

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

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

WEDNESDAY 12 JUNE 2019

Beginning at 1:30pm for the purpose of considering and determining matters included in this agenda.



Peter Robinson
Executive Manager Development Assessment

Panel Members

Paul Vergotis	Chair
Steve Kennedy	Urban Design Expert
Marcus Sainsbury	Environmental Expert
Lloyd Graham	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 12 June 2019
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1:30pm**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 5 JUNE 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 5 June 2019 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1 DA2018/2058 - 3 BRUCE AVENUE, MANLY - ALTERATIONS
AND ADDITIONS TO A DUAL OCCUPANCY

AUTHORISING MANAGER Anna Williams

TRIM FILE REF 2019/307085

ATTACHMENTS

- 1 [↓ Assessment Report](#)
- 2 [↓ Plans](#)
- 3 [↓ Clause 4.6](#)

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/2058 for alterations and additions to a dual occupancy at Lot CP SP 22407, 3 Bruce Avenue, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/2058
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot CP SP 22407, 3 Bruce Avenue MANLY NSW 2095
Proposed Development:	Alterations and Additions to an existing dual occupancy
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 22407
Applicant:	Proprietors of Strata Plan 22407
Application lodged:	27/12/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	17/05/2019 to 31/05/2019
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 67,430.00

Executive Summary

The application is for alterations and additions to an existing dual occupancy and includes a variation of 17.6% to the floor space ratio development standard. As the proposal relates to a dual occupancy (Class 2) and the variation is greater than 10%, the application is referred to the Northern Beaches Local Planning Panel for determination.

Notwithstanding the FSR non-compliance, the additional gross floor area is achieved within the existing building envelope and the proposal does not result in any additional building bulk.

No further assessment issues are raised and the proposal is recommended for approval.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning

and Assessment Act 1979 and the associated Regulations. In this regard:

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 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 - 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 - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area
 Manly Development Control Plan - 5.4.2 Threatened Species and Critical Habitat Lands

SITE DESCRIPTION

Property Description:	Lot CP SP 22407 , 3 Bruce Avenue MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Bruce Avenue.</p> <p>The site is irregular in shape with a frontage of 11.85m along Bruce Avenue and an average depth of 30m. The site has a surveyed area of 376.3m².</p> <p>The site is located within the R1 General Residential zone and accommodates a two-storey dual occupancy.</p> <p>The site slopes approximately 8m from front (north) to rear (south).</p>

The site slopes steeply at the rear and contains terraced garden and turfed areas.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwellings, dual occupancies and residential flat buildings. Little Manly Cove is located in close proximity to the south-east of the subject site.

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:

DA0176/2017 - Alterations and additions to the existing dual occupancy - Approved 10 November 2017.

Mod2018/0201 for Modification of Development Consent DA0176/2017 granted for alterations and additions to the existing dual occupancy - Approved 16/07/2018.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes works as follows:

- Demolition of existing north-eastern common staircase
- New Ground Floor Storage room
- New First Floor Bathroom
- Refurbish existing Basement Laundry/Bathroom
- Changes to windows

The application also includes Strata re-subdivision to allocate and title the areas of work.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
	via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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 Philippe Remond	23 Addison Road MANLY NSW 2095

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

- Proposed FSR and over-development
- Cost of works
- Relevance of Biodiversity Report and Assessment of Significance

The matters raised within the submissions are addressed as follows:

- Proposed FSR and over-development
Comment:
The Clause 4.6 written request submitted with the application is considered to adequately justify the proposed development. Further, the proposed increase to gross floor area on the site will result in no unreasonable visual or amenity impact on the adjoining properties or surrounding area. A full assessment of the development against the provisions of Clause 4.6 is completed as part of this report.
- Cost of works
Comment:
A revised cost of works estimate and Builder's quote has been provided to satisfy the DA lodgement requirements.
- Relevance of Biodiversity Report and Assessment of Significance
Comment:
Council's Biodiversity Officer commented that the flora and fauna report and seven-part tests satisfy the relevant requirements in relation to this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the following provisions:</p> <ul style="list-style-type: none"> - Manly LEP Clause 6.3 (Terrestrial Biodiversity) - Manly DCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands) - NSW Biodiversity Conservation Act 2016 (BC Act) <p>The subject site is known habitat for the endangered populations of Long-nosed Bandicoots and Little Penguins, as declared under the BC Act. Accordingly, the flora and fauna report (Total Earth Care, July 2017) includes a seven-part test for these entities. It is noted that the flora and fauna report pre-dates the plans submitted in support of the DA and that the environmental assessment was undertaken in accordance with provisions of the now-repealed NSW Threatened Species Conservation Act 1995. However, given that the submitted plans are generally the same as those included in the flora and fauna report, it is considered that the conclusions of the flora and fauna</p>

Internal Referral Body	Comments
	<p>report remain valid for the proposed development and that the seven-part tests satisfy the requirements of Section 7.3 of the BC Act.</p> <p>The flora and fauna report states that no evidence of penguin or bandicoot occupation was recorded during site surveys, and that existing habitat on the site is unlikely to be utilised by penguins or bandicoots due to the nature of the site terrain and access. This conclusion is supported. Furthermore, the proposed development is generally within the existing development footprint and is therefore unlikely to result in a notable loss of soft open space on the site. It is therefore considered that, subject to conditions of consent, the proposal is compliant with relevant controls, and that further assessment in the form of a Biodiversity Development Assessment Report (BDAR) is not required.</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)

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

Comment:

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

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

Comment:

The proposal is consistent with this Clause.

14 Development on land within the coastal use area

- (1)
- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform*

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

Comment:

The proposal will not unreasonably impact the coastal use area.

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

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

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

Comment:

The proposed works are generally minor and are not considered likely to cause increased risk of coastal hazards.

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	6.35m	N/A	Yes
Floor Space Ratio	0.6:1 225.78m ²	0.7:1 265.6m ²	17.6%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (225.78m ²)
Proposed:	0.7:1 (265.6m ²)
Percentage variation to requirement:	17.6%

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 subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *"The proposed additional GFA for washroom facilities will enable the building to better meet contemporary living standards and supports the housing needs of the community in a manner that will have negligible impact.*
- *The site, being 376m², is small by contemporary standards. The proposed addition of 11m² is not large or excessive in extent but will significantly improve the functionality of the existing dwellings consistent with the zone objectives.*
- *The proposal will not result in any perceivable increase in the visual bulk or scale of the development on the property.*
- *There are no significant or unreasonable amenity impacts (for example, on overshadowing, privacy, noise, view loss etc) that are attributable to the FSR of the proposal. In other words the proposed design is appropriate, relative in scale to the area of the allotment, and does not result in what could be concluded to be an over-development of the site."*

The proposed works will not materially alter the appearance of the existing building, but will improve the internal amenity for the occupants of both units. Notwithstanding the non-compliance, the proposal is not considered to result in any unreasonable visual or amenity impacts on the adjoining properties or surrounding area.

In this regard, the applicant's written request has demonstrated that the proposed development is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 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 E4 Environmental Living 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 will not alter the appearance of the development as viewed from the street.

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 proposed works are contained within the existing building envelope and will not unreasonably obscure any landscape or townscape features.

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

Comment:

The proposal generally retains the existing visual appearance of the building, with the exception of proposed window/door changes.

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

Comment:

The proposal will not unreasonably impact the use or enjoyment of the adjoining properties or 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:

N/A

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

The underlying objectives of the E4 Environmental Living zone:

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

Comment:

The proposed works are generally internal and are considered to be low impact.

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

Comment:

The proposal will not unreasonably impact the ecological, scientific or aesthetic values of the site.

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

Comment:

The proposed works will not impact the tree canopy or dominate the scenic qualities of the foreshore.

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

Comment:

The proposed works contained within the existing building footprint will not unreasonably impact the surrounding natural environment.

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

Comment:

The proposed works are sufficiently separated from the foreshore.

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

Comment:

The proposal does not contribute any significant bulk to the existing building.

Conclusion:

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

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

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

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

6.2 Earthworks

No excavation is proposed in this application.

6.5 Terrestrial biodiversity

Council's Biodiversity Officer commented that the proposed works are generally within the existing building footprint and will not result in substantial loss of landscaped area on the site.

6.9 Foreshore scenic protection area

The proposed works are wholly contained within the existing building footprint. Alterations to the external building fabric are limited to changes to window/glazing. As such, the proposal will result in no unreasonable impact in relation to visual aesthetic amenity or views to and from Sydney Harbour.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 376.3m ²	Requirement	Proposed	Complies
4.1.2.1 Wall Height	NE: 7.7m	6.77m	Yes (Existing)
4.1.2.2 Number of Storeys	2	3	No (Existing)
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.25m	1.2m	No (Existing)
4.1.4.4 Rear Setbacks	8m	8.3m	Yes (Existing)

***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
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1.2 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
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	N/A	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

The proposal does not result in any additional building bulk or overshadowing impact.

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The proposal is appropriately designed to maintain the privacy of the adjoining properties. The proposed first floor bathroom windows incorporates louvered and frosted glazing. The proposed ground floor storage room and basement windows will not result in any unreasonable privacy impacts.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and

views from habitable rooms and private open space.

Comment:

The proposal allows sufficient privacy and sunlight access to the subject site and adjoining property.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal will not alter existing 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.

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

The proposal retains the existing building height and number of storeys.

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

The proposed works are contained within the existing building envelope and result in no change to the existing setbacks.

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

The proposal does not result in any increase to car parking requirements on the site.

4.4.5 Earthworks (Excavation and Filling)

No excavation is proposed in this application.

5.4.1 Foreshore Scenic Protection Area

The proposed works are wholly contained within the existing building footprint. Alterations to the external building fabric are limited to changes to window/glazing. As such, the proposal will result in no unreasonable impact in relation to visual aesthetic amenity or views to and from Sydney Harbour.

5.4.2 Threatened Species and Critical Habitat Lands

Council's Biodiversity Officer commented that the proposed works are generally within the existing building footprint and will not result in substantial loss of landscaped area on the site. As such, no objection is raised to the proposal.

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 DA2018/2058 for Alterations and Additions to an existing dual occupancy on land at Lot CP SP 22407, 3 Bruce Avenue, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A101 Site Plan	26 November 2018	Blue Sky Building Designs
A102 Proposed Basement	26 November 2018	Blue Sky Building Designs
A103 Ground Floor	26 November 2018	Blue Sky Building Designs
A104 First Floor	26 November 2018	Blue Sky Building Designs
A105 NE Elevation	26 November 2018	Blue Sky Building Designs
A106 SW Elevation	26 November 2018	Blue Sky Building Designs
A107 NW & SE Elevations	26 November 2018	Blue Sky Building Designs
Sheet 1 of 2 Location Plan	20 April 2018	Warren L. Bee
Sheet 2 of 2 Level 1, Level 2, Level 3, Level 4	20 April 2018	Warren L. Bee

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Terrestrial Biodiversity Report and Assessment of Significance	July 2017	Total Earth Care

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

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

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

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

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

2. Prescribed Conditions

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

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

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

- to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS**4. Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE**5. Preparation of Environmental Management Checklist**

A Construction Environmental Management Checklist is to be prepared and is to incorporate all measures for the protection of native vegetation, wildlife and habitats during the construction phase. Measures specified in the checklist must include all requirements of conditions of this consent addressing construction-related impacts on biodiversity. The Checklist is to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To protect native vegetation, wildlife and habitats in accordance with relevant Natural Environment LEP/DCP controls.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**6. Construction Hours – Manly LEP Clause 6.5**

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 7:00am and 5:00pm.

Reason: Noise and vibration can disturb local native fauna (including threatened species) and prevent access to their natural habitats.

7. Pre-clearance Survey Required – Penguin and Bandicoot Habitat

A pre-clearance survey for Little Penguin and Long-nosed Bandicoot activity and presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no Little Penguins or Long-nosed Bandicoots are present within the area to be cleared or the immediate vicinity. All clearing must initially be carried out with hand tools to identify whether any penguins or bandicoots are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter). Machinery may only be used once it has been confirmed that no penguins or bandicoots are sheltering within the area to be

cleared. Clearing must be carried out at dusk and completed within one day so that penguins or bandicoots do not reoccupy partially cleared areas overnight. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to Principal Certifying Authority.

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

8. **Fencing for Wildlife Passage**

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

Reason: Management of wildlife corridors

9. **Report Dead or Injured Penguins or Bandicoots – Penguin and Bandicoot Habitat**

Any injured or dead Long-nosed Bandicoots or Little Penguins found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

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

10. **Slurry and Concrete to be Removed – Penguin Habitat**

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

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

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

11. **Fire Safety Upgrade**

The Building Code of Australia works (and including recommended actions) and fire upgrading measures to upgrade the building as detailed in Part 4 of the BCA Fire Safety Report prepared by BCA Vision Pty Ltd, dated 26 October 2017, Report Ref No.P17167 (2) are to be carried out to the building.

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

Reason: To ensure adequate provision is made for fire safety and for building occupant safety

12. **Building Code of Australia Upgrading works**

The Building Code of Australia works (and including recommended actions) and fire upgrading measures to upgrade the building as detailed in Part 4 of the BCA Fire Safety Report prepared by BCA Vision Pty Ltd, dated 26 October 2017, Report Ref No.P17167 (2) are to be carried out to the building.

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

Reason: To ensure adequate provision is made for fire safety and for building occupant safety

13. **Implementation of Construction Environmental Management Checklist**

Construction is to be undertaken in accordance with the Constructional Environmental Management Checklist. Details demonstrating compliance are to be provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect native vegetation, wildlife and habitats in accordance with relevant Natural Environment LEP/DCP controls.(DACNEFPOC1)

14. **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.

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

15. **No Planting Environmental Weeds**

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

Reason: Weed management.

16. **Maintain Fauna Access and Landscaping Provisions – Manly LEP Clause 6.5**

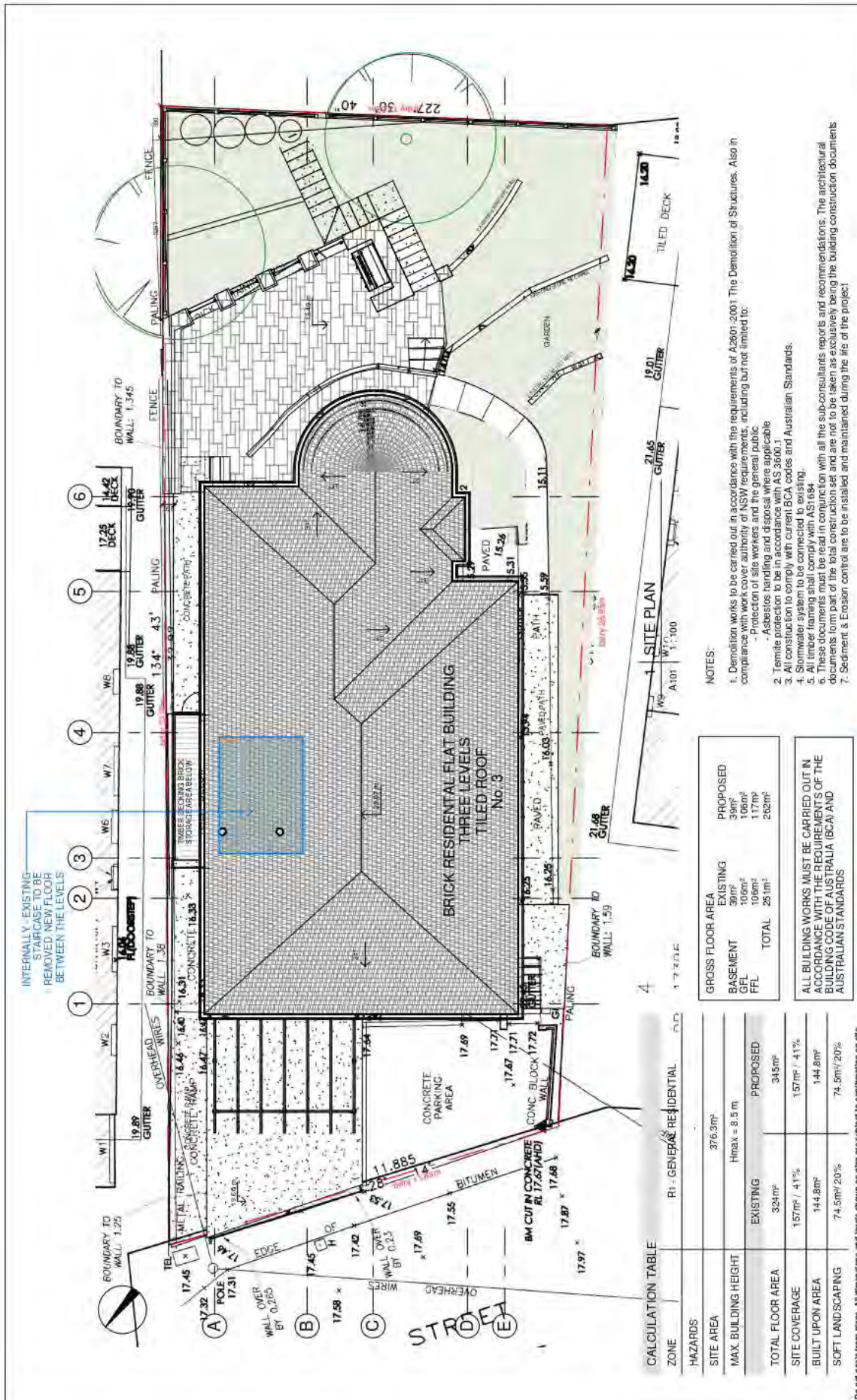
All fauna access/movement and landscaping provisions specified in these conditions of consent are to be implemented and maintained for the life of the development.

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

17. **Dead or Injured Wildlife – Manly LEP Clause 6.5**

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

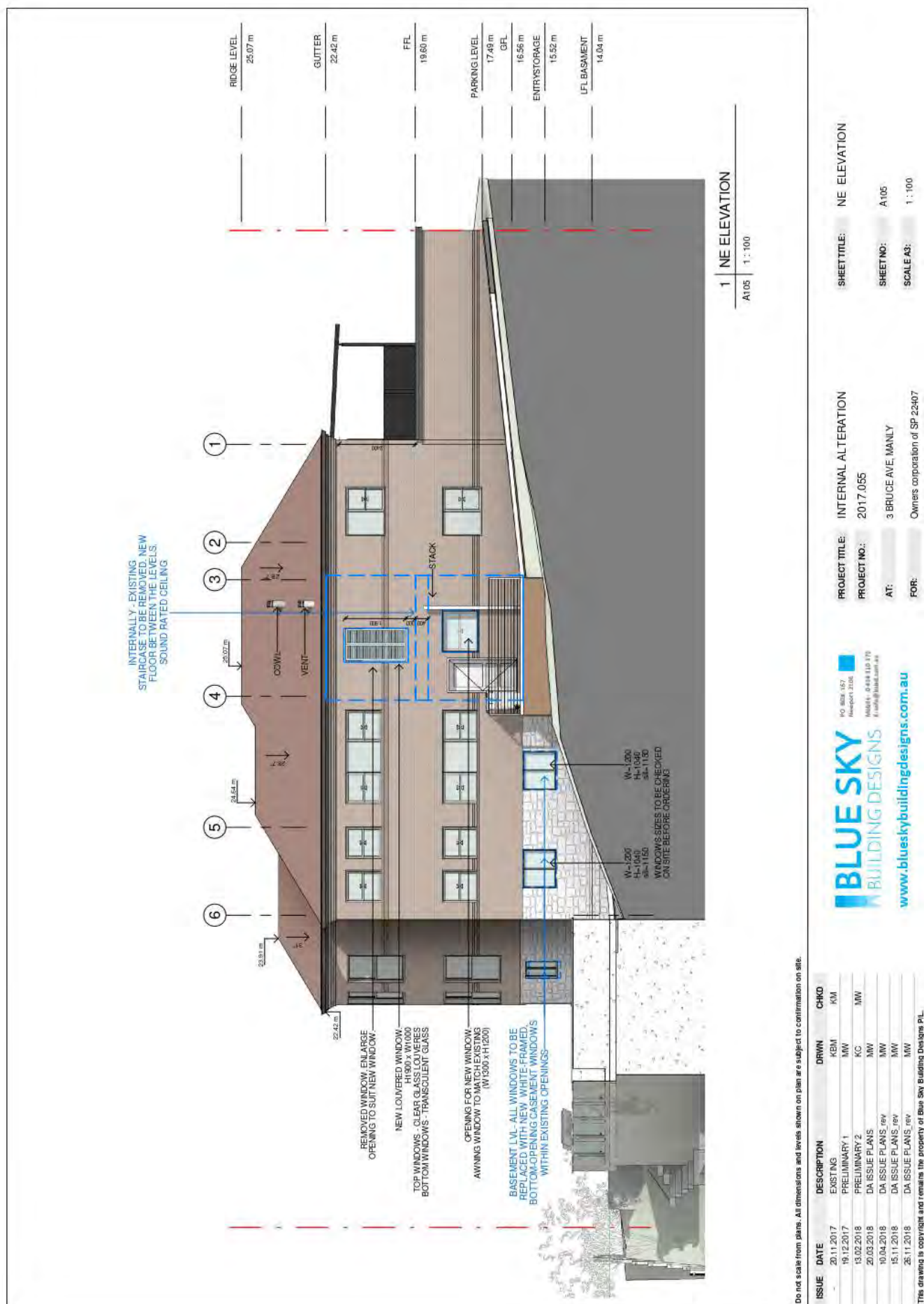
Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

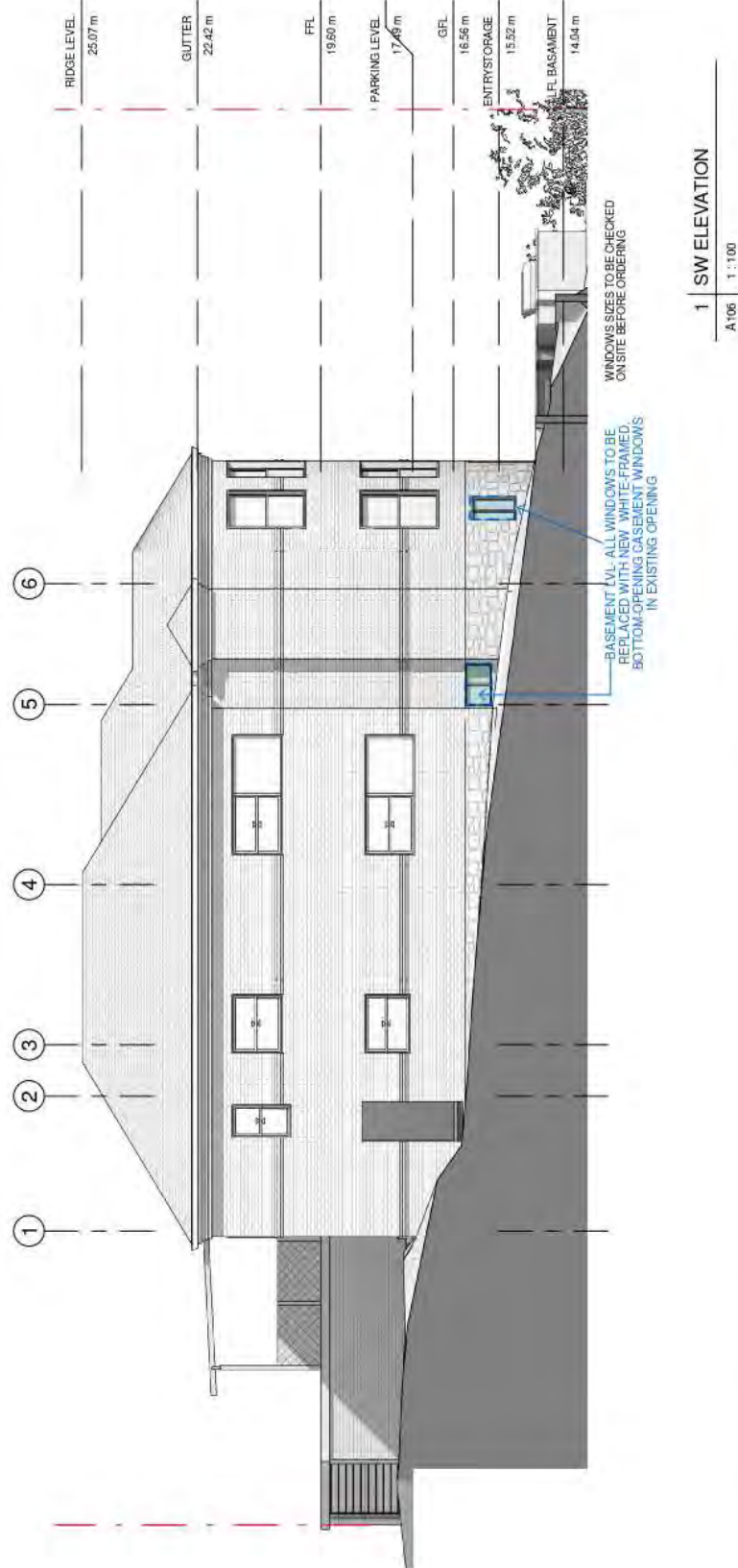


SHEET TITLE: SITE PLAN
SHEET NO: A101
SCALE A3: As indicated

PROJECT TITLE: INTERNAL ALTERATION
PROJECT NO.: 2017.055
AT: 3 BRUCE AVE, MANLY
FOR: Owners corporation of SP 23407

BLUE SKY
BUILDING DESIGNS
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Do not scale from plans. All dimensions and levels shown on plan are subject to confirmation on site.

ISSUE	DATE	DESCRIPTION	DRWN	CHKD
1	20.11.2017	EXISTING	KBM	KM
2	19.12.2017	PRELIMINARY 1	MW	MW
3	13.02.2018	PRELIMINARY 2	KC	MW
4	20.03.2018	DA ISSUE PLANS	MW	MW
5	10.04.2018	DA ISSUE PLANS rev	MW	MW
6	15.11.2018	DA ISSUE PLANS rev	MW	MW
7	28.11.2018	DA ISSUE PLANS rev	MW	MW

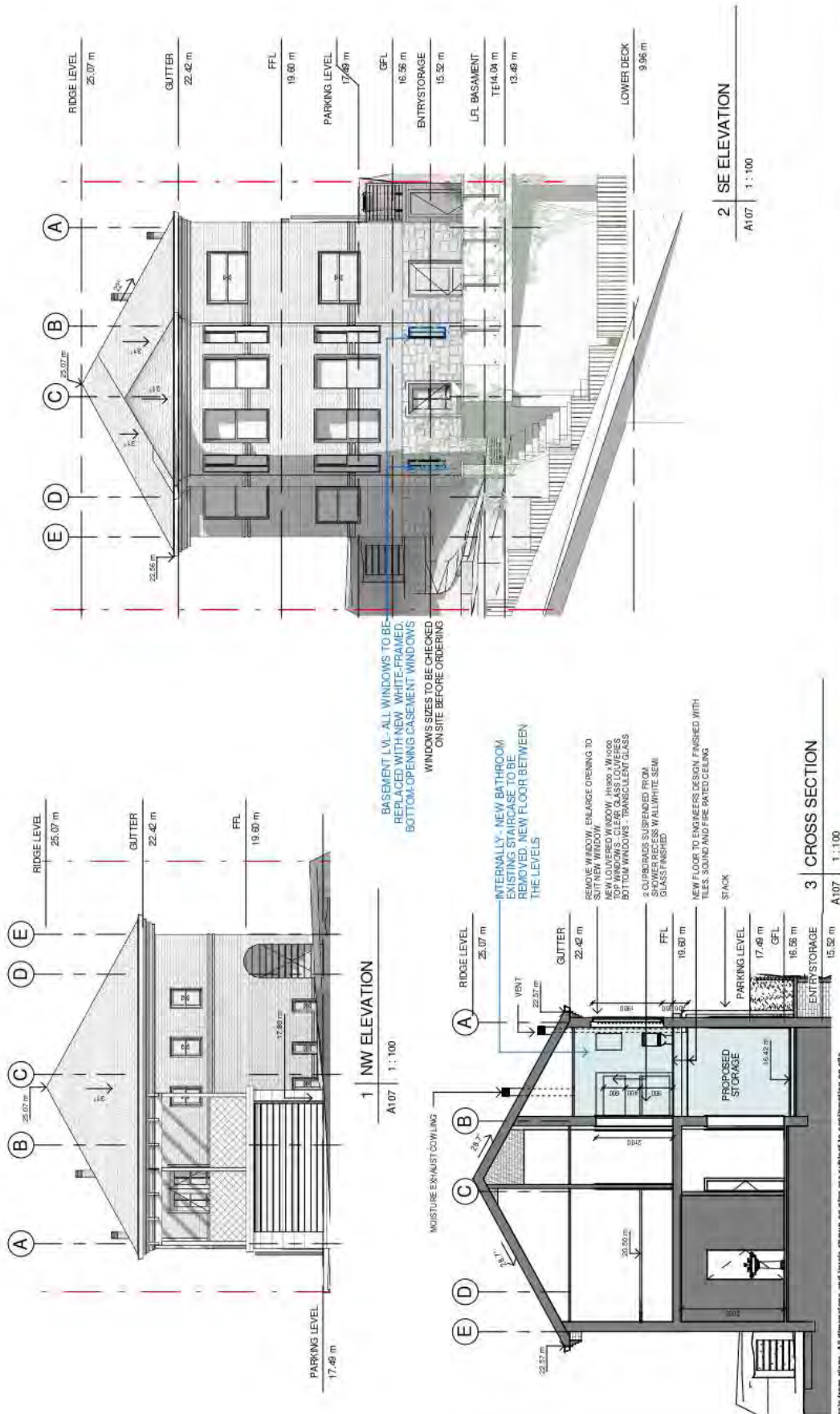
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www.blueskybuildingdesigns.com.au

PO BOX 657
Marengo NSW 2250
Mobile: 0494 110 170
Email: info@bluesky.com.au

PROJECT TITLE: INTERNAL ALTERATION
PROJECT NO.: 2017.055
AT: 3 BRUCE AVE, MANLY
FOR: Owners corporation of SP 23407

SHEET TITLE: SW ELEVATION
SHEET NO.: A106
SCALE A3: 1:100



PROJECT TITLE:	INTERNAL ALTERATION	SHEET TITLE:	NW AND SE ELEVATIONS
PROJECT NO.:	2017.055	SHEET NO.:	A107
AT:	3 BRUCE AVE, MANLY	SCALE A3:	1:100
FOR:	Owner's corporation of SP 23407		

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www.blueskybuildingdesigns.com.au

PO BOX 487
Manlyport NSW 1585
Mobile: 08 9494 110 112
E: info@bluesky.com.au

ISSUE	DATE	DESCRIPTION	DRWN	CHKD
1	20.11.2017	EXISTING	KBM	KBM
2	19.12.2017	PRELIMINARY 1	MW	MW
3	13.02.2018	PRELIMINARY 2	KC	MW
4	20.03.2018	DA ISSUE PLANS	MW	MW
5	10.04.2018	DA ISSUE PLANS rev	MW	MW
6	15.11.2018	DA ISSUE PLANS rev	MW	MW
7	26.11.2018	DA ISSUE PLANS rev	MW	MW

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ENVIRONMENTAL PLANNING INSTRUMENTS

5.2 Part 4 of the LEP – development standards

5.2.1 LEP Clause 4.3 – Height of Buildings

Clause 4.3 Height of buildings is applicable to the assessment of the proposal. It establishes an 8.5m height limit applicable to the site. The proposed works are within the height and envelope of the existing building and satisfies this assessment consideration.

5.2.2 LEP Clause 4.4 – Floor space ratio

Clause 4.4 Floor Space Ratio (FSR) is applicable to the assessment of the proposal. It establishes an FSR limit of 0.6 to 1 applicable to the site. The existing development exceeds this limit with a GFA of 251 m². This is proposed to be increased by the proposed conversion of the existing common stairwell into spaces associated with units 1 & 2 by 11 m². This is addressed below under clause 4.6 of the LEP.

As per the LEP definition of *gross floor area* (copied below), the existing common stairwell does not constitute GFA, whereas the proposed change in the use of this space which is to be incorporated within the units, does. This is a modest increase in GFA that does not alter the bulk or scale of the development, nor the intensity of the land use.

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,
but excludes:
 - (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above.

ENVIRONMENTAL PLANNING INSTRUMENTS

5.3 LEP Clause 4.6 – Exceptions to development standards

As identified, the proposal contravenes Clause 4.4, the Floor Space Ratio development standard and an exception is sought. As required by clause 4.6 (3) the following is a written request to justify this contravention for the consent authority's consideration.

5.3.1 Clause 4.6 (3)(a) compliance with the development standard is unreasonable or unnecessary

In accordance with 4.6 (3)(a) it can be demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case given that:

- The area for common vertical circulation, such as lifts and stairs is not included in the calculation of GFA or FSR. The proposed change in the use of this space to be incorporated within the units does.
- The proposed additional GFA is located within the existing building envelope and development footprint. In this way the proposal does not impact on the amenity of the adjoining properties.
- The proposal does not increase the bulk or scale of the existing development or impact on the building's visual impact.
- The proposed additional floor area will not generate additional accommodation or increase the property's land use intensity.
- The proposed additional GFA for washroom facilities will enable the building to better meet contemporary living standards and supports the housing needs of the community in a manner that will have negligible impact.

5.3.2 Clause 4.6 (3)(b) sufficient environmental planning grounds to justify contravening the development standard

In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify contravening the development standard given that:

- The site, being 376m², is small by contemporary standards. The proposed addition of 11m² is not large or excessive in extent but will significantly improve the functionality of the existing dwellings consistent with the zone objectives.
- The proposal will not result in any perceivable increase in the visual bulk or scale of the development on the property.
- There are no significant or unreasonable amenity impacts (for example, on overshadowing, privacy, noise, view loss etc) that are attributable to the FSR of the proposal. In other words the proposed design is appropriate, relative in scale to the area of the allotment, and does not result in what could be concluded to be an over-development of the site.
- The site is suitable in accommodating the proposed redevelopment given that:
 - It is constrained in its site area and site configuration;
 - It is compatible with the current and likely future character of development within the local context;
 - It will not result in any significant unacceptable offsite impacts that limit the use or enjoyment of nearby or adjoining land.

ENVIRONMENTAL PLANNING INSTRUMENTS

5.3.3 Clause 4.6 (4)(a)(ii) - the public interest

Objectives of the Development Standard

In accordance with 4.6 (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the Clause 4.4 *Floor space ratio* of MLEP 2013 which are stated as follows:

- (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.*

In response

Consistent with the objectives of the development standard the proposal will result in a development that:

- is compatible with the existing bulk, nature and scale and built form character of the residential development within the context of the site, particularly those to the north and south.
- will maintain the dwelling's streetscape presentation and roof form. The design avoids adverse impacts on the streetscape and preserves the environmental amenity of neighbouring properties.
- The proposed additional FSR will not obscure landscape or townscape features.
- The proposal is consistent with the objectives of the FSR development standard and presents an opportunity to add floor area in a manner that is sensitive to maintaining the presentation of the development in respect to the site's scenic protection area location.
- The proposed additional GFA and additions are modest in their extent. When compared to the overall existing building GFA, they will not increase the visual scale, bulk or size of the development as it presents to surrounding land.
- The proposed alterations and additions, will not be visible from the foreshore; they are within the overall scale and extent of the existing building envelope. They will be compatible and in-keeping with the character of the foreshore's scenic qualities.

Objectives of the zone

The proposed development will be in the public interest because it is consistent with the objectives for development within the R1 General Residential zone in which the development is proposed to be carried out. These are stated as follows:

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

ENVIRONMENTAL PLANNING INSTRUMENTS

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

In response, the proposal is consistent with the zone objectives in that:

- The proposal will not result in any perceivable increase in the visual bulk or scale of the development on the property. As such, the proposed development is compatible with the scale and character of the surrounding residential development;
- The proposed additional GFA for washroom facilities will enable the building to better meet contemporary living standards and supports the housing needs of the community in a manner that will have negligible impact.

5.3.4 Conclusion:

The exceedance proposed to the FSR development standard has been appropriately acknowledged and the circumstances assessed, having regard to the objectives of the control. In conclusion, Council can be satisfied that:

- This written request has adequately addressed the matters required to be demonstrated by 4.6 (3) & 4.6(a)(i);
- Is well founded and adequately address the matters required in accordance with & 4.6(a)(i);
- The exception is appropriate taking into account the range of relevant environmental planning considerations and the circumstances of the case.

The proposal succeeds when assessed against the Heads of Consideration pursuant to clause 4.6. There is no statutory planning impediment to the assessment and approval of the application.

5.4 Part 6 of LEP – Additional local provisions

Part 6 of the LEP contains Additional local provisions. The provisions of relevance to the proposal are:

- Clause 6.5 Biodiversity
- Clause 6.9 Foreshore scenic protection area.

These are addressed in turn below

5.4.1 LEP Clause 6.5 – Terrestrial Biodiversity

Pursuant to Clause 6.5, the site is identified on the terrestrial biodiversity map. The nature and extent of the proposed works are internal and within the footprint of the existing 2-3 storey building on the property.

Notwithstanding, the proposal is accompanied and supported by a Terrestrial Biodiversity Report & Assessment of Significance (7-part test) prepared by Total Earth Care Pty Ltd. The report concludes that the proposal is unlikely to impose 'a significant effect' on the endangered population of the Little Penguins at Manly and that consequently, a Species Impact Statement is not required to be prepared for the development application.

ITEM 3.2**DA2019/0053 - 40 FAIRY BOWER ROAD, MANLY -
ALTERATIONS AND ADDITIONS TO AN EXISTING
RESIDENTIAL FLAT BUILDING****AUTHORISING MANAGER** Steve Findlay**TRIM FILE REF** 2019/309802**ATTACHMENTS**
1 [↓](#) Assessment Report
2 [↓](#) Plans
3 [↓](#) Clause 4.6**PURPOSE**

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0053 for alterations and Additions to an existing residential flat building at SP 8962, 40 fairy Bower Road, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0053
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot CP SP 8962, 40 Fairy Bower Road MANLY NSW 2095
Proposed Development:	Alterations and Additions to an existing residential flat building
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 8962
Applicant:	Wisden Architects
Application lodged:	23/01/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/02/2019 to 19/02/2019
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 496,000.00

Executive Summary

This report is submitted to the Local Planning Panel for the consideration of Development Application No. DA2019/0053 for alterations and additions to the existing Residential Flat building at 40 Fairy Bower Road, Manly.

In the case of this application, the two levels of the existing building each containing two apartments (4 apartments in total) are to remain but reconfigured with internal changes, external changes and additions of attics to the existing roof structure.

The site is known as 40 Fairy Bower Road, Manly and has a total area of 403.8m². The site is located at the end of a cul-de-sac on Fairy Bower Road. The site is relatively flat.

The proposed alterations and additions are to be made to a "residential flat building" as defined under

the Manly Local Environmental Plan (MLEP) 2013 and is permissible with consent in the R1 - General Residential zone. The proposed development has been assessed against the applicable planning controls for the site including the relevant provisions of Manly LEP 2013. The application does not comply with the building height development standard of 8.5m. The application also does not comply with the floor space ratio development standard of 0.6:1. Therefore, the applicant has lodged requests under Clause 4.6 for variation to the development standards.

In the circumstances, the site provides an orientation in which the additions can be made to improve the amenity and functionality of the top level apartments and result in a positive outcome for the streetscape and area. Therefore, the variation to the development standards, while continuing to allow for the existing building to be substantially retained, is not considered unreasonable and essentially the encroachment does not result in any unreasonable impacts to any surrounding properties.

The application has also been assessed against the planning controls of the Manly Development Control Plan 2013, and whilst there are some minor variations to the built form as a result of the proposal, they are found to be consistent with the relevant requirements. In this regard, the built form will integrate into the landscape, streetscape and will continue to be sited to relate well to adjoining and surrounding residential buildings.

The proposed development was notified and one (1) submission was received, which was in support of the application.

The assessment report concludes that the proposed design is a modernised improvement of the existing residential flat building, with a design that will provide for appropriate amenity for the subject site without having any unreasonable visual impact on the streetscape or any unreasonable amenity impact on surrounding uses.

This report recommends that consent be granted to this application in accordance with the recommended conditions.

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 - 4.3 Height of buildings
Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.1 Streetscapes and Townscapes
Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot CP SP 8962 , 40 Fairy Bower Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of an allotment located on the north-western side of Fairy Bower Road.</p> <p>The site is regular in shape with a frontage of 12.65m along Fairy Bower Road and a depth of 24.84m.</p> <p>The site is located within the R1 General Residential zone and accommodates a Residential flat building comprising of 4 units on site.</p> <p>The site is relatively flat and contains landscaping and footpaths which surround the building.</p> <p>The site has a row of heritage buildings which adjoin to the rear and a walking passageway which adjoins to the north-east.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development with variable densities.</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:

- A subdivision plan dated 5th of June, 1974 shows a brick 2 storey building with 4 lots.

Pre-Lodgement- 24/08/17

A Pre-Lodgement meeting was held on 24/08/2017 to discuss the following proposal:

"Apartments 1 and 2- remove windows, demolish brickwork below sill, addition of a new door, landing and steps to garden."

Apartments 3 and 4, new attic conversion providing new bathrooms and bedroom (Apt 3) and living area/kitchen (Apt 4)."

The notes provided from this meeting state that; "the proposal as it has been submitted could not be recommended for approval." In particular, the following relevant advice was given:

An additional storey is not supported and as a result it is recommended that the proposed attic meets the definition for attics under the Manly LEP, 2013. This definition is as follows:

"attic means any habitable space, but not a separate dwelling, contained wholly within a roof above the ceiling line of the storey immediately below, except for minor elements such as dormer windows and the like."

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves alterations and additions to the existing Residential flat building. In detail, this includes:

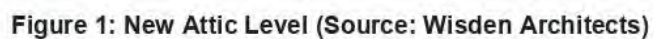
- New gates and fence to surround the property
- New timber glazed door to match existing to apartment 2
-

Ground Floor Apartments 1 and 2

- Remove windows
- Demolish brickwork below sill
- Addition of a new door
- Landing and steps to the garden
- Wrought iron fence over existing brick garden fence

First Floor Apartments 3 and 4

- Attic level to each apartment
- New bathroom and bedroom to each apartment
- New living room and kitchen to apartment 4



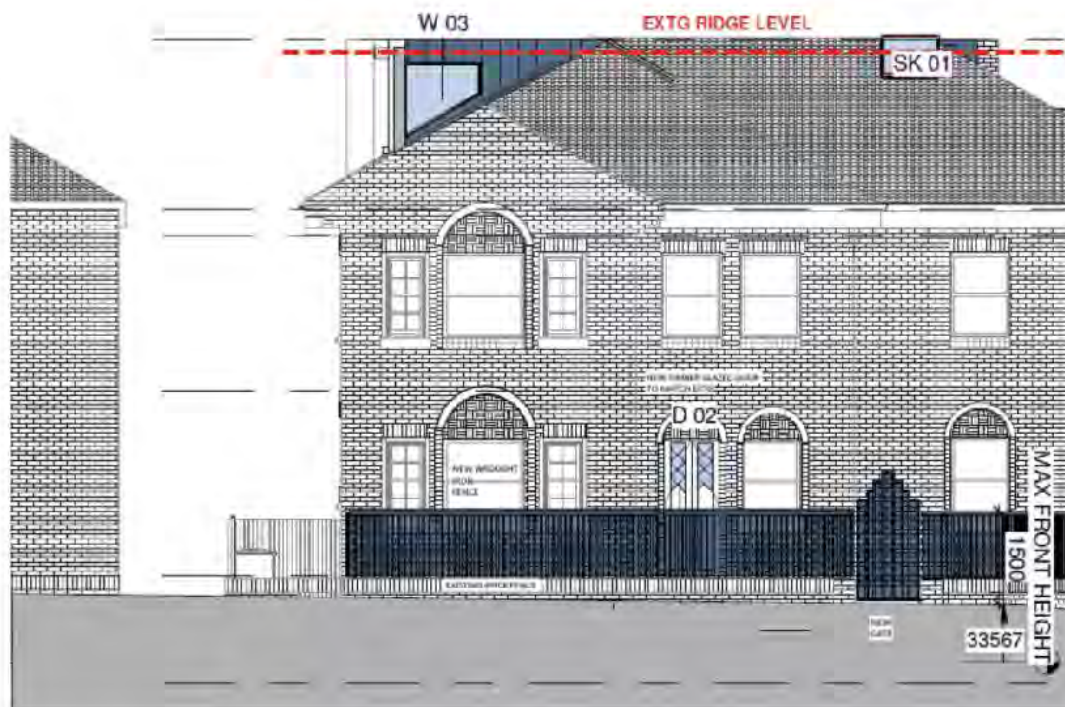


Figure 2: Street Elevation (Source: Wisden Architects)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration*	Comments
	<p>Clauses 54 and 109 of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition 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 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:
Dr Anthony Charles Bernard	4 Albert Street NARRABEEN NSW 2101

The following comments were raised in a submission of support for the application:

- The loft extension is subtle and unobtrusive, the proposal appears to be well designed and there would be no adverse impact on the streetscape.

Comment:

As further assessed below in this report, it is agreed that the proposed attic spaces provides an adequate minimisation in the presentation of bulk to provide an appropriate visual outcome.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the 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>
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the following Natural Environment provisions:</p> <ul style="list-style-type: none"> - MLEP Clause 6.5 (Terrestrial Biodiversity) - MDCP Clause 5.4.2 (Threatened Species and Critical Habitat Lands) - MDCP Clause 3.3.1 (Landscape Design - Bandicoot Habitat) <p>The subject site is within declared habitat for the endangered population of Long-nosed Bandicoot at North Head. A 'five-part test' is therefore required under the NSW Biodiversity Conservation Act 2016. However, given that the proposal will have minimal impact on</p>

Internal Referral Body	Comments
	<p>soft open space, Council's Biodiversity Section has undertaken this assessment on the applicant's behalf.</p> <p>It is concluded that, subject to recommended conditions of consent, the proposal can achieve compliance with relevant controls.</p>
NECC (Development Engineering)	<p>The application proposes internal changes to the existing building.</p> <p>Development Engineering has no objection to the application.</p>
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of the available documents and site visit, the site of proposed development is not a listed heritage item in its own right, however, it is located in the directly abutting properties of 128 and 130 Addison Road (which are heritage items).</p> <p>Given the nature of the proposal and the terrain configuration, it is assessed that the proposed changes will not be visible, and that thus the impact on heritage values is assessed as acceptable.</p> <p>Based on the above, I have no objections to this proposal from a heritage perspective.</p>
Traffic Engineer	<p>The existing development has no offstreet parking and the proposal involves only creation of additional attic rooms without creation of additional dwellings. There will be negligible impact upon traffic and parking conditions in the surrounding area as a result of the development.</p> <p>There is no traffic objection to approval of this development application</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

Nil

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Existing	Existing Variation	Proposed	Proposed Variation	Complies
Height of Buildings	8.5m	9.9m	16.4%	9.8m	15.2%	No (see comments)
Floor Space Ratio (Site Area: 429sqm)	0.6:1 (257.4m ²)	0.652:1 (280m ²)	8.8%	0.75:1 (324m ²)	25.8%	No (see comments)

Compliance Assessment

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

Detailed Assessment

4.3 Height of buildings

See discussion on the variation to the building height standard in the Clause 4.6 section of this report.

4.4 Floor space ratio

See discussion on the variation to the floor space ratio standard in the Clause 4.6 section of this report.

4.6 Exceptions to development standards

(1) Height of Buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.8m
Percentage variation to requirement:	15.2%

Assessment of request to vary a Development Standard:

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

Clause 4.6 Exceptions to development standards

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

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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

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

Applicants Written Request

The Applicants written request argues, in part:

The existing building is currently over the height limit (built in the post war period around 1938) and strict compliance would mean that change could not be made to the existing roof (such as the proposed dormer windows). It is also stated that bulk, height and impacts are minimised. Finally, it is provided that improvements will be made to residential amenity whilst retaining the visual presentation of the existing streetscape.

It is accepted that the alterations and additions that are within the building footprint are appropriate due to the height being below the existing ridge and the bulk being partially contained within the roof so as to minimise the presentation of bulk. It is also agreed that the age of the building, developed at a time prior to the current planning controls, contributes to grounds to allow modifications in a form that is appropriately subservient to the existing building.

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 proposed additions are of 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.

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 provides for attic space in two sections being to the rear and western side of the building. These locations do not directly face the streetscape and the dormer style of the additions provide a built form that is complementary with the existing roof structure. The proposed attic space is partially within the roof area and also below the existing ridge height of the building so as to appropriately maintain the character of the existing building and to maintain a desirable presentation in the streetscape.

b) to control the bulk and scale of buildings,

Comment:

The proposed attic spaces within the existing roof space will provide a bulk and scale that provides appropriate visual presentation and minimises any amenity impacts. This is contributed to by the minimalist form of the elements (attics with dormer style features) as well as the separation between each element to be on separate sides of a ridge line in the existing roof.

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 attic spaces are below the existing ridge line and have side setbacks which comply with the applicable controls under the Manly DCP. This provides a sufficient minimisation 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 fact that each attic complies with the control for side setbacks at the western boundary, along with the location below the existing ridge and partly within the existing roof, results in an outcome that is satisfactory in relation to solar access.

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 provides additional floor space to the existing residential flat building. This ensures that the building continues to contribute to the housing needs of the community.

It is considered that the development satisfies this objective.

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

Comment:

The use of the building will remain as a residential flat building and this contributes to the variety of housing types and densities in the area.

It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet 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. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

(2) Floor Space Ratio

Description of non-compliance

Development standard:	Floor Space Ratio
Requirement:	FSR - 0.6:1 (257.4m ²)
Proposed:	FSR - 0.75:1 (324m ²)

Percentage variation to requirement:	25.8%
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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 subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

Applicants Written Request

The Applicants written request argues, in part:

The existing building is currently over the maximum FSR and strict compliance would negate any improvements to the building in terms of additions. Furthermore, it is stated that the additions provide improvements to the existing building that is relatively old and does not comply with the FSR standard currently. One improvement is stated to be additional amenity for residents. The applicant also states that there are grounds to vary the standard due to the characteristics of the site including the orientation to the street and walkway frontage.

It is agreed that there are sufficient environmental planning grounds in the form of a design which adequately minimises the presentation of bulk to the street, on a site which an old building will be substantially retained and in which the orientation of the building allows for the additions to be suitably separated from the street and adjoining neighbors to provide an appropriate outcome for amenity and an appropriate visual presentation.

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 additions are 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.

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

Zone objectives

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 existing streetscape contains a mix of development including several two storey residential flat style buildings in close vicinity to the subject site. The proposed attic space in the roof provides a design that involves a change to the roof style rather than an additional storey that may be incompatible with the character of these buildings. Additionally, these dormer additions to the roof are located above elevations that face away from the street to ensure that the presentation of bulk and scale will be adequately minimised so as to maintain a desirable 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,

Comment:

The proposed additions are within the existing building footprint and below the existing ridge so as to ensure that surrounding landscape and townscape features would not be unreasonably obscured.

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

Comment:

The proposal maintains open space and landscaping to surround the site and provides additions to the roof that are sufficiently subservient to the existing building. This ensures that the existing building and site will continue to be complementary with other similar sites and buildings within the vicinity.

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

Comment:

The location of the additions within the existing footprint, with compliant side setbacks to the neighbouring dwelling and with a compliant setback from the street, provides a situation in which impacts to adjoining land and the public domain are minimised.

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

Comment:

Not applicable.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposal provides additional floor space to the existing residential flat building. This ensures

that the building continues to contribute to the housing needs of the community.

It is considered that the development satisfies this objective.

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

Comment:

The use of the building will remain as a Residential Flat Building and this contributes to the variety of housing types and densities in the area.

It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet 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.

Conclusion:

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

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 429m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling/ 250m ²	4 dwellings (existing)	N/A	No (but as existing)
4.1.2.1 Wall height	East: 6.8m	6.8m (existing)	N/A	Yes
4.1.2.1 Wall height	West: 6.8m	6.7m (existing)	N/A	Yes

4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	3.2m	N/A	No (but as existing)
4.1.4.1 Street Front Setbacks	Prevailing building line/6.0m	7.2m (to attic)	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.27m (based on wall height)	2.532m-5.2m	N/A	Yes
	West: 2.23m (based on wall height)	4.4m-5.7m	N/A	Yes
	Windows: 3.0m	2.532m	N/A	No (see comments)
4.1.4.4 Rear Setbacks	8.0m	5.624m	N/A	No (see comments)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (235.95m ²)	51.3% (220m ²)	N/A	No (but as existing)
4.1.5.2 Landscaped Area	Landscaped area 35% of open space (77m ²)	61.3% (135m ²)	N/A	Yes
4.1.10 Fencing	1.0m-1.5m (with transparency)	1.5m-1.8m (with transparency)	N/A	No (see comments under <i>Clause 3.1 Streetscape</i>)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance/issue

The proposal provides for a change to the roof form with a design which includes dormer windows. As such, clause 3.1.1.3, *Roofs and Dormer Windows*, is particularly applicable to the proposal.

The proposal does not comply with the numerical control for fence height of 1.5m. In this regard, the proposal provides a fence height that varies from 1.5m to 1.8m.

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 proposal includes a new fence and new gates to surround the property. The fence provides a varied height of 1.5m-1.8m with the majority of the fence facing Fairy Bower Road being 1.5m in height (so as to meet the control under the Manly DCP). The section of fence that does not comply with the control is on a down slope and flexibility is warranted to grant this 0.3m variation due to the slope and the transparency in the design, providing a situation in which the bulk and height of the fence is similar to the remainder of the fence as well as other fences in the street.

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

Comment:

The existing streetscape has a mix of residential development including single dwellings and residential flat style buildings. It is particularly noted that there are number of buildings which are of a similar style and within close proximity to the subject building. This style involves two storey flat buildings with several windows facing the street frontage and a relatively large pitched roof. The proposal will generally complement this identified style by providing attic additions to the roof that do not dominate the style of the existing pitched roof and that face away from the streetscape (to be consistent with the requirements under *Clause 3.1.1.3 Roofs and Dormer Windows*). Overall, this maintains a building that will positively contribute to the streetscape by complementing other development rather than dominating through more substantial new built form.

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

Comment:

A front fence is appropriate in this circumstance given the existing landscaping on site and the other examples of fencing in the streetscape.

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

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

Description of non-compliance

The proposal provides dormer windows to the attic additions. These are setback 2.532m from the western side boundary. This does not comply with the numerical requirement for new windows facing the boundary (3m).

The proposal does not comply with the 8m numerical control for rear setback. In this regard, the proposal provides a setback of 5.624m to the dormer windows.

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 provides for alterations and additions to the existing residential flat building and maintains landscaping that surrounds the building. Along with the proposed roof additions facing away from the street and being subservient to the roof form (rather than being defined as an additional storey under the Manly DCP), the proposal will maintain desired spatial proportions and character within the streetscape.

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 provides windows to the attic space that are of an appropriate size and that do not directly face neighbouring living spaces or private open space. This provides a situation in which there would be no unreasonable opportunity for overlooking caused by the proposal. Along with the maintenance of the floor space within the building footprint, this provides a satisfactory outcome for privacy.

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

Comment:

The proposal provides for attic additions to the roof that are consistent with the requirements of *Clause 3.1.1.3 Roofs and Dormer Windows*. These additions are to a building that retains the existing siting and in this circumstance, this provides an appropriate outcome in terms of mitigating amenity impact and providing appropriate visual presentation.

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 maintains the landscaped area facing the street, accessway and rear boundary. This provides natural features that positively present to public space and that are appropriate for the site.

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 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.

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

Public Consultation

The notification of the application resulted in one response from a neighbouring resident. This submission provided support for the proposal including that it was well designed and that it would not have adverse impact on the streetscape.

Referrals

The application was referred to seven (6) internal departments and external authorities.

No response was received from Ausgrid (so concurrence is assumed) and Council's Landscape, Bushland and Biodiversity and Development Engineering officer's all indicated that the proposal is acceptable subject to specific conditions. Council's Heritage and Traffic officers also advised that the proposal was acceptable without any further recommended conditions.

Assessment of the Development Application

The works sought as a part of this application include alterations and additions to the existing residential flat building including attic additions to the roof and external changes.

The assessment of the proposed development against the provisions of MLEP 2013 found that the proposal does not comply with the 'Height of Buildings' Development Standard of 8.5m and the 'Floor Space Ratio' Development Standard of 0.6:1.

In this case, the two existing levels of the building are to remain but reconfigured with internal changes and attic additions are to be made to the existing roof form. It is these attic additions that contribute to further non-compliance with the height and floor space ratio standards. Whilst the building height and floor space ratio variations are significant, the overall height of the development is below the existing ridge and the floor space is within the building footprint. Furthermore, the applicant has provided sufficient justification for the departures from the development standards.

In addition, the assessment of the proposed development against the provisions of the Manly DCP found that the proposal does not comply with a number of controls, including windows to boundary, rear setback and fencing. Given the existing structures on the site and the appropriate visual and amenity outcome of the additions, some flexibility in applying these controls is required. It is considered that the scale of these non-compliances will not have unreasonable amenity impacts for adjoining properties and are consistent with the streetscape character of the Locality.

Recommendation

In summary, the proposal should be approved as the design is reasonable for the site by virtue of the supportable non-compliances that do not create any unreasonable amenity impacts. The proposed alterations and additions will integrate with the streetscape and landscape and be consistent with surrounding developments.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development does not constitute the proper and orderly planning for the site or the locality.

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 DA2019/0053 for Alterations and Additions to an existing residential flat building on land at Lot CP SP 8962, 40 Fairy Bower Road, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02 - RevA- Site Plan	22/01/2019	wisden architects
DA06- Ground Floor	22/01/2019	wisden architects
DA07- Level 1	22/01/2019	wisden architects
DA08- Attic Level	22/01/2019	wisden architects
DA09- Roof Plan	22/01/2019	wisden architects
DA10- West & North Elevation	22/01/2019	wisden architects
DA11- Fairy Bower Road Elevation & Passageway Elevation	22/01/2019	wisden architects
DA12- Apt Section north south & Section east west	22/01/2019	wisden architects
DA13- Apt Section east west and Section north south	22/01/2019	wisden architects
DA17- Attic Level fire separation	22/01/2019	wisden architects
DA19- Ground Floor Demolition Plan	22/01/2019	wisden architects
DA20- Level 1 Demolition	22/01/2019	wisden architects
DA21- Attic Demolition Plan	22/01/2019	wisden architects

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

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

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

2. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments

specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

- (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 unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

5. **Stormwater Disposal**

Stormwater shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003.

Details demonstrating compliance 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.

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

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

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

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

7. **Access Spaces – Bandicoot Habitat**

Any new gates or fences are to be designed to include gaps appropriate to maintain bandicoot access through and within the site. Gaps are to be at least 150mm high and 300mm wide. This condition does not apply to pool fencing.

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

8. **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.

9. **Tree and vegetation protection**

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

- i) all trees and vegetation within the site identified for retention on the survey and site plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation,

B) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- iv) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,
- vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist,
- viii) no existing ground levels around trees and vegetation are permitted to be altered, without consultation with a AQF Level 5 Arborist,
- ix) should either or all of v), vi), vii) and viii) 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,
- x) 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,
- xi) 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.

10. **Pre-clearance Survey Required – Bandicoot Habitat**

A pre-clearance survey for Long-nosed Bandicoot activity and presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no Long-nosed Bandicoots are present within the area to be cleared. All clearing must initially be carried out with hand tools to identify whether any bandicoots are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter). Machinery may only be used once it has been confirmed that no bandicoots are sheltering within the area to be cleared. Clearing must be carried out at dusk and completed within one day so that bandicoots do not reoccupy partially cleared areas overnight. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to the Principal Certifying Authority.

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

11. **Report Dead or Injured Bandicoots – Bandicoot Habitat**

Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

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

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

14. **Maintain Fauna Access and Landscaping Provisions – Manly LEP Clause 6.5**

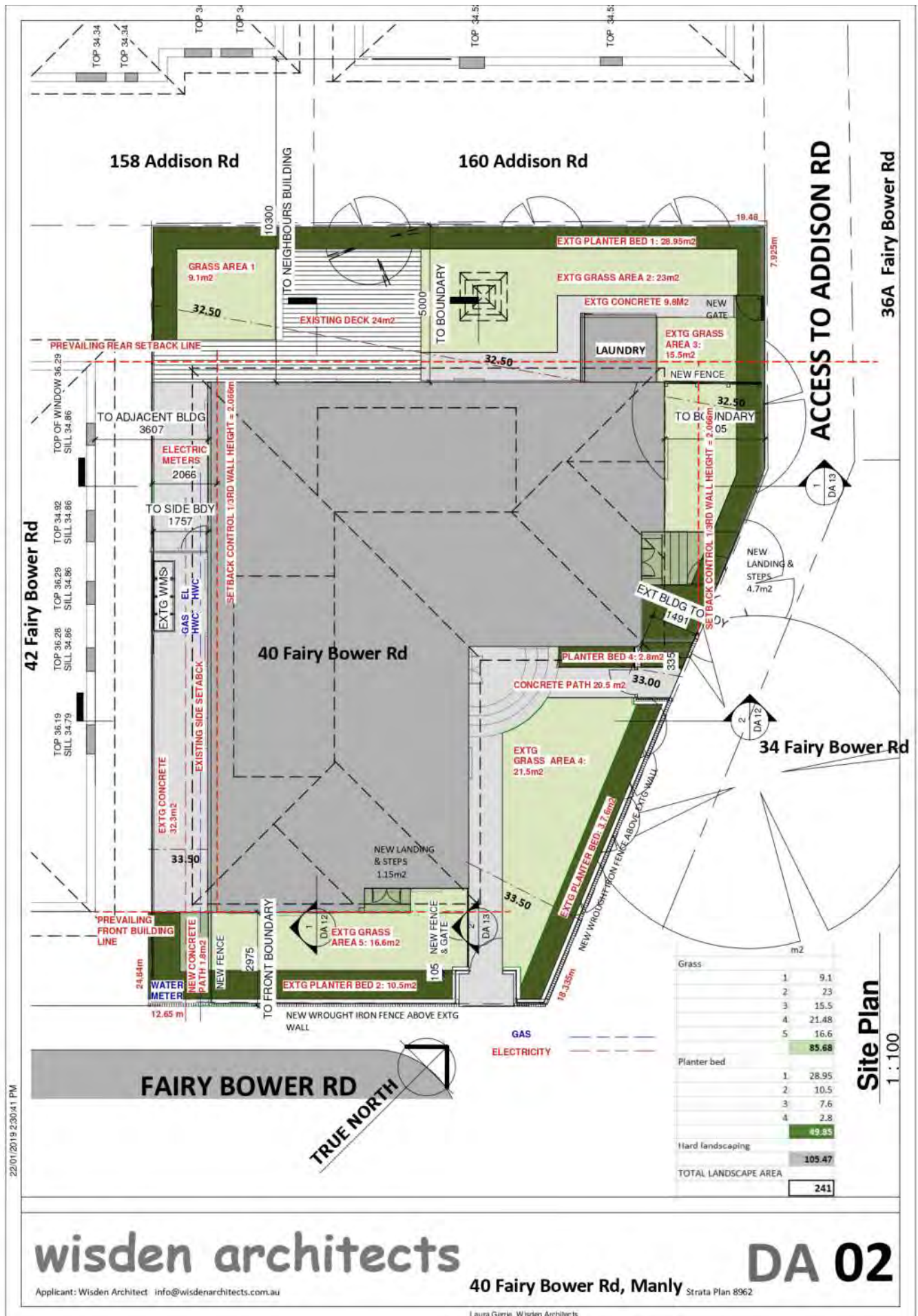
All fauna access/movement and landscaping provisions specified in these conditions of consent are to be implemented and maintained for the life of the development.

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

15. **Dead or Injured Wildlife – Manly LEP Clause 6.5**

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

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





West Elevation

1 : 100



North Elevation

1 : 100

wisden architects

Applicant: Wisden Architect info@wisdenarchitects.com.au

40 Fairy Bower Rd, Manly Strata Plan 8962

DA 10

Laura Gernie, Wisden Architects



Fairy Bower Rd Elevation

1 : 100



Passageway Elevation

1 : 100

wisden architects

Applicant: Wisden Architect info@wisdenarchitects.com.au

40 Fairy Bower Rd, Manly Strata Plan 8962

DA 11

Laura Gernie, Wisden Architects



APPENDIX 7

CL 4.6 VARIATION SUBMISSION

Height of Buildings

40 Fairy Bower Rd, Manly

WRITTEN REQUEST PREPARED PURSUANT TO CLAUSE 4.6 OF MANLY LEP 2013 IN RELATION TO A VARIATION WHICH IS SOUGHT TO THE **HEIGHT OF BUILDINGS** DEVELOPMENT STANDARD CONTAINED IN CLAUSE 4.3 OF MLEP 2013

Submitted in support of Development Application for
Conversion of existing roof space, addition of two attic rooms to first floor apartments 3 & 4,
New French doors and landing to ground floor apartments (1 & 2)
New wrought iron fence and gates

No trees removed
No increase in density



Prepared for SP8962
January 2019

1.0 Introduction

This Clause 4.6 variation request has been prepared in support of a development application for the conversion of existing roof space, addition of two attic rooms to first floor apartments 3 & 4, new French doors and landing to ground floor apartments (1 & 2), new wrought iron fence and gates. No trees are removed. There is no increase in density.

The site is zoned R1 General Residential under the Manly Local Environmental Plan (MLEP) 2013.

The objectives of the zone are:

- *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*

Clause 4.3 of the MLEP establishes maximum heights for buildings in the form of a development standard. These maximum building heights are specified on the Height of Buildings Map in MLEP (see **page 27** of the SEE). Pursuant to Clause 4.3 of MLEP, the maximum building height limit for the site is 8.5 metres.

“Building Height” is defined in the MLEP to mean:-

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

“Ground level (existing)” is defined as:-

- “the existing level of the site at any point”.*

“Ground level (existing)” is indicated as RL 34020 on the Wisden Architects Plans DA 10 and DA 11.

Measured from existing ground level to the top of the roof the existing flat building has a maximum height of 8.7 m which exceeds the 8.5m height limit which applies to the site. (Max Ht 42730 – 34020 (Ground Floor) = 8710)

Measured from existing ground level to the top of the roof the proposed dormer retains the existing ridge height.

Clause 4.6 of MLEP allows approval to be granted to a DA, even though a proposed development contravenes a development standard in the LEP, including the building height limit in Clause 4.3.

This written request addresses the requirements of Clause 4.6 of MLEP.

2. Objectives of Clause 4.6 of Manly Local Environmental Plan 2013

The objectives of Clause 4.6 of MLEP are contained in (1) and are:-

- (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."*

3. Requirements for Applications

Clause 4.6 of MLEP states as follows:-

(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.

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

The matters raised above are addressed below in Section 4 of this written request.



Figure 1: Height of Building Map Extract, Area I

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

Area I = 8.5m

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

Existing = 8.7m (RL 42730)

Proposed = keeps to existing ridge height 8.7m (RL 42730)

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

The percentage variation is 2.35%

$$\frac{0.2}{8.5} = 2.35\%$$

NOTE: In the Elevations below (Figures 2 to 5) the red line indicates the 8.5m Height Control and illustrates the 2.35% non-compliance over the existing roof and the proposed dormers. The variation to the building height is evidently a minimal variation to the building height control of 8.5 m.

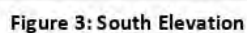
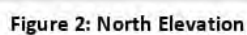




Figure 4: East Elevation



Figure 5: West Elevation

The NGEO Survey dated 10/10/2017 (Appendix 3) identifies the highest roof ridge height to be RL 42.73 (AHD). The Wisden Architects Plans (Appendix 4) propose a maximum RL of 42.70 (AHD). The proposed works will not increase the existing ridge height.

The Ground floor height is RL 34.02, which represents a maximum building height of 8.7m measured from ground level (existing) to the top of the ridge height. This represents a breach of the maximum height of buildings existing and proposed of 0.2m.

4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case and are there sufficient planning grounds to justify contravening the standard?

4.1 What is the Purpose/Object of the Standard?

The objectives of the building height control in MLEP are set out as follows in Clause 4.3(1):

- (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.*

In relation to the above objectives:-

The purpose of objective (a) is to provide heights and roof forms consistent with the topography. The height of the proposal is compatible with the built form of the existing area which contains similar residential flat buildings to the west and north of the site, that are over the 8.5m height limit. It is particularly relevant to note the reference in this objective to building heights that are consistent with the “topographic landscape”.

The purpose of objective (b) is to control the bulk and scale of buildings, the design of the proposed dormers fit the site with no unreasonable impacts on neighbouring properties.

In relation to objective (c), its purpose is to reduce the impacts of development on views to/from public spaces. The proposed development will not result in the loss of views to or from public spaces.

The purpose of objective (d) is to control development so that it will not negatively impact on solar access to the habitable rooms of adjacent dwellings to the south. The proposed development will have no impact on the solar access to any habitable rooms as the shadows cast are minimal and fall on the road pavement due to the orientation of the site.

Objective (e) is not applicable – the site is not in a recreation or environmental protection zone.

4.2 Consistency with the objectives of the standard

In relation to Objective (a):-

The proposed dormers to the building have been designed to be consistent with the prevailing building height of the building and adjoining residential flat buildings and immediately surrounding residential building heights. The parts of the building that exceed the maximum MLEP building height are sufficiently setback from the side and rear boundaries and will not be visually dominant when viewed from the street or adjoining walkway. The height of the building is appropriate on this site and is generally compatible with other buildings in the locality.

It should be noted here that the submitted DA scheme is the result of an extensive consultative process with Council and that the final scheme reflects feedback from the pre DA meeting and numerous emails to Council's planner. This process deemed the dormers' height, bulk and form to be consistent with Council's vision for the desired future streetscape character

In relation to Objective (b):-

The building has been designed to minimise its apparent bulk and scale when viewed from the street. It is sufficiently set into the roof space to reduce bulk when viewed from the public realm or adjoining properties.

In relation to Objective (c):-

The proposed development has no unreasonable impacts on views to or from nearby residential development to or from public spaces or views between public spaces. Further, the existing outlook from adjoining properties over the site adjacent to the laneway is set back.

In relation to Objective (d):-

The non-compliant building height will not block solar access to the private open spaces or habitable rooms of adjacent dwellings to the south to any significant degree (see Drawings 14 -16).

In relation to Objective (e):-

This objective is not applicable to the site.

4.3 Is compliance with the Development Standard unreasonable or unnecessary in the circumstances of the case?

The NSW Land and Environment Court has dealt with this question in many cases including a case known as *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, where the court considered how 'unreasonable or unnecessary' could be answered and referred to an earlier Court decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827. The result is that the most common way of demonstrating that compliance is unreasonable or unnecessary, is whether the proposal met the objectives of the 'Five Part Test' refer Section 7 of this report (below).

With respect to the proposal the compliance with the "Building Height" development standard in Clause 4.3 of MLEP is considered to be unreasonable and unnecessary in the circumstances for the following reasons:

- The existing building is currently over the height limit and strict compliance would negate any improvements to the roof where all development applications should be assessed on their merits;
- The proposed dormers will maintain the existing ridge height of 8.7m, and they are located on the western side and rear of the site;
- The attic conversion is set into the roof space to minimise the impacts of its bulk and height on adjoining properties and on the public realm;
- The proposed development meets the objectives of the building height development standard;
- Impacts associated with the increased height are not unreasonable or unacceptable;
- Strict compliance is unreasonable because the existing residential flat building is already over the max allowable height and was built post war about 1938, prior to the imposition of the 8.5 m height restriction. Strict compliance would mean that all attic conversions would be prohibited, this would be unreasonable as each development application is assessed on the merits of the application.
- The proposed development meets the objectives of the zone and provides a building height and roof form that is consistent with the prevailing building heights of adjoining residential flat buildings. The dormers' design minimises disruption to views of nearby residential development and maintains existing solar access to public and private open spaces and habitable rooms of adjacent dwellings.
- The proposed attic conversions and dormer windows to the existing roof space have been skilfully designed so as to retain the existing overall maximum ridge height of the existing building and is considered appropriate to the context and circumstances of the site. The proposed 2.35% increase over the development standard of 8.5m does not result in a scale of development that is out of character with the existing streetscape when viewed from the footpath.
- Strictly complying with the numerical standard would not allow improvements to the existing post war residential flat building as proposed to improve the amenity for the existing residents while retaining the existing streetscape. On the contrary, if floor space and building height were to be strictly adhered to this residential flat building and the living space could not be further improved. It should be noted that the 2nd bedroom in Apartment 3 is below the Apartment Design Guide's minimum area of 70m² (Objective 4D-1).

4.4 Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposal will deliver a well-designed, high-quality residential development which will provide improved housing opportunities for long term residents with good amenity without unreasonably diminishing the amenity of any existing residents in the locality, including immediate neighbours.

The inherent characteristics of the site, including its orientation to the street and walkway frontage, surroundings and proximity to facilities, make the site eminently suitable for this proposed improvement.

5. Has this written request adequately addressed the matters required to be demonstrated by sub-clause 4.6(3)?

We believe so. There has been considerably Pre DA lodgement predesign and amendments to demonstrate addressing the matters in sub clause 4.6(3) which are:

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

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

6. Is the development in the public interest because it is consistent with the objectives of the Building Height standard and the objectives for development within the zone in which the development is proposed to be carried out?

Yes.

The proposal is consistent with the objectives of the height of buildings standard for the reasons set out in Section 4.2 above. The development is consistent with the objectives for development in the R1 General Residential Zone as contained in the MLEP.

7. The 'Five Part Test'

The 'Five Part Test' was contained within the *Wehbe v Pittwater Council [2007] NSW LEC 827 Land & Environment Court case*. As a consequence a consent authority may choose to not only use the principles of Clause 4.6 but also the 'five part test' established by the Land and Environment Court. The five part test is to be considered when assessing an application to vary a standard to determine whether the objection to the development standards is well founded.

The 'five part test' is as follows:

- "1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;*
- 2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

- 4. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone."*

Point (1): The proposal meets the objectives of the height of buildings standard, as detailed above in Section 4.2 notwithstanding the noncompliance.

Point (2): The development standard is relevant for the area, but the existing building is non-compliant. More than likely the existing residential building would not be approved in this day and age, but because there is grouping of similar post war residential flat buildings they create the streetscape. The proposal is to improve living amenity utilising roof space and has been designed to the existing ridge height, therefore strict numeric compliance is unnecessary.

Point (3): If strict numerical compliance was required with the standard, the development would not go ahead, the housing could not be improve to provide meeting the needs of the long term residents.

Point (4): Each application is to be assessed on its merits and departing from the standard when there is merit in doing so will not "destroy" the development standard. In this case, the building will only minimally exceed the building height.

In relation to point (5): Not applicable.

8. Conclusion

Having regard to the above, it can be concluded that compliance with the building height standard is unreasonable and unnecessary in the circumstances of the case, that there are sufficient environmental planning grounds to justify the non-compliance and that the proposal is in the public interest because it is consistent with the objectives both of the building height standard and of the R1 General Residential zone.

The MLEP includes an aim of providing "a safe place to live" and the proposal provides improved living areas to the long term residents which will have economic and social benefits, with little if any environmental impact.

Another aim of the MLEP is to maintain a diverse range of housing to cater for an ageing population, changing demographics and all socio-economic groups. The proposal is to meet the changing needs of the long term residents, with no increase in density. While the will have no impact on the existing landscaping on the site, i.e. no trees removed and the established garden retained, with the addition of the new wrought iron fence above the existing low brick fence for security of pets.

Under the zone: R1 General Residential an aim is to provide for the housing needs of the community and provide a variety of housing types and densities. The proposal is designed to provide for all the residents in the residential flat building equally/ justly – with more outdoor areas for the ground apartments and more living area for the first floor apartments.

Under Clause 4.3 Height of buildings the number 1 objective is to provide for building heights and roof forms that are consistent with the prevailing building height and desired future streetscape character in the locality and the proposal does that, as the dormers are within the roof space which retains the prevailing height of 8.7m.

Another objective of Clause 4.3 is to control the bulk and scale of buildings. The proposed attic conversions within the roof space, with dormers on the western side and rear reduce the bulk and scale while maintaining the existing streetscape with no impact to any views to the harbour or foreshore. The design will cause negligible impact on solar access to private open spaces or any habitable rooms of adjacent dwellings.

This submission satisfies the provisions of 4.6(3)(a), 4.6(3)(b) and 4.6(4)(a)(i) of the MLEP and compliance with the height development standard is both unnecessary and unreasonable in the circumstances of this case and there is sufficient planning grounds to justify contravening the standard.



APPENDIX 8

CL 4.6 VARIATION SUBMISSION

Floor Space Ratio

40 Fairy Bower Rd, Manly

WRITTEN REQUEST PREPARED PURSUANT TO CLAUSE 4.6 OF MANLY LEP 2013 IN RELATION TO A VARIATION WHICH IS SOUGHT TO THE **FLOOR SPACE RATIO** DEVELOPMENT STANDARD CONTAINED IN CLAUSE 4.4 OF MLEP 2013

Submitted in support of Development Application for
Conversion of existing roof space, addition of two attic rooms to first floor apartments 3 & 4,
New French doors and landing to ground floor apartments (1 & 2)
New wrought iron fence and gates

No trees removed
No increase in density



Prepared for SP8962
January 2019

1.0 Introduction

This Clause 4.6 variation request has been prepared in support of a development application for the conversion of existing roof space, addition of two attic rooms to first floor apartments 3 & 4, new French doors and landing to ground floor apartments (1 & 2), new wrought iron fence and gates. No trees are removed. There is no increase in density.

The site is zoned R1 General Residential under the Manly Local Environmental Plan (MLEP) 2013.

The objectives of the zone are:

- *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*

Clause 4.4 of the MLEP establishes the floor space ratio development standard. The maximum floor space ratio (FSR) for a building on any land in the Manly area is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The subject site is within Area F which has a FSR of 0.6:1.



Figure 1: FSR Map Extract: Subject site highlighted in red and within Area F

What is the numeric value of the development standard in the environmental planning instrument, i.e. MLEP?

Area F = 0.6:1

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

The environmental standard is 0.6:1, the proposed FSR is 0.8:1

Site Area = 403.8 m²
Allowable = 242.28m²
Existing = 280m² (exceeds allowable FSR)
Proposed = 326m²

	EXISTING	PROPOSED	ADDITIONAL
Apartment 1	68m ²	68 m ²	-
Apartment 2	72 m ²	72 m ²	-
Apartment 3	68 m ²	90 m ²	22 m ²
Apartment 4	72 m ²	94 m ²	22 m ²
	280 m ²	326 m ²	44 m ²

The proposal provides each of the first floor apartments with an extra 22m² floor area to be utilised as living area (no increase in density). The existing residential flat building is already 11% above the prescribed FSR and the proposal adds another 11% or 44m². The total area of the breach of the development standard is estimated at an area of 84m².

As demonstrated on the plans by Wisden Architects (Appendix 4) the proposal seeks to provide a maximum floor area of 326m² which represents 0.8:1 or 22% exceedance (in total) but only 11% in addition to that which currently exists.

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

The percentage variation for new proposed works is 11%, total 22%.



Figure 2: The Existing footprint of the residential flat building is unchanged

Clause 4.6 of MLEP allows some flexibility for approval to be granted to a DA, even though a proposed development contravenes a development standard in the LEP, including the floor space ratio in Clause 4.4. This written request addresses the requirements of Clause 4.6 of MLEP.

2. Objectives of Clause 4.6 of Manly Local Environmental Plan 2013

The objectives of Clause 4.6 of MLEP are contained in (1) and are:-

- (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."*

3. Requirements for Applications

Clause 4.6 of MLEP states as follows:-

(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.

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

The matters raised above are addressed below in Section 4 of this written request.

4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case and are there sufficient planning grounds to justify contravening the standard?

4.1 What is the Purpose/Object of the Standard?

The objectives of the FSR control in MLEP are set out as follows in Clause 4.4(1):

- (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.*

In relation to the above objectives:-

Objective (a) is to ensure the bulk and scale of development is consistent with the existing and desired streetscape character – this is achieved as the proposal converts attic space maintaining existing bulk and scale to the streetscape – no impact.

The purpose of objective (b) is to control building density and bulk to ensure that development does not obscure important landscape and townscape features, this is achieved by reducing the bulk by utilising the roof space.

Objective (c) to maintain appropriate visual relationship to new and existing which is achieved by the reduced bulk of the dormers and utilising the roof space.

Objective (d) is to minimise adverse environmental impacts to adjoining land which is achieved by reducing bulk of the dormers, the orientation of the site.

Objective (e) is not applicable.

4.2 Consistency with the objectives of the standard

Yes the design of the dormers, attic conversion and increased floor area has been designed to be consistent with the objectives of the FSR development standard.

Objective (a) is to ensure the bulk and scale of development is consistent with the existing and desired streetscape character – this is achieved as the proposal converts attic space maintaining existing bulk and scale to the streetscape – no impact, consistent with objective.

The purpose of objective (b) is to control building density and bulk to ensure that development does not obscure important landscape and townscape features, this is achieved by reducing the bulk by utilising the roof space - no impact, consistent with objective.

Objective (c) to maintain appropriate visual relationship to new and existing which is achieved by the reduced bulk of the dormers and utilising the roof space - no impact, consistent with objective.

Objective (d) is to minimise adverse environmental impacts to adjoining land which is achieved by reducing bulk of the dormers, the orientation of the site - no impact, consistent with objective.

Objective (e) is not applicable.

4.3 Is compliance with the Development Standard unreasonable or unnecessary in the circumstances of the case?

The NSW Land and Environment Court has dealt with this question in many cases including a case known as *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, where the court considered how 'unreasonable or unnecessary' could be answered and referred to an earlier Court decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827. The result is that the most common way of demonstrating that compliance is unreasonable or unnecessary, is whether the proposal met the objectives of the 'Five Part Test' refer Section 7 of this report (below).

With respect to the proposal the compliance with the "Floor Space Ratio" development standard in Clause 4.4 of MLEP is considered to be unreasonable and unnecessary in the circumstances for the following reasons.

- the existing building is currently over the FSR and strict compliance would negate any improvements to the building
- the increased FSR is not unreasonable or unacceptable as the existing footprint is maintained.
- Strict compliance is unreasonable because the existing residential flat building is already over the allowable FSR and was built post war about 1938, prior to the imposition of the FSR restriction.
- The proposed development meets the objectives of the zone and provides a building that maintains the existing buildings footprint and prevailing building heights of adjoining

residential flat buildings while minimising disruption to views of nearby residential development and maintains existing solar access to public and private open spaces, habitable rooms of adjacent dwellings.

- Development standards are a means of implementing and controlling development in an area, the proposal has been designed to be consistent with the development standard's objectives.
- The proposed attic conversions and dormer windows to the existing roof space have been skilfully designed so as to retain the existing overall maximum ridge height of the existing building and is considered appropriate to the context and circumstances of the site. The proposed 22m² to apartment 3 and 4 is considered reasonable.
- Strictly complying with the numerical standard would not allow improvements to the existing post war residential flat building as proposed to improve the amenity for the existing residents while retaining the existing streetscape. On the contrary, if floor space ratios were to be strictly adhered to this residential flat building and the living space could not be further improved, as it stands.

4.4 Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposal will deliver a well-designed, high-quality residential development which will provide improved housing opportunities for long term residents with good amenity without unreasonably diminishing the amenity of any existing residents in the locality, including immediate neighbours.

The inherent characteristics of the site, including its orientation to the street and walkway frontage, surroundings and proximity to facilities, make the site eminently suitable for this proposed improvement.

5. Has this written request adequately addressed the matters required to be demonstrated by sub-clause 4.6(3)?

We believe so. There has been considerably Pre DA lodgement predesign and amendments to demonstrate addressing the matters in sub clause 4.6(3) which are:

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

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

6. Is the development in the public interest because it is consistent with the objectives of the Floor Space Ratio standard and the objectives for development within the zone in which the development is proposed to be carried out?

Yes.

The proposal is consistent with the objectives of the **floor space ratio** standard for the reasons set out in Section 4.2 above. The development is consistent with the objectives for development in the R1 General Residential Zone as contained in the MLEP.

7. The 'Five Part Test'

The 'Five Part Test' was contained within the *Wehbe v Pittwater Council [2007] NSW LEC 827 Land & Environment Court case*. As a consequence a consent authority may choose to not only use the principles of Clause 4.6 but also the 'five part test' established by the Land and Environment Court. The five part test is to be considered when assessing an application to vary a standard to determine whether the objection to the development standards is well founded.

The 'five part test' is as follows:

- "1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;*
- 2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone."*

Point (1): The proposal meets the objectives of the FSR standard, as detailed above in Section 4.2 notwithstanding the noncompliance.

Point (2): The development standard is relevant for the area, but the existing building is non-compliant. More than likely the existing residential building would not be approved in this day and age, but because there is grouping of similar post war residential flat buildings they create the streetscape. The proposal is to improve living amenity utilising roof space for an attic conversion with dormers and has been designed to the existing ridge height, therefore the increase in floor area has not detrimental impact to the streetscape, amenity, character to the area.

Point (3): If strict numerical compliance was required with the standard, the development would not go ahead and the housing could not be improved to provide for the needs of the long term residents.

Point (4): Each application is to be assessed on its merits and departing from the standard when there is merit in doing so will not “destroy” the development standard. In this case, the proposal will maintain the bulk and scale of the existing building while improving the living amenity for long term residents and meets the objectives of the development standard and the MLEP.

In relation to point (5): Not applicable.

8. Conclusion

Having regard to the above, it can be concluded that compliance with the **floor space ratio** standard is unreasonable and unnecessary in the circumstances of the case, that there are sufficient environmental planning grounds to justify the non-compliance and that the proposal is in the public interest because it is consistent with the **objectives** both of the **floor space ratio** standard and of the R1 General Residential zone.

Site Area = 403.8 m²
Allowable floor area = 242.28m²
EXISTING floor area = 280 m²
Proposed floor area = 326 m²

Proposed FSR is 0.8:1

The MLEP includes an aim of providing ‘a safe place to live’ and the proposal provides improved, healthier and safer living conditions to the long term residents which will have economic and social benefits, with little if any environmental impact.

Another aim of the MLEP is to maintain a diverse range of housing opportunities and choices that encourages affordable housing to cater for an ageing population, changing demographics and all socio-economic groups. The proposal is to meet the changing needs of the long term residents. No increase in density. Also an aim of the MLEP is to ensure high quality landscaped areas in the residential environment, and there will be no change to the existing landscape, i.e. no trees removed and the established garden retained, with the exception of the new wrought iron fence for security of pets.

Under the zone: R1 General Residential an aim is to provide for the housing needs of the community and provide a variety of housing types and densities. The proposal is designed to provide for all the residents in the residential flat building equally/ justly – with more outdoor areas for the ground apartments and more living area for the first floor apartments.

With respect to MLEP Clause 4.4 FSR objectives, (1) (a) is to ensure the bulk and scale of development is consistent with the existing and desired streetscape character, as the proposal utilises the existing roof space and maintains the existing footprint, the bulk and scale status quo is largely maintained in situ. The Clause 4.4 (1) Existing roof space utilised – reduces (b) objective is to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features – the proposal does not obscure any important landscape or townscape features. The existing footprint is retained, the existing streetscape is retained – no impact.

The Clause 4.4 (1) (c) objective is to maintain an appropriate visual relationship between new development and the existing character and landscape of the area. The proposal meets this objective by maintaining the existing streetscape, character and landscaping, maintaining the garden with a new wrought iron fence above the existing brick wall. The existing roof space is utilised for the attic conversion, with two dormers, the bulk and scale is reduced and the solar impact is minimal and falls to the south on the road pavement.

The Clause 4.4 (1) (d) objective is to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain. The proposal minimises adverse environmental impacts by setback into the existing roof space.

This submission satisfies the provisions of 4.6(3)(a), 4.6(3)(b) and 4.6(4)(a)(i) of the MLEP and compliance with the **floor space ratio** development standard is both unnecessary and unreasonable in the circumstances of this case and there is sufficient planning grounds to justify contravening the standard.

ITEM 3.3

**DA2019/0231 - 346-352 WHALE BEACH ROAD, PALM BEACH -
DEMOLITION WORKS, CONSTRUCTION OF A DWELLING
HOUSE INCLUDING SWIMMING POOL AND CONSOLIDATION
OF LOTS**

AUTHORISING MANAGER Steve Findlay
TRIM FILE REF 2019/309504
ATTACHMENTS
1 [↓ Assessment Report](#)
2 [↓ Plans](#)
3 [↓ Clause 4.6](#)

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is a relative of a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979* and the development contravenes a development standard imposed by an environmental planning instrument by more than 10%.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0231 for Demolition works, construction of a dwelling house including swimming pool and consolidation of Lots at Lots 327, 328, 329 & 330 DP 16362, 346 - 352 Whale Beach Road, Palm Beach subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0231
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Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 328 DP 16362, 348 Whale Beach Road PALM BEACH NSW 2108 Lot 329 DP 16362, 350 Whale Beach Road PALM BEACH NSW 2108 Lot 330 DP 16362, 352 Whale Beach Road PALM BEACH NSW 2108 Lot 327 DP 16362, 346 Whale Beach Road PALM BEACH NSW 2108
Proposed Development:	Demolition works, construction of a dwelling house including swimming pool and consolidation of Lots
Zoning:	E4 Environmental Living E4 Environmental Living E4 Environmental Living E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	David Barrett Wade Jennifer Ruth Wade
Applicant:	David Barrett Wade

Application lodged:	07/03/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	18/03/2019 to 03/04/2019
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval

Estimated Cost of Works:	\$ 7,280,000.00
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Executive Summary

This Development Application seeks consent for demolition works, consolidation of the four (4) Lots into

one (1) Lot and construction of a new dwelling house over a basement level, swimming pool and associated excavation and landscaping works.

The site is known as 346-352 Whale Beach Road, Palm Beach and comprises four (4) individual allotments. The site is irregular in shape and has a total area of 2,269.6m². The site is located on the eastern side of Whale Beach Road. The site experiences significant fall of approximately 20m down to Whale Beach Road. The land generally is characterised by a further drop through reserve land to a rocky ocean shore.

The proposed development is defined as a "dwelling house" under the Pittwater Local Environmental Plan (PLEP) 2014 and is permissible with consent in the E4 Environmental Living Zone. The proposed development has been assessed against the applicable planning controls for the site including the relevant provision of Pittwater LEP 2014 and is found to be generally consistent with the relevant requirements, with the exception of building height. The applicant has lodged a request under Clause 4.6 for variation to the development standard.

The variation is supported largely due to the constraints imposed by the topography of the land and is offset throughout the development. The variation is not considered to result in excessive bulk and scale and does not result in adverse shadow and amenity on surrounding properties. It is considered that the development is in public interest in the circumstances as the proposed development includes the consolidation of four allotments, which could have otherwise each individually been developed with a significantly greater overall impact.

The proposed development was notified for a period of 14 days. During this period, one (1) submission was received, which has been addressed in detail in the notification section of this report.

Consequently, this report concludes that the development proposal is sound in terms of design, environmental impact, and relationship to the existing streetscape and surrounding sites. This report recommends that consent be granted to this application in accordance with recommended conditions.

The application is being reported to the NBLPP to enable an independent assessment and determination of the application.

ASSESSMENT INTRODUCTION

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

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

State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - D12.3 Building colours and materials
Pittwater 21 Development Control Plan - D12.5 Front building line

SITE DESCRIPTION

Property Description:	<p>Lot 328 DP 16362 , 348 Whale Beach Road PALM BEACH NSW 2108</p> <p>Lot 329 DP 16362 , 350 Whale Beach Road PALM BEACH NSW 2108</p> <p>Lot 330 DP 16362 , 352 Whale Beach Road PALM BEACH NSW 2108</p> <p>Lot 327 DP 16362 , 346 Whale Beach Road PALM BEACH NSW 2108</p>
Detailed Site Description:	<p>The site is known as 346-352 Whale Beach Road, Palm Beach and comprises four (4) individual allotments. The site is irregular in shape and has a total area of 2,269.6m². The site is located on the eastern side of Whale Beach Road. The site experiences significant fall of approximately 20m down to Whale Beach Road. The land generally is characterised by a further drop through reserve land to a rocky ocean shore.</p> <p>The site comprises of four (4) allotments, with Lot 329 currently occupied by an existing dwelling with adjoining paved terraces and decks. Lots 330, 328 and 327 are currently vacant. The vegetation within the site consists of coastal scrub and heath with predominately locally-indigenous species.</p> <p>The property is surrounded by residential properties to the north, south, and west with varied topography. The site adjoins a public reserve known as 'Annie Wyatt Reserve' to the West.</p> <p>The site is zoned E4 - Environmental Living pursuant to Pittwater Local Environmental Plan 2014.</p> <p>PLEP 2014 identifies the land as being subject to the following:</p> <ul style="list-style-type: none"> • Height of Buildings Map - 8.5m; • Bushfire Prone Land Map as being within the 100m buffer zone;

- Flood Prone Land (A minor portion of the subject site, along the south boundary)
- Biodiversity Map;
- Site being in the vicinity of local heritage item 'Cox House' located at 356 Whale Beach Road, Palm Beach
- Geotechnical Hazard Map - Hazard H1;
- Lot Size Map - 700m².

Map:



SITE HISTORY

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

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

A pre-lodgement meeting was held with Council in relation to the current proposal on 12 June 2018.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works, consolidation of four (4) allotments into one (1) Lot, and construction of a new three (3) storey dwelling house, with basement parking, swimming pool and associated excavation and landscaping works.

Specifically, the proposal includes the following:

- Consolidation of four (4) allotments into one (1) allotment;
- Excavation works to accommodate a basement level to provide for parking with an associated storage area;
- The ground level will accommodate three (3) bedrooms with ensuites, Entry and Entry Courtyard, Open plan Kitchen, Dining and Living room, Laundry, Outdoor Dining Area, Gym with Sauna, 2 WCs, and Pool Terrace;
- The first floor will accommodate two additional bedrooms with ensuites, storage, kitchen, Dining

- Area, Living Area, Cinema, WC, Outdoor Dining Area, Outdoor Living Area;
- The second floor will accommodate Master Bedroom and Ensuite, Study, Laundry, and Terrace;
- The construction of a swimming pool;
- Associated earthworks; and
- Associated landscaping works.



Figure 1 - Site Plan (Source : Tzannes)

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 the discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions	None applicable.

Section 4.15 Matters for Consideration'	Comments
of any draft environmental planning instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider 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 Pittwater 21 Development Control Plan section in this report. In summary, the proposed development is found to be consistent with the desired future character for the locality. The proposed dwelling is contemporary in its design, which is respectful of its setting and its neighbours.</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</p>

Section 4.15 Matters for Consideration'	Comments
	proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development as the key characteristics of the site, including its location, orientation, aspect, character, size, topography, surroundings, and accessibility make the site suitable for residential development of the type proposed, which is consistent with the zoning of the land and predominantly complying with the DCP controls that apply to the subject site.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See the discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	The public interest is best served by the orderly and economic use of land for purposes that is permissible and which, in its design, configuration and operation, satisfy the intent of the relevant controls. In the subject case, the proposal is in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The application was referred to NSW Rural Fire Service (NSW RFS) for comments on 18 March 2019 accordance with Section 4.14 of the 'EP and Act 1979. NSW RFS by letter dated 3 April 2019 raised no objection to the proposed development subject to conditions, which needs to be included as conditions of consent if the application was worthy of approval.

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:
Withheld	CLONTARF NSW 2093

(i) Non-compliance with Building Height

A submission received has provided diagrams on how to design the development to comply with the 8.5m height limit. The submission does not state that there any adverse impacts associated with the non-compliant component of the development.

Comment:

This issue has been addressed in detail under Clause 4.6 of this report. In summary, the non-compliant component of the development is found to be minor and supportable as the removal of the non-

complying elements to achieve strict compliance would not result in an improved planning outcome. The additional height does not cause any material impact in terms of privacy or view loss to neighbouring properties or adverse overshadowing to residential properties or the public domain.

The minor variation results in an improved internal amenity for the future occupants of this development and a built form that is in keeping with adjoining development and in essence, would result in a better planning outcome. Accordingly, this issue does not warrant the refusal of the application.

(ii) Building Colour

Concern has been raised that the external colour of the dwelling is white and not suitable for its bushland setting.

Comment:

This issue is discussed in the report in the relevant sections and it is agreed that the external wall colour is white and not suitable for the subject site given the visual and scenic sensitivity of the location. Accordingly, the concern raised is concurred with and is addressed by way of a condition requiring that the external colours to be muted and earthy tones.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal, in terms of landscape outcome, is acceptable subject to the protection of existing trees and vegetation, and the completion of landscaping.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • C1.3 View Sharing • D12 Palm Beach Locality <p>Landscape Plans and an Arboricultural Impact Assessment are provided with the application.</p> <p>The landscape plans are acceptable subject to conditions to amend the plans to incorporate the retention of two High Landscape Significance trees as identified in the Arboricultural Impact Assessment.</p> <p>The Arboricultural Impact Assessment assesses T25 (Turpentine) and T31 (Large-fruited Red Mahogany) both of high landscape significance, with a high retention value, that are worthy of retention and are in good condition and provide a positive amenity.</p> <p>It is noted in the Arboricultural Impact Assessment that T31 will be impacted by excavation for the basement without providing verifying distances of the tree to the basement. Based on approximate calculations from the survey and architectural plans, it is estimated</p>

Internal Referral Body	Comments
	<p>that T31 sits 3.2m from the basement cut. The SRZ (structural root zone) is reported as 2.3m in the Arboricultural Impact Assessment.</p> <p>It is considered that these trees should be retained, with design changes to proposed walling, stairs and pavements to facilitate such retention, as conditioned.</p>
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the following provisions:</p> <ul style="list-style-type: none"> - NSW Biodiversity Conservation Act 2016 (BC Act) - Pittwater LEP Clause 7.6 (Biodiversity Protection) - Pittwater DCP Clause B4.3 (Flora and Fauna Habitat Enhancement Category 2 Land) - Pittwater DCP Clause B4.17 (Littoral Rainforest EEC) <p>As the proposal will impact native vegetation including canopy trees, an ecological assessment (Abel Ecology, February 2019) and an agricultural assessment (Earthscape Horticultural Services, February 2019) have been submitted with the DA.</p> <p>The Arborist's Report assesses 74 trees within the vicinity of works, including 28 trees which are exempt under SEPP (Vegetation), and states that the proposal will necessitate the removal of 22 trees of low-very low retention value, 8 trees of moderate retention value, and 2 trees of high retention value. Removal of trees of high retention value is inconsistent with the objectives of the applicable controls; accordingly, Council's Senior Landscape Architect has recommended conditions to enable retention of Trees 25 (Turpentine) and 31 (Large-fruited Red Mahogany).</p> <p>Furthermore, the proposal will result in the loss of a significant proportion of canopy onsite, which is inconsistent with the controls. However, the proposed landscape plan includes detailed provisions for replacement planting and appropriate landscaping on site, including Littoral Rainforest and Sandstone Crest/Coastal Heath Zones which respond appropriately to site conditions and natural vegetation on the site. Landscaping is to be undertaken in accordance with these plans, accounting for retention of Trees 25 and 31 as per recommended Landscape conditions.</p> <p>The submitted ecological assessment ("Prescribed Ecological Actions Report") assesses potential impacts to six threatened entities groups through five-part tests prepared in accordance with Section 6.3 of the BC Act. However, the submitted report prescribes minimal 'ecological actions' to mitigate impacts to these entities. It is considered that the key risk to threatened fauna potential utilising the site will be associated with construction activities such as demolition of existing structures and clearing of vegetation and stockpiles. It is therefore conditioned that a Construction Environmental Management Plan is be prepared to manage environmental protection measures during the construction phase.</p>

Internal Referral Body	Comments
	It is considered that, subject to recommended conditions of consent, the proposal can comply with controls.
NECC (Coast and Catchments)	<p>The subject land has been assessed under State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). It has not been included on the Coastal Vulnerability Area Map and the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p>
NECC (Development Engineering)	The proposed method of stormwater disposal is satisfactory. The proposed driveway crossing is also satisfactory and the Geotechnical report addresses the relevant DCP controls. No objection to approval subject to conditions as recommended.
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed works generally comply with the flood related development controls of the DCP and LEP.</p> <p>No flood related objections.</p>
Parks, reserves, beaches, foreshore	No objection to the proposed development.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as it is within the proximity of a heritage item:
	Cox House - 356 Whale Beach Road
	Details of heritage items affected
	<p>Details of the item as contained within the Pittwater heritage inventory is as follows:</p> <p><u>Statement of significance:</u></p> <p>It has aesthetic significance as a good example of Australian contemporary residential architecture, exploiting the spectacular views from the site and nestling closely into the cliff face below the Annie Wyatt Reserve. The house won the Sydney Morning Herald Popular House Award in 1990.</p> <p><u>Physical description:</u></p> <p>"...The house consists of three narrow stacked floors, the uppermost being a roof terrace with a small entry mezzanine and study to the west. The terrace facilitates retained ocean views from the reserve such that the arrival experience is one of minimal change to the setting. The mezzanine study space provides volume to the main living level above to which adjustable louvres allow penetration of light. The planning aligns services spaces of bathroom, stairs and kitchen and a library along the cliff edge to enable living, dining and bedroom spaces, which are located at the middle level, to occupy the ocean frontage. Propping of the timber-framed structure off a narrow ledge at the base of the house</p>

Internal Referral Body	Comments
	<p>allowed retention of mature trees close to the house, enhancing its priority upon minimal environmental impact"</p> <p>The proposal seeks consent for the demolition of the existing building and the construction of a new large dwelling. The heritage item is located to the north of the subject property across number 354 Whale Beach Road. Given the physical separation afforded by the property inbetween, the proposal is considered to not impact upon the heritage item or its significance.</p> <p>Therefore Heritage raised no objections and requires no conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Rural Fire Service – local branch (s79BA EPAA)	The application was referred to NSW Rural Fire Services (RFS) in accordance with Section 4.14 of the 'Environmental Planning and Assessment Act 1979. The RFS within its letter dated 3 April 2019 raised no objection to the proposed development subject to conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether the 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. 966238S and 1 March 2019). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	40	50

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 application has been considered with regard to the relevant provisions of *State Environmental Planning Policy (Coastal Management) 2018* and Council can be satisfied that the proposal is consistent with the relevant matters prescribed by this policy.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	10m	11.6m	16%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.9 Preservation of trees or vegetation	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	10.0m
Proposed:	11.6m
Percentage variation to requirement:	16%

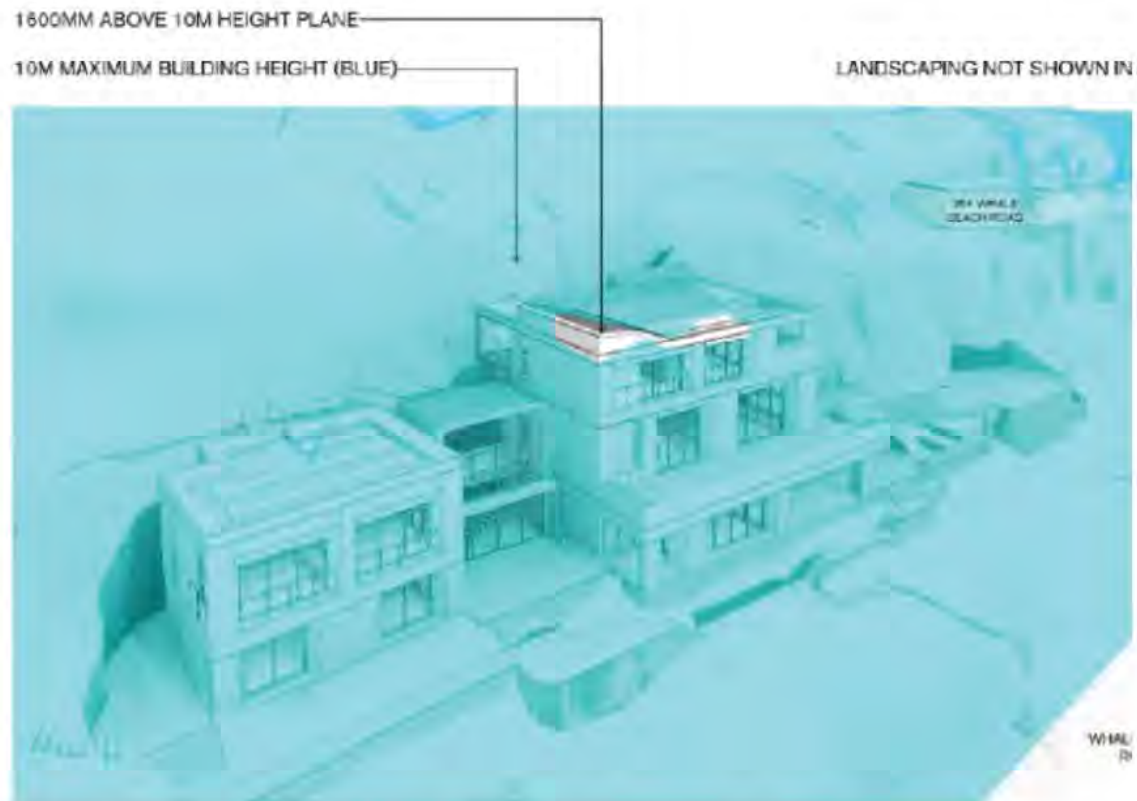


Figure 2 - Extract of 3D View of Proposal with 10.0m Maximum Building Height Plane (Source : City Plan SEE)

Assessment of request to vary a development standard:

The maximum building height prescribed for the subject site according to Clause 4.3(2) of PLEP is 8.5m. However, Clause 4.3(2D) stipulates that development on land that has a maximum building height of 8.5m may exceed 8.5m but be no more than 10.0m if the following is met:

- *The consent authority is satisfied that the portion of the building above the maximum height shown on that land on the Height of Buildings Map is minor, and*
- *The objectives of Clause 4.3 are achieved; and*
- *The building footprint is situated on a slope that is in excess of 16.7 degrees (that is 30%); and*
- *The buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by design that allow the building to step down the slope.*

Clause 4.6 'Exceptions to development standards' is the mechanism by which an applicant's request to vary a development standard can be considered. The development standard that this request seeks approval to vary is the Height of Buildings control, in Clause 4.3(2D) of the PLEP, as the building footprint is located on a slope that is in excess of 16.7 degrees (that is 30%).

The following assessment of the variation to Clause 4.3 (2D) - 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 provides flexibility in applying certain development standards on the following grounds:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to*
- (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.*
- (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*
 - (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.*

The provisions of clause 4.6 fall into two distinct parts, those for which the consent authority must be 'indirectly satisfied' (clause 4.6(4)(a)(i)) through the clause 4.6 variation request and those for which the consent authority must be 'directly satisfied' (clause 4.6 (4)(a)(ii)).

If the consent authority finds that the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority cannot be satisfied that the development will be in the public interest for the purposes of clause 4.6(4)(a)(ii) and cannot uphold the clause 4.6 variation request.

Assessment of Applicants Written Request (Sub-section 3)

1. *Whether compliance with the standard is unreasonable and unnecessary in the circumstances of the case*

The appropriate methodology for the consideration of this question is enunciated in the decision of Chief Justice Preston in *Wehbe v Pittwater Council*. In this decision, the Chief Justice summarised the

case law on the consideration of this question and expressed the view that there are five ways in which an applicant may demonstrate that compliance with a development standard is unreasonable or unnecessary.

The Applicant's written request of Clause 4.6 as prepared by City Plan, dated March 2019 argues, in part:

- *Most of the proposed development is under the general permissible height control of 8.5m under Clause 4.3(2) and consequently below the greater height allowance of 10m under Clause 4.3 (2D);*
- *The variation is minor and only occurs at the south-east corner of the development in relation to the Second Floor at the lift and the Master Bedroom;*
- *The variation does not result in any additional overshadowing for adjoining properties, in particular 354 Whale Beach Road, Palm Beach;*
- *The variation does not result in any adverse view loss impact and continues view sharing from the public domain of Whale Beach Road and Annie Wyatt Reserve;*
- *The variation of the development standard does not cause any loss of privacy for neighbouring properties, particularly 354 Whale Beach Road, Palm Beach;*
- *The dense vegetation on the east, west and south boundary of the site, in addition to the proposal's skillful design, ameliorates the impact of the minor variation by reducing the scale as viewed from the public domain;*
- *The variation helps minimise the building footprint and disturbance to natural topography, whilst dedicating 64.5% of the site area to landscaping;*
- *The variation does not alter the intended purpose for a dwelling house in the E4 Environmental Living zone; and*
- *The proposal results in a better planning outcome than if compliance were to be achieved, as it provides a development that meets the objective of the standard as well as providing circulation space around the lift, improved amenity for the Master Bedroom and the location of the lift reduces the need for deeper excavation on the site at this location.*

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

2. Whether there are sufficient environmental planning grounds to justify co

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ stated:

- *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.*
- *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify*

contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].

The applicant's clause 4.6 variation request specifically identifies the 'environmental planning grounds' that support the case for a variation, which is reproduced below:

- (i) *In terms of the objects (Section 1.3) of the Environmental Planning & Assessment Act, which Preston J observed constitute 'environmental planning grounds', the consolidation of the four (4) allotments, provision of a new bushfire compliant dwelling house and extensive landscaping is highly desirable.*
- (ii) *The proposal promotes protection of the environment (s1.3(e)), sustainable management of heritage in the nearby vicinity (s1.3(f)) and, good design and amenity of the built environment (s.1.3(g)). The benefit of the minor contravention greatly outweighs the negligible harm resulting from the variation. In this regard we submit that there are sufficient environmental planning grounds to justify*

The applicant's justification is concurred with and it is considered that the written request does contain sufficient environmental planning grounds to justify contravening the development standard to that proposed.

The applicant's justification has been prepared on the grounds of there being sufficient environmental planning grounds. As such, the grounds for the variation that are particular to the circumstances of the proposed development are that the site is significantly sloping and the proposed height responds to the existing topography. In view of the particular circumstances of this case, strict compliance with Clause 4.3 of the LEP is considered to be both unnecessary and unreasonable on the following environmental planning grounds:

- The proposal is consistent with the intent of Clause 4.3 which is to maintain the character of the area. The proposal achieves this outcome, notwithstanding the proposed numerical variation;
- In this instance, it is considered that removal of the non-complying elements to achieve strict compliance would not result in an improved planning outcome and the additional height does not cause any material impact in terms of privacy or view loss to neighbouring residential properties, or adverse overshadowing to residential properties or the public domain. The minor variation results in an improved internal amenity for the occupants of this development and a built form in keeping with adjoining development and in essence, would result in a better planning outcome;
- Despite the additional height, the scale of the proposed dwelling is comparable to other dwellings along Whale Beach Road, thus creating a unified scale in this part of the locality; and

- The amenity of adjoining properties is not significantly impacted by the non-compliance.

Conclusion on Environmental Planning Grounds

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).

3. ***Public interest – Development consistent with the zone objectives and objectives***

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 E4 - Environmental Living Zone. An assessment against these objectives is provided below.

Objectives of the Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment:

The non-compliance of the development occurs at the south-east corner of the development, and is a direct result of topography of the site. The height and scale of the dwelling is consistent with the desired character statement of the Palm Beach Locality as discussed under the relevant section of this report.

Accordingly, the proposed development is consistent with this objective of the standard.

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

Comment:

The consolidation of the four (4) allotments and location of the building on the new larger lot, together with the recessive setbacks and articulation of the massing of facades, results in a development that is considered to be compatible with the surrounding and nearby development within the locality.

Accordingly, the proposed development is consistent with this objective of the standard.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The overshadowing of the development is insignificant by virtue of setbacks (given the consolidation of four lots into one), landscaping and architectural treatment. Shadow diagrams show that the areas of non-compliance will not impact on the solar access of adjoining properties.

Accordingly, the proposed development is consistent with this objective of the standard.

d) to allow for the reasonable sharing of views,

Comment:

The proposal allows for a reasonable sharing of views between adjoining and neighbouring dwellings. 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, were applied to the proposal.

While no objections regarding view loss were received, the view assessment has been undertaken having regard to all surrounding properties.

The assessment has found that the proposal does not unreasonably affect the outcome in regards to the view sharing. Overall, the proposal is considered appropriate for the subject site and acceptable with regards to view sharing principle.

Accordingly, the proposed development is consistent with this objective of the standard.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment:

The consolidation of the four (4) allotments and location of the new dwelling house on the new larger lot responds to the natural topography of the site. In addition, the location of the dwelling is such that it minimises impact on the natural environment of the site.

Accordingly, the proposed development is consistent with this objective of the standard.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,

Comment:

The visual impact of the development is reduced by virtue of significant setbacks, high quality landscaping and architectural treatment. The impact of the proposed development on natural environment and impact on the nearby heritage item 'Cox House' is found to be satisfactory as discussed elsewhere in this report.

Accordingly, the proposed development is consistent with this objective of the standard.

Zone Objectives

The underlying objectives of the E4 Environmental Living zone are:

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

- To ensure that residential development does not have an adverse effect on those values.
- To provide for residential development of a low density and scale integrated with the landform and landscape.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

The proposed development is found to be consistent with the zone objectives for the following reasons:

- The proposed development is low impact in that it consolidates four (4) lots into one, with the proposed development being for a dwelling house that is located such that it minimises its impact on the vegetation of the site;
- The proposal is for a single dwelling house on the site affected by sloping topography;
- The proposals design to integrate with the ecological and aesthetic values of the site and the surrounding locality; and
- The proposed development maintains, preserves and enhances the foreshore vegetation and wildlife corridors in particular the Littoral Rainforest, Annie Wyatt Reserve and vegetation adjoining the Pacific Ocean on the east of the property.

Conclusion:

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

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

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

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

However, the application is being reported to the NBLPP to enable an independent assessment and determination of the application.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Nil (Basement) 2.20m (Pool retaining wall) 3.06m (Ground floor and first floor terrace) 3.91m (Ground floor living area) 6.61m (Dwelling)	39.85% - 100%	No

Rear building line	6.5m	7.34m (Second floor master bedroom) 8.56m (Rear staircase)	N/A	Yes
Side building line	2.5m (South)	16.69m (Dwelling)	N/A	Yes
	1.0m (North)	2.65m (Edge of pool) 27.33m (Dwelling)	N/A	Yes
Building envelope	3.5m	Within	N/A	Yes
	3.5m	Within	N/A	Yes
Landscaped area	60%	66.96% (1519.6 sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.3 Greywater Reuse	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

Desired Character

The Palm Beach locality will remain primarily a low-density residential area with dwelling houses in maximum of two storeys in any one place in a landscaped setting, integrated with the landform and

landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the lowlands and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

Comment

The proposed development adequately responds to the desired future character as the development will appear as a two storey dwelling when viewed from the public domain. The setbacks of the vertical facades of each level from the garage moving back from the street are in two distinct and separate modules that will reduce the prominence of the upper levels when viewed any vintage points.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Comment:

The site is adequately serviced by roads with water and sewerage infrastructure connections available within the Whale Beach Road reserve.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale whilst ensuring that future development respects the horizontal massing of the existing built form. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

Comment:

The design of the proposed development includes stepping of the facade above the garage level to ensure that the bulk and scale of the development remains commensurate with the anticipated building form for this type of sloping topography. The development is considered to integrate with the natural falls of the land. The finishing materials for the development will be subject to a condition to ensure the use of muted and earthy tones that are complementary to the surrounding natural environment.

The design, scale and treatment of future development within the commercial centres will reflect a 'seaside-village' character through building design, signage and landscaping, and will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

Comment:

This outcome is not relevant to the subject site.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

Comment:

The proposed works are concentrated within the central portion of the site. The portion of the site that contains numerous rock shelves and native vegetation will remain undisturbed by the development. The

retention of a large portion of the site in its natural state serves to support the development fitting within the natural environment.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

Comment:

The site is not identified as a heritage item under the PLEP nor located within a heritage conservation area. The site is however located in the vicinity of local heritage item 'Cox House' located at 356 Whale Beach Road, Palm Beach.

In this regard, the proposed development has been assessed by Council's Heritage officer whom have raised no objection to the proposed development.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Comment:

The proposed development does not require any changes to the existing road network around the site. Vehicular, pedestrian and cycle access through the locality will not be adversely affected by the proposed works.

Palm Beach will remain an important link to the offshore communities.

Comment:

The subject site will not impact on the Palm Beach link with offshore communities.

D12.3 Building colours and materials

The external colour submitted indicates that the wall colour of the dwelling is to be "Ren" which is a white colour that is inconsistent with the requirement of this Clause (see photomontage below). Accordingly, a condition has been imposed on the consent to ensure that the external colours of the roof and walls are muted and earthy tones, which is consistent with the requirement of this Clause.



Figure 3 - Photomontage showing proposed external finishes (Source : City Plan SEE)

D12.5 Front building line

Description of non-compliance

- Basement - Nil
- Pool retaining wall - 2.20m
- Ground floor and first floor terrace - 3.06m
- Ground floor living area - 3.91m

Merit consideration:

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

Achieve the desired future character of the Locality.

Comment:

The proposed development is considered to achieve the desired future character requirements for the Palm Beach Locality. This is discussed in further detail within Section A4.12 of PLEP.

Equitable preservation of views and vistas to and/or from public/private places. (S)

Comment:

There are no views or vistas that have been identified which are adversely affected by the proposed development. Views and vistas are considered adequately preserved.

The amenity of residential development adjoining a main road is maintained. (S)

Comment:

The subject site is not adjoining a main road.

Vegetation is retained and enhanced to visually reduce the built form. (En)

Comment:

More than 50% of the site is retained in its natural form and additional native landscaping being proposed to provide adequate a natural curtilage for the proposed built form.

Vehicle manoeuvring in a forward direction is facilitated. (S)

Comment:

Due to the topographic constraints of the site and the narrowness and curvature of Whale Beach Road, manoeuvring a vehicle to and from the site in a forward direction is not possible. The parking arrangement for the site is considered acceptable in this instance.

To preserve and enhance the rural and bushland character of the locality. (En, S)

Comment:

The site is located opposite a natural bushland reserve. The new planting at the front of the proposed development will provide an extension of this bushland character.

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

Comment:

The proposed development is commensurate with the scale and density existing and emerging streetscape in this location. The height of the development is considered acceptable.

To encourage attractive street frontages and improve pedestrian amenity.

Comment:

The new dwelling includes multiple areas addressing the streetscape for casual surveillance and active frontage at ground level (above the garage) and at second floor level. There is restricted pedestrian amenity in this location due to a narrow road reserve.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

Comment:

The proposed development is considered a suitable and appropriate form of development for this location, as it sensitively addresses the natural setting, scenic quality and physical constraints of the site.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Pittwater Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

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

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

The proposal is permissible with consent under the Pittwater LEP 2014 and is found to satisfy the relevant requirements of this instrument, with the exception of building height. The proposed variation to the development standard for height of buildings under the PLEP 2014 will not result in any commercial gain for the applicant and will be visually imperceptible. The requested variation under Clause 4.6 is considered reasonable, well founded and is supported.

The development is considered to be consistent with the objectives of the controls for the site and generally consistent with Pittwater 21 DCP requirements. The variation in relation to P21DCP relates to the front building setback, which is also found to be satisfactory on merit due to the slope of the land and the proposal is considered to be compatible with the pattern of building setbacks within Whale Beach Road.

Accordingly, the application is recommended for approval, subject to conditions.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0231 for Demolition works, construction of a dwelling house including swimming pool and consolidation of Lots on land at Lot 328 DP 16362, 348 Whale Beach Road, PALM BEACH, Lot 329 DP 16362, 350 Whale Beach Road, PALM BEACH, Lot 330 DP 16362, 352 Whale Beach Road, PALM BEACH, Lot 327 DP 16362, 346 Whale Beach Road, PALM BEACH, 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
DA0102 - RevE: Site Plan	25/03/2019	Tzannes
DA1100 - RevC: Basement Plan	27/02/2019	Tzannes
DA1102 - RevE: Ground Floor Plan	25/03/2019	Tzannes
DA1103 - RevE: First Floor Plan	25/03/2019	Tzannes
DA1104 - RevE: Second Floor Plan	25/03/2019	Tzannes
DA0200 - RevB: Site Section & Elevation	27/02/2019	Tzannes
DA2000 - RevB: Elevations Sheet 1	27/02/2019	Tzannes
DA2001 - RevB: Elevations Sheet 2	27/02/2019	Tzannes
DA3000 - RevB: Sections Sheet 1	27/02/2019	Tzannes
DA3001 - RevB: Sections Sheet 2	27/02/2019	Tzannes
DA3002 - RevB: Sections Sheet 3	27/02/2019	Tzannes
DA3003 - RevB: Sections Sheet 4	27/02/2019	Tzannes
DA3004 - RevB: Sections Sheet 5	27/02/2019	Tzannes
DA External Finishes	21/01/2019	Tzannes

Engineering Plans		
Drawing No.	Dated	Prepared By
C02 - RevP2: Erosion and Sediment Control Plan	05/02/2019	Taylor Thomson Whitting
C03 - RevP2: Siteworks Plan	05/02/2019	Taylor Thomson Whitting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Traffic and Parking Impacts Report	01/03/2019	TEF Consulting
Stormwater and Flooding Assessment	28/02/2019	Taylor Thomson Whitting

Prescribed Ecological Actions Report	28/02/2019	Abel Ecology
Heritage Impact Statement	04/02/2019	City Plan Heritage
Construction Management Plan	28/02/2019	TEF Consulting
Geotechnical Assessment Report	31/01/2018	JK Geotechnics
Bushfire Assessment Report	28/02/2019	Abel Ecology
Arboricultural Impact Assessment Report	28/02/2019	Earthscape Horticultural Services

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
DA01 - 1418-RevE	25/03/2019	Dangar Barin Smith
DA02 - 1418-RevE	25/03/2019	Dangar Barin Smith
DA03 - 1418-RevE	25/03/2019	Dangar Barin Smith
DA04 - 1418-RevE	25/03/2019	Dangar Barin Smith

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Site Waste Management Plan	27/02/2019	Tzannes

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
NSW Rural Fire Services	Response NSW RFS	3 April 2019

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

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

3. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments

specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

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

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

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

Reason: Legislative Requirement

4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

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

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

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

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

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

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

6. **On slab landscape planting and associated works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate,

i) indicating the proposed method of waterproofing to the concrete slabs and planters to which soil and planting is being provided,

ii) indicating soil type, plant species, irrigation, services connection, maintenance activity schedule and soil depth compliant with iii) below:

iii) the following minimum soil depths are required to be provided:

-300mm for lawn and groundcovers

-600mm for shrubs

-1 metre for trees

iv) certification shall be provided by a structural engineer that the roof garden planter is designed structurally to support the 'wet' weight of landscaping (materials, soil and established planting).

Reason: to ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by JK Geotechnics dated 31 January 2018 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

The applicant is to submit drainage plans by a Civil Engineer detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's Pittwater 21 DCP 2014 Clauses B5.7 and B5.10 and the concept drawing by TTW, drawing number 181376 C01, C03, and C06 dated 5/02/2019. Detailed drainage plans, including engineering certification

confirming the above requirements have been satisfied are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

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. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings.

Council approval is required if temporary ground anchors are to be used within Council land. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal 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.

11. **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.

12. **Construction Management Program**

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

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

inconvenience to the community

13. **Soil and Water Management Program**

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

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

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

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

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

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

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site. (DACHPCPC2)

15. **Arboricultural investigation of T31 and T25**

A Project Arborist with AQZ Level 5 qualification in horticulture is to be appointed to undertake subsurface root investigations to provide a definitive recommendation on the suitability to retain existing tree T31 (Large-fruited Red Mahogany). It is considered that the current design layout should be altered to accommodate the retention of this tree, and the Project Arborist shall provide recommendations on design alterations to allow for retention, including relocation of walling, stairs and pavements. The findings are to be detailed and submitted to the Certifying Authority and shall be implemented should the Project Arborist determine that retention is feasible.

Contrary findings to suggest that tree 31 will not be suited to be retained shall be detailed and submitted to the Certifying Authority, including photographic evidence of investigation trenches and the like.

Existing T25 (Turpentine) is considered suitable for retention with amendment to the design layout of walling, stairs and pavements. The Project Arborist shall provide details to the Certifying Authority recommending required amendments to the design layout for implementation.

Reason: to justify the reason for removal of a high retention value trees.

16. **Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure all bushland biodiversity protection measures are carried out according to the conditions of consent. The Project Ecologist must have one of the following memberships/accreditation:

- Practising member of the NSW Ecological Consultants Association OR
- Biodiversity Assessment Method assessor accreditation under the NSW Biodiversity Conservation Act 2016

Engagement of a Project Ecologist is to be certified by the Principal Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife in accordance with relevant Natural Environment LEP/DCP controls(DACNECPCC1)

17. **Preparation of Environmental Management Checklist**

A Construction Environmental Management Checklist is to be prepared and is to incorporate all measures for the protection of native vegetation, wildlife and habitats during the construction phase. Measures specified in the checklist must include all requirements of conditions of this consent addressing construction-related impacts on biodiversity. The checklist is to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To protect native vegetation, wildlife and habitats in accordance with relevant Natural Environment LEP/DCP controls. (DACNECPCC2)

18. **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.

19. **External Finishes**

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

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

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

20. **Sewer / Water Quickcheck**

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:

- o Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- o Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- o Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLC12)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. Project Arborist

A Project Arborist with AQZ Level 5 qualification in horticulture is to be appointed to supervise and certify tree protection measures for the following existing trees in accordance with the recommendations of the Arboricultural Impact Assessment prepared by Earthscape Horticultural Services dated February 2019, as listed under section 9 - Recommended Tree Protection Measures:

- Tree 25 (Turpentine): requiring supervision of altered design layout,
- Tree 26 (Turpentine): including site attendance during excavation and construction works,
- Tree 27 (Sydney Blue Gum): including site attendance during excavation and construction works, and to ensure protection of rock outcrop,
- Tree 28 (Bastard Mahogany): including site attendance during excavation and construction works, and
- Tree 31 (Large-fruited Red Mahogany): subject to Construction Certificate assessment as conditioned. Should recommendations result in retention, the Project Arborist shall attend site during excavation and construction works.

Additionally, the Project Arborist is to recommend tree protection measures such as tree fencing, trunk protection and ground protection, and supervise all excavation and construction works near all trees, including recommending the construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Reason: to ensure the protection of the existing landscape amenity.

22. Tree removal

In consideration of the assessment of tree health and condition, the following existing trees are approved for removal, based on the recommendations of the Arboricultural Impact Assessment report prepared by Earthscape Horticultural Services dated February 2019:

- existing trees identified as T16, T21a, T29, T29a, T29b, T31a, T32, T33, T34, T34a, T34b, T34c, T34b, T34c, T35, T36, T37, and T38 located within the site, and
- existing trees identified as T23 (dead), T24a (environmental weed species), T61 and T62 (both to be removed for proposed driveway), located with the road reserve.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. Traffic Control During Works

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

Reason: Public Safety

24. **Vehicle Crossings**

The provision of one vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/2 NH 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.

25. **Maintenance of Road Reserve**

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

Reason: Public Safety.

26. **Temporary Sediment**

Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.

Reason: To reduce erosion and prevent sediment runoff into public assets

27. **Maintenance of Sediment**

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

Reason: To ensure sediment controls are effective

28. **Site Entry Access way**

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

Reason: To reduce sediment being taken offsite

29. **Noise and Vibration**

The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations

Reason: To ensure the amenity of the surrounding area for residents

30. **Protection of Adjoining Property - Excavation**

Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.

Reason: To ensure private and public safety

31. **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 within the Arboricultural Impact

Assessment prepared by Earthscape Horticultural Services dated February 2019:

- o (T3, T4, T4a, T5, T8, T9, T10, T12, T13, T14, T15, T17, T18, T26, T27, T28, T30, T40, T45, T55, T56, and T57) and including the following trees proposed for removal and subject to review for retention: T25 and T31), excluding exempt trees under the relevant planning instruments or legislation,
- ii) all trees and vegetation located on adjoining properties, and particularly:
 - o T1, T2a, T19, T19a, T20, T20a, and T58,
- iii) all road reserve trees and vegetation, including:
 - o T6, T7, T9a, T11a, T11b, T21, T22, T24, T24a, T43, T58a, T59, and T60.

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, and the recommendations of the Arboricultural Impact Assessment prepared by Earthscape Horticultural Services dated February 2019, as listed in section 9. Recommended Tree Protection Measures,
- 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.

32. **Protection of rock and sites of significance**

All rock outcrops and ledges outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

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.

33. **Tree Hollow Inspection by Ecologist**

All tree hollows proposed for clearing are to be inspected by the project ecologist prior to removal. Inspection of tree hollows is to be facilitated by a qualified and experienced tree climber or arborist with the use of an elevated work platform where necessary. Details prepared by the project ecologist in writing demonstrating compliance are to be submitted to the Principal Certifying Authority prior to commencement of tree removals.

Reason: To protect native wildlife in accordance with Section 2.1 of the NSW Biodiversity Conservation Act 2016 and relevant Natural Environment LEP/DCP controls.

34. **Construction Environmental Management Checklist Inductions**

All workers, including site inspectors and sub-contractors, are to be briefed on measures specified in the Construction Environmental Management Checklist through a site induction prior to workers commencing their works. Evidence of the site induction is to be documented and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To protect native vegetation, wildlife and habitats in accordance with relevant Natural Environment LEP/DCP controls. (DACNEEDW1)

35. **Inspection of Wildlife Habitat**

Habitat for native wildlife including potential microbat roosting habitat must be inspected for native wildlife by the Project Ecologist prior to removal. If native wildlife is found within habitat required to be removed, the animal must be safely relocated to an appropriate location by the Project Ecologist or a registered wildlife rescue organisation. The Project Ecologist is to prepare a record of any incidents or a statement that no such incidents occurred and provide this to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To protect native wildlife in accordance with Section 2.1 of the NSW Biodiversity Conservation Act 2016.

36. **Vegetation Clearing Protocols**

The Project Ecologist is to prepare detailed vegetation clearing protocols and vegetation clearing works are to undertaken in accordance with these protocols. Details confirming compliance are to be certified by the Project Ecologist and submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To protect native vegetation in accordance with relevant Natural Environment LEP/DCP controls.(DACNEEDW2)

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

37. **Landscape works**

Landscaping is to be implemented in accordance with the Landscape Plans DA01-1418 (issue E), DA02-1418 (issue E), DA03-1418 (issue E), DA04-1418 (issue E), and DA05-1418 (issue

E), prepared by Dangar Barin Smith, including the following requirements:

- i) the existing ground levels around existing trees to be retained unless authorised and certified by the Project Arborist,
- ii) the proposed tree planting shall be located at least 3 metres from building structures where pier and beam construction is used or 5 metres where ground strip footing are used, and shall be planted at the nominated pot sizes on the landscape plans, and planted in areas providing at least 3m x 3m of available soil area,
- iii) the proposed tree planting shall be located within the site to achieve a reasonable sharing of views available to adjoining properties,

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

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

38. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an AQF Level 5 Arborist (or equivalent), shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

- i) Compliance to Arborist recommendations for tree protection and excavation works.
- ii) Extent of damage sustained by vegetation as a result of the construction works.
- iii) Any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: to retain and protect significant planting on development sites, and protect the existing amenity.

39. **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.

40. **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.

41. **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)

42. **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.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

44. **Weed Removal and Management**

No weeds are to be imported on to the site.

All invasive and priority weeds on the site are to be removed and managed continuously, in accordance with the Biosecurity Act 2015.

Details demonstrating the removal and management of weeds are to be prepared by the project ecologist in writing and submitted to the Principal Certifying Authority prior to occupation certificate.

Reason: Weed management and biosecurity

45. **Implementation of Construction Environmental Management Checklist**

Construction is to be undertaken in accordance with the Constructional Environmental Management Checklist. The project ecologist is to certify compliance with the Construction Environmental Management Checklist and provide evidence to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect native vegetation, wildlife and habitats in accordance with relevant Natural Environment LEP/DCP controls.(DACNEFPOC1)

46. Installation of Nest Boxes

At least two nest boxes designed to suit microbats are to be appropriately installed in trees not affected by development. Nest box installation is to be certified by the Project Ecologist as being complete and adequate prior to issue of the Occupation Certificate.

Reason: Wildlife habitat replacement.

47. Consolidation of Lots or Restrictive Covenant

Lot 327, 328, 329, and Lot 330 in DP 16362 must be consolidated as one (1) allotment and registered on a survey plan (prepared and signed by a Registered Surveyor) with the NSW Land & Property Information Service (NSW Department of Lands).

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 development is not constructed over property boundaries

48. 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)

49. 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)

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

50. **Landscape maintenance**

All landscape components are to be maintained for the life of the development. A maintenance program is to be established. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme of the site.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

51. **Environmental and priority weed control**

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: preservation of environmental amenity.

52. **No Planting Environmental Weeds**

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

Reason: Weed management.

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

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

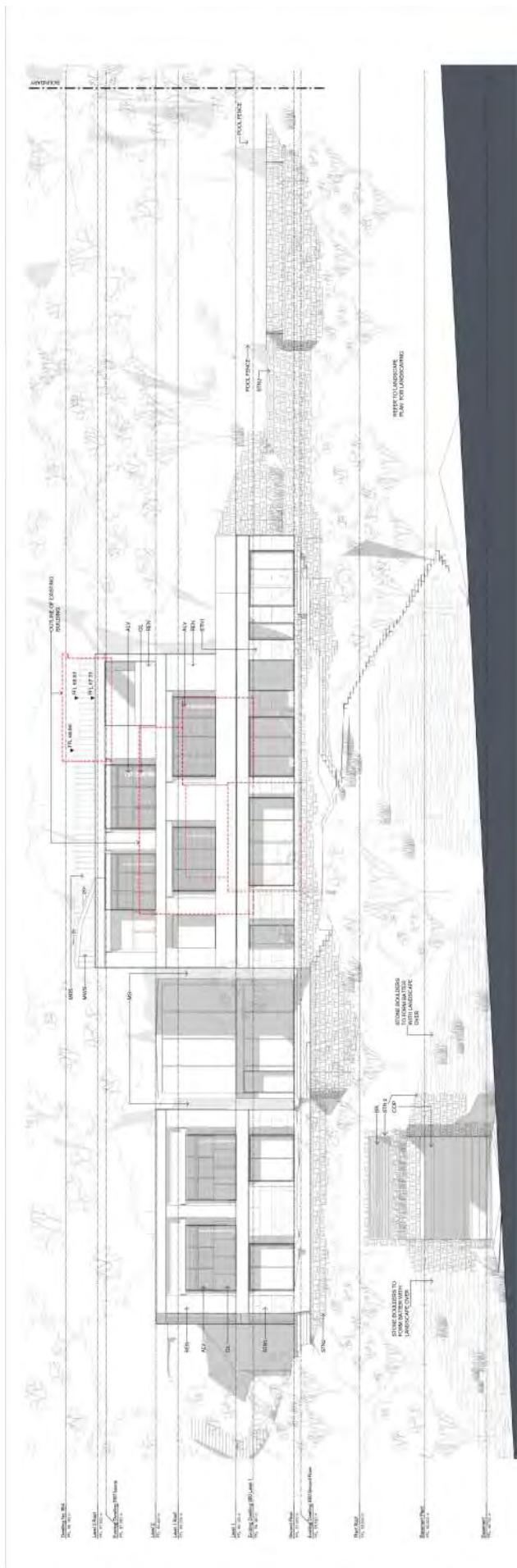
Reason: To protect Aboriginal Heritage.

54. **Dead or Injured Wildlife**

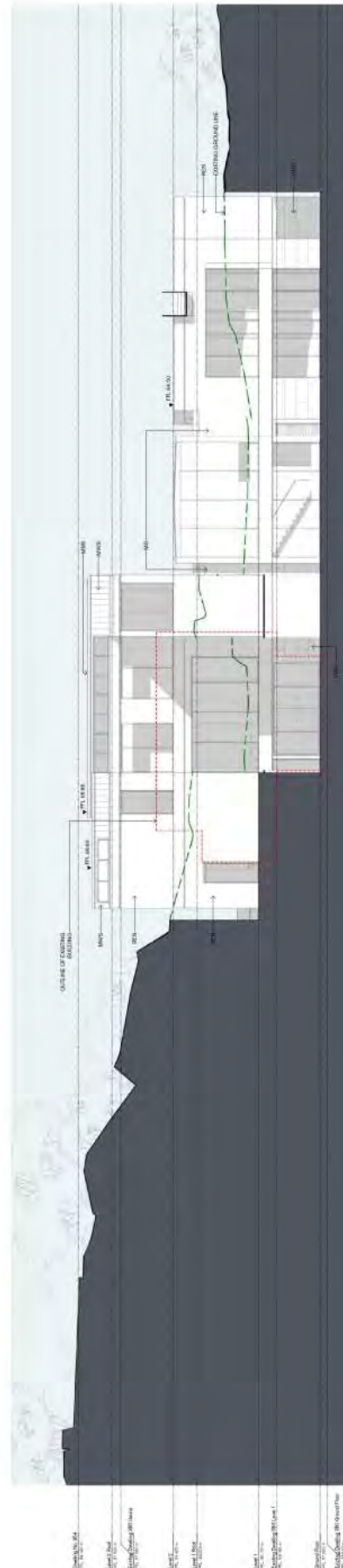
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

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





1 | Elevation East
1:100



2 | Elevation West
1:100



W
E
Northern Beaches Council
346-352 Whale Beach Road
Palm Beach NSW 1505

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General Notes
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Project
Palm Beach Residence

Address
346-352 Whale Beach Road, Palm Beach

State
DEVELOPMENT APPLICATION

Drawing No
17018

Date
2000

Design
KD

Checked
AT

Revision
B

Legend

NOT FOR CONSTRUCTION

1:100 @A1

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Project
Palm Beach Residence

Address
346-352 Whale Beach Road, Palm Beach

State
DEVELOPMENT APPLICATION

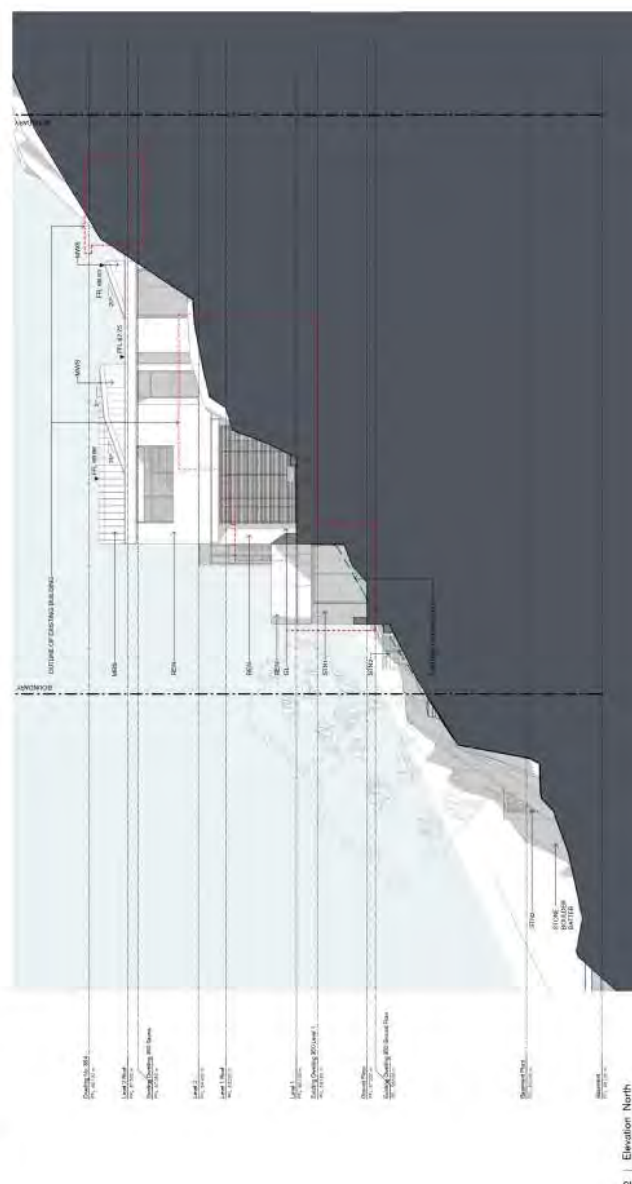
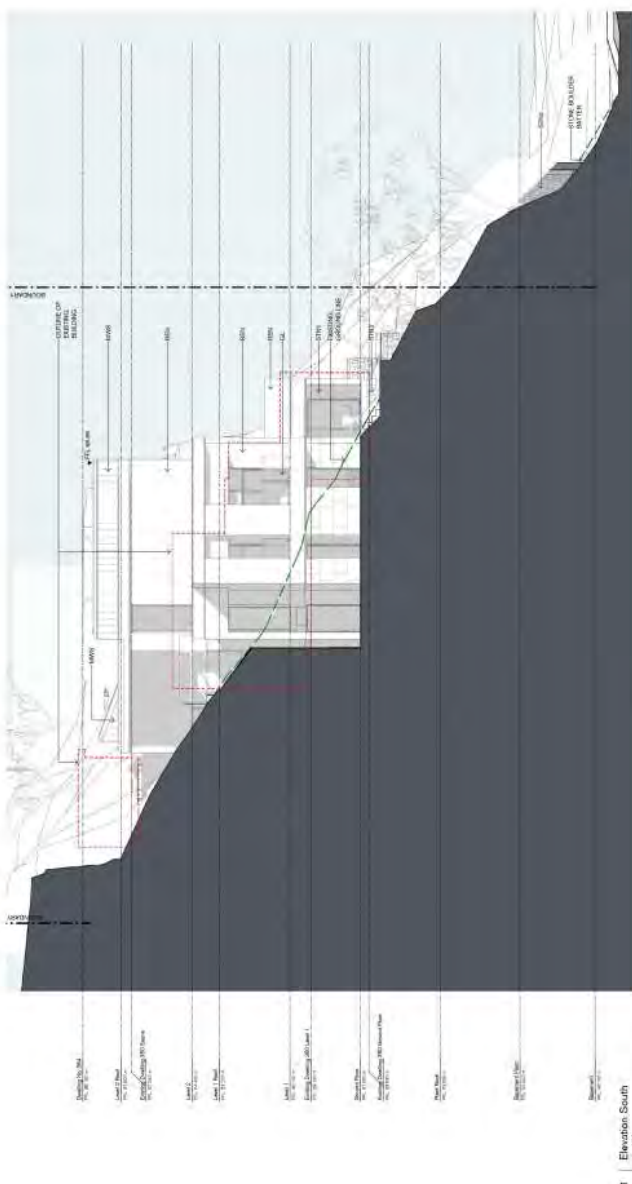
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KD

Checked
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Revision
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Clause 4.6 Variation Request

Height of Buildings
(Clause 4.3(2D))

Pittwater Local Environmental
Plan 2014

346-352 Whale Beach Road, Palm Beach


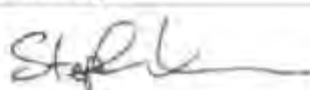
Submitted to Northern Beaches Council
On Behalf of Tzannes

MARCH 2019



4.6 Request
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Palm Beach
#18-037
March 2019

REPORT REVISION HISTORY

Revision	Date Issued	Revision Description
01	28/02/19	Revision tracking notes
		<div>Prepared by</div> <div>Olivia Page Assistant Project Planner</div>
		<div>Verified by</div> <div> Stephen Kerr Executive Director</div>
02	07/03/19	Revision tracking notes
		<div>Prepared by</div> <div>Olivia Page Assistant Project Planner</div>
		<div>Verified by</div> <div> Stephen Kerr Executive Director</div>

Disclaimer

This report has been prepared by City Plan Strategy & Development P/L with input from a number of other expert consultants (if relevant). To the best of our knowledge, the information contained herein is neither false nor misleading and the contents are based on information and facts that were correct at the time of writing. City Plan Strategy & Development P/L accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance on information in this publication.

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City Plan Strategy & Development P/L
Suite 6.02, 120 Sussex St, Sydney NSW 2000
P +61 2 8270 3500

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Palm Beach
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March 2019

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Suite 6.02, 120 Sussex St, Sydney NSW 2000
P +61 2 8270 3500

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4.6 Request

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1. INTRODUCTION

This is a formal written request that has been prepared in accordance with Clause 4.6 of the *Pittwater Local Environmental Plan 2014* (PLEP) to support a Development Application (DA) submitted to Northern Beaches Council for the demolition of the existing dwelling and construction of a three-storey dwelling house with basement facilities, associated landscaping and excavation at 346-352 Whale Beach Road, Palm Beach ("the subject site").

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

The subject site is zoned E4 Environmental Living. It is acknowledged that the maximum building height prescribed for the subject site according to Clause 4.3(2) of the current PLEP is 8.5m. However, pursuant to Clause 4.3(2D), development on land that has a maximum building height of 8.5m may exceed 8.5m but be no more than 10m if:

- *The consent authority is satisfied that the portion of the building above the maximum height shown on that land on the Height of Buildings Map is minor, and*
- *The objectives of Clause 4.3 are achieved; and*
- *The building footprint is situated on a slope that is in excess of 16.7 degrees (that is 30%); and*
- *The buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by design that allow the building to step down the slope.*

The development standard that this request seeks approval to vary is the Height of Buildings control, in Clause 4.3(2D) of the PLEP.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal¹.

In **Sections 4 and 5** of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by Clause 4.6 to be addressed in a written request from the applicant. In **Sections 6, 7 and 8** we address additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

2. STANDARD TO BE VARIED

The standard seeking to be varied is Clause 4.3(2D) of the *Pittwater Local Environmental Plan 2014* where the maximum nominated building height is 10m, only where the abovementioned criteria achieved.

¹ Relevant decisions include: *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46; *Wehbe v Pittwater Council* [2007] NSWLEC 827; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, and *Moskovich v Waverley Council* [2016] NSWLEC 1015.



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3. EXTENT OF VARIATION

Pursuant to Clause 4.3(2D), a development that has a maximum building height of 8.5m may exceed 8.5m but be no greater than 10m if all the considerations in the respective clause are addressed. A response to the criteria is provided below and justifies that the 10m building height development standard is appropriate for the subject proposal:

- a) The consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and*

The portion of the development above the 8.5m height limit is minor. The variation to the 8.5m are the result of the varying existing ground level and topography of the site. The minor variations as can be seen in **Figure 8** below relate to the lift, the eastern wall of the Master Bedroom and the terrace on the Second Floor. These variations result in no adverse impact on the adjoining properties and overall the proposal is generally compliant with the 8.5m building height standard.

- b) The objectives of this clause are achieved, and*

The proposal is consistent with the objectives of Clause 4.3 of the PLEP 2014. The proposal is consistent with the desired character of the Palm Beach Locality. The dwelling is generally compliant with the maximum 8.5m building height development standard and responds to the adjoining and nearby development in terms of bulk and scale. It is noted that some additional overshadowing of the subject site occurs as a result of the proposal. However, the sun access control of the PDGP are still met with the predominate orientation of the house facing east. The site is bounded to the east by Whale Beach Road and, a number of properties and Annie Wyatt Reserve to the west. Due to the extensive existing vegetation, especially to the west of the site, there are no adverse view loss impacts that arise and view sharing is maintained consequently. The proposed stepping nature of the development directly responds to the natural topography of the site and aims to minimise excavation. The stepping nature of the proposal minimises the impact of the building height variation through a gradual reduction in height toward the foreshore area. The visual amenity of the natural environment located on all boundaries is not adversely affected by the proposed development.

- c) The building footprint is situated on a slope that is in excess of 16.7 degrees (that is 30%), and*

The building footprint is situated on a slope of a minimum of 36 degrees, which is in excess of 16.7 degrees (30%) as can be seen in the below figures prepared by Tzannes.



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Figure 1: Extract of Section 1 from Architectural Plans showing slope of the site (Source: Tzannes)



Figure 2: Extract of Section 2 of the Architectural Plans showing the slope of the site (Source: Tzannes)

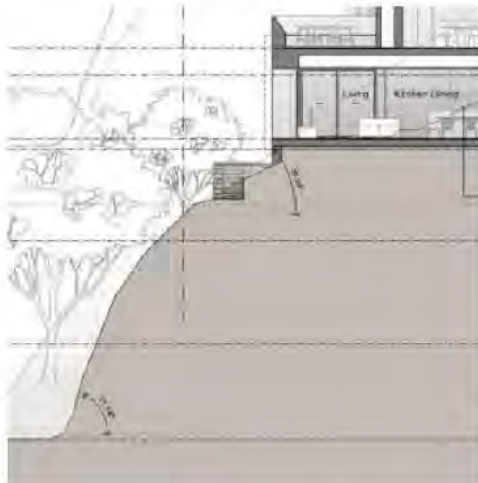


Figure 3: Extract of Section 4 of the Architectural Plans showing the slope of the site (Source: Tzannes)



Figure 4: Extract of the Section 4 of the Architectural Plans showing slope of the site (Source: Tzannes)

- d) *The buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by design that allow the building to step down the slope.*

The proposed development responds to the natural topography of the site and steps from west to east from Annie Wyatt Park to Barrenjoey Road. The proposed stepping nature of the development aims to minimise excavation. The Geotechnical Report prepared by JK Geotechnics, in **Appendix 1**, has considered the suitability of the site for the proposed excavation and recommendations relating to fill similarly.

Therefore, the appropriate maximum building height control for the subject site is 10m as the required criteria in Clause 4.3(2D) is met, as shown above.

The proposal contravenes the maximum 10m building height control by 1.6m at the south-east corner of the development on the Second Floor. The proposed numerical variation to the maximum allowable building height is 1.6m, which represents a variation of 11.6% from the standard. The extent of the height variation can be seen in **Figures 5- 7** below.



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Figure 5: Extract of Section 3 showing departure from the 10m building height plane (in blue) at the lift (Source: Tzannes)

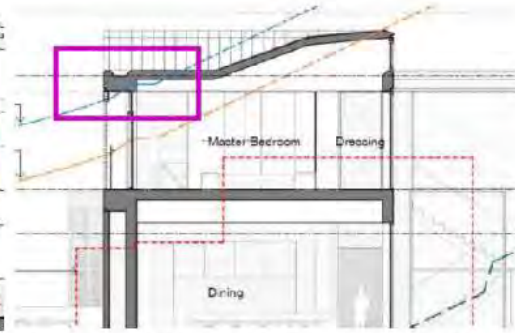
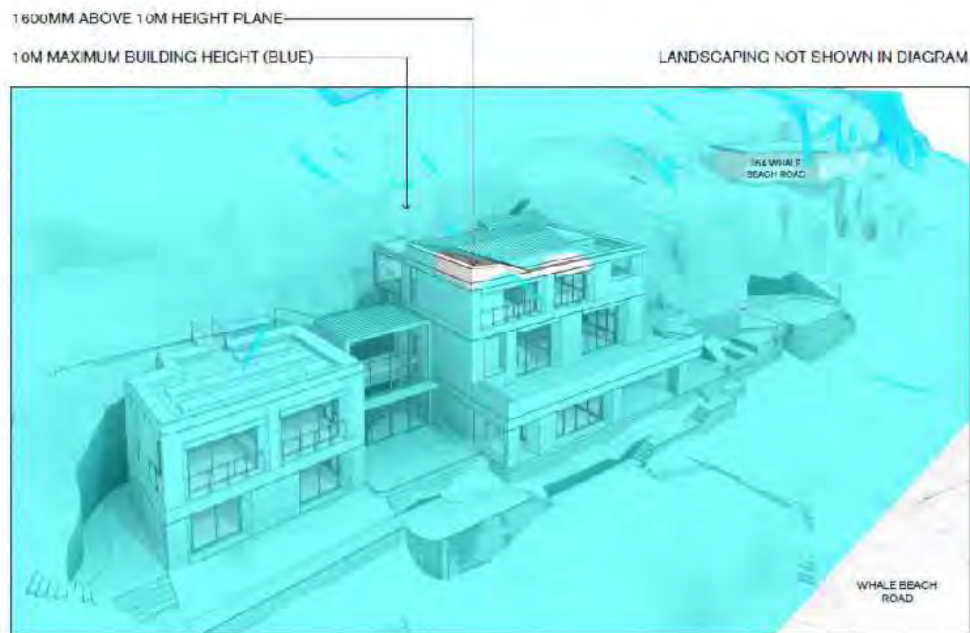


Figure 6: Extract of Section 4 showing departure from the 10m building height plane (in blue) at the Master Bedroom (Source: Tzannes)



1 | 3D View 10m Maximum Building Height

Figure 7: Extract of 3D View of 10m Building Height (Source: Tzannes)

It is important to note that the extent of the variation is related to the topography of the site, the varying existing ground level and, the desire to minimise the building footprint and disturbance of the natural features of the site.

For abundant caution, if Clause 4.3(2D) is not applicable to the subject site, the development proposes a maximum departure, from the 8.5m building height development standard, by 3.04m on the south-east corner on the Second Floor as can be seen in **Figure 8** below.



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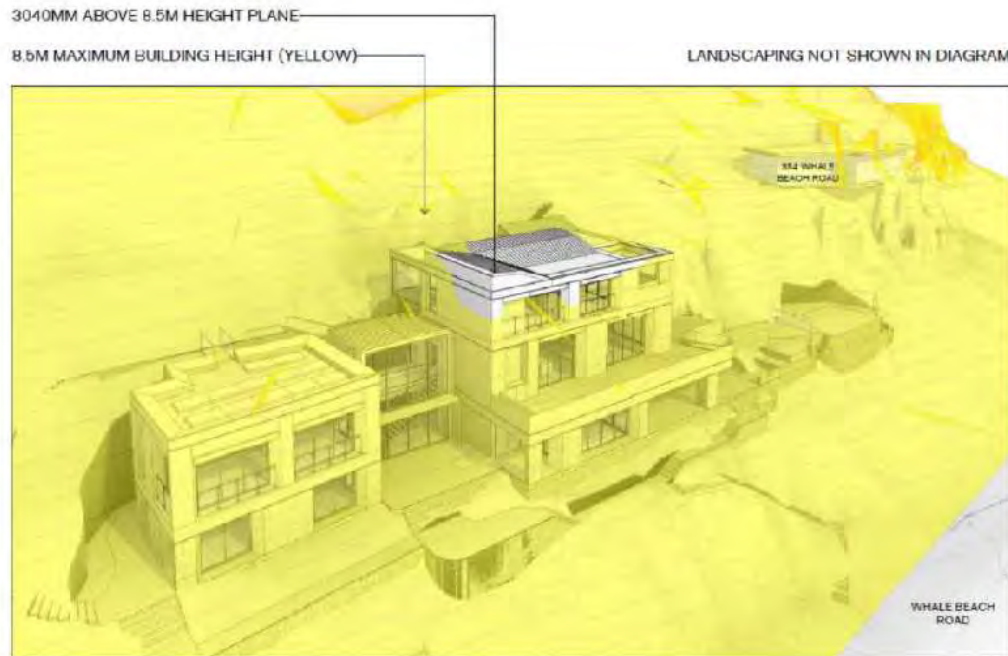


Figure 8: Extract of 3D View of Proposal with 8.5m Maximum Building Height Plane (Source: Tzannes)



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4. COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THIS CASE. [CL.4.6 (3)(A)]

4.1. Achieves the objectives of the standard

Compliance with the Height of Buildings is unreasonable or unnecessary in the circumstances of this case because, as explained in **Table 1**. (below), the objectives of the development standard are achieved, notwithstanding non-compliance with the standard.²

Table 1: Achievement of Development Standard Objectives.

Objective	Discussion
(a) To ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,	The proposed development is generally consistent with the desired character for the Palm Beach Locality as described in the Pittwater Development Control Plan (PDCP). Due consideration has been given to the character of the development when viewed from a public place. The proposal is compliant with the side and rear setbacks controls which apply to the Palm Beach Locality. The development involves a minor departure from the front building line however extensive landscaping and retention of vegetation is proposed to screen the built form. 64.5% of the site area is dedicated to landscaping, ensuring the development is secondary to the landscape. The proposed development compliments the surrounding development and overall locality of the area. The proposal is generally compliant with the 8.5m height standard (see Figure 8 above). Given the slope of the land, the building height standard allowed is measurable to 10m for the proposal. The variation represents 5.8% of the roof area, which is based on the total area of all roofs at 331m ² and the total departure of approximately 18m ² . This is barely perceptible.
(b) To ensure that buildings are compatible with the height and scale of surrounding and nearby development,	The proposal responds to the surrounding and nearby development in terms of height and scale, as can be seen in Figure 9 below. 

² In *Wehbe v Pittwater Council* [2007] NSWLEC 827 Preston CJ identified 5 ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established. Although the decision concerned SEPP 1, it remains relevant to requests under clause 4.6 as confirmed by Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, notwithstanding that if the first and most commonly applied way is used, it must also be considered in 4.6(4)(a)(ii). The 5 ways in *Wehbe* are: 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; 3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; or 5. The zoning of the land is unreasonable or inappropriate.



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Objective	Discussion
	<p><i>Figure 9: Extract of Photomontage, site outlined in red (Source: Tzannes)</i></p> <p>The surrounding development, especially that located to the north, south and west of the site, have been considered in the application of the height controls.</p>
(c) To minimise any overshadowing of neighbouring properties,	<p>The proposal does not result in any additional overshadowing to the neighbouring property at 354 Whale Beach Road, as can be seen in Appendix 2. The existing overshadowing to the adjoining property on the northern boundary occurs at 3pm on the 21st June as a result of the dense vegetation and orientation of the sun in the afternoon. As the site consists of multiple allotments, the proposal does not cause any additional overshadowing to other properties in the near vicinity.</p>
(d) To allow for reasonable sharing of views,	<p>View sharing from the public domain and adjoining properties is unaltered due to the location of the variation on the south-east corner of the Second Floor. As the site contains dense vegetation, especially to the west and south, view sharing from Annie Wyatt Reserve and the adjoining residential properties to the rear of the site are maintained. View sharing is similarly maintained for 354 Whale Beach Road, Palm Beach. The proposed development in its skillful design and chosen location allows continued sharing view for neighbouring properties and from the adjoining reserve to the west of the site. Overall view sharing of the Pacific Ocean and surrounding vegetation is unchanged from the minor non-compliance with the building height development standard. Refer to the Photomontages in Appendix 3.</p>
(e) To encourage buildings that are designed to respond sensitively to the natural topography,	<p>The consolidation of the four (4) allotments and location of the new dwelling house on the allotments directly responds to the natural topography of the site and aims to minimise excavation. The design, how the building sits in the landscape and variation helps to minimise the building footprint and disturbance to the natural topography.</p>
(f) To minimise the adverse visual impact of development on the natural environment, heritage conservations area and heritage items.	<p>Generally, the proposal is not visible from public places, the site maintains an extensive amount of unbuilt area and consolidates four (4) lots which otherwise could have each contained a dwelling house.</p> <p>The subject site is in proximity to local heritage item 'Cox House', located at 356 Whale Beach Road, Palm Beach. However, the proposed contravention, nor the proposed development, are visible from the local heritage item.</p>



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5. THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD. [CL. 4.6(3)(B)]

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, Preston J observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole.

As discussed earlier, the aspect of the development that contravenes the 10m development standard is a minor portion of the Master Bedroom and the lift at the Second Floor. In this regard the contravention of the development standard is very minor, and the environmental impacts are negligible, as explained earlier in the discussion regarding privacy, overshadowing and visual impacts in **Section 4**.

The variation does not cause environmental harm as follows:

- Most of the proposed development is under the general permissible height control of 8.5m under Clause 4.3(2) and consequently below the greater height allowance of 10m under Clause 4.3(2D) (refer to **Figure 7** on the previous page and **Figure 8** above);
- The variation is minor and only occurs at the south-east corner of the development in relation to the Second Floor at the lift and the Master Bedroom;
- The variation does not result in any additional overshadowing for adjoining properties, in particular 354 Whale Beach Road, Palm Beach, (refer to **Appendix 2** for further detail);
- The variation does not result in any adverse view loss impact and continues view sharing from the public domain of Whale Beach Road and Annie Wyatt Reserve;
- The variation of the development standard does not cause any loss of privacy for neighbouring properties, particularly 354 Whale Beach Road, Palm Beach;
- The dense vegetation on the east, west and south boundary of the site, in addition to the proposal's skillful design, ameliorates the impact of the minor variation by reducing the scale as viewed from the public domain;
- The variation helps minimise the building footprint and disturbance to natural topography, whilst dedicating 64.5% of the site area to landscaping (refer to **Appendix 4** for further detail);
- The variation does not alter the intended purpose for a dwelling house in the E4 Environmental Living zone; and
- The proposal results in a better planning outcome than if compliance were to be achieved, as it provides a development that meets the objective of the standard as well as providing circulation space around the lift, improved amenity for the Master Bedroom and the location of the lift reduces the need for deeper excavation on the site at this location.

in terms of the objects (Section 1.3) of the Environmental Planning & Assessment Act, which Preston J observed constitute 'environmental planning grounds', the consolidation of the four (4) allotments, provision of a new bushfire compliant dwelling house and extensive landscaping is highly desirable. The proposal promotes protection of the environment (s1.3(e)), sustainable management of heritage in the nearby vicinity (s1.3(f)) and, good design and amenity of the built environment (s.1.3(g)). The benefit of the minor contravention greatly outweighs the negligible harm resulting from the variation. In this regard we submit that there are sufficient environmental planning grounds to justify contravening the height of buildings development standard to extent proposed in this application.



4.6 Request

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6. THE PROPOSAL WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE STANDARD AND THE OBJECTIVES OF THE ZONE. [CL.4.6(4)(A)(II)]

In **Section 3** (above), it was demonstrated that the proposal is consistent³ with the objectives of the development standard. The proposal is also consistent with the objectives of the zone as explained in **Table 2** (below).

Table 2: Consistency with Zone Objectives

Objective	Discussion
To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.	The proposed development is of a low impact. The proposed consolidation of four (4) allotments, which could have otherwise each individually been developed, contributes greatly to its low impact. The built form is distributed and the disturbance to the natural topography minimised. The Prescribed Ecological Assessment Report (PEARs) in Appendix 5 details how the design of the proposal protects and preserves the main rock escarpment and rock outcrops on the site that provide habitat to native reptiles. Abel Ecology confirm that the proposal poses no adverse impact to the ecology of the site. Water sensitive urban design and improved stormwater quality contribute to the developments' low impact. The proposed development delivers great public benefit through the provision of a bushfire compliant dwelling house, compared to the existing home.
To ensure that residential development does not have an adverse effect on those values.	The proposed development does not compromise the effect of the values discussed above. The proposal duly integrates the ecological and aesthetic values of the site and the surrounding locality. In particular, the proposal responds to the topography of the site, protects and assimilates the native vegetation and species in the area, provides an improved stormwater system to promote water sensitive urban design, involves a Bushland Regeneration Strategy, proposes no works within the Littoral Rainforest and, retains some existing vegetation and provides additional landscaping to ensure the built form is secondary to the landscape.
To provide for residential development of a low density and scale integrated with the landform and landscape.	The proposal is for a single dwelling house on the site affected by sloping topography. The proposed design responds to the existing landform and landscape through a minimisation of the building footprint and disturbance to the natural topography. This is achieved through a dedication of 64.5% of the site area to landscaping. The consolidation of the four (4)

³ In *Dem Gillespies v Warringah Council* [2002] LGERA 147 and *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC the term 'consistent' was interpreted to mean 'compatible' or 'capable of existing together in harmony'



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	allotments distributes the built form, meaning the visual impact is ameliorated. The design of the proposal retains the existing outcrops ensuring their protection and preservation.
To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.	The proposed development maintains, preserves and enhances the foreshore vegetation and wildlife corridors in particular the Littoral Rainforest, Annie Wyatt Reserve and vegetation adjoining the Pacific Ocean on the east of the property. The site comprises of four (4) allotments, one of which contains a creek and Littoral Rainforest. No development is proposed on this lot or in the vicinity of riparian vegetation. The proposal also includes a Bushland Regeneration Strategy.

As can be seen from **Table 1** and **Table 2**, the proposal is consistent with the objectives of the standard and the objectives of the zone and is therefore considered to be in the public interest.

**4.6 Request**346-352 Whale Beach Road,
Palm Beach
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March 2019**7. CONTRAVENTION OF THE DEVELOPMENT STANDARD DOES NOT RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING. [CL. 4.6(5)(A)]**

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

8. THERE IS NO PUBLIC BENEFIT OF MAINTAINING THE STANDARD. [CL. 4.6(5)(B)]

The variation of the standard is minor and represents the south-east corner of the Second Floor.

There is no public benefit⁴ in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the Height of Buildings standard and hence there are very minor disadvantages.

The benefits of the proposal including a bushfire compliant building, improved stormwater quality, consolidation of four (4) lots which could have otherwise each contained a dwelling house, provision of extensive landscaping to ensure the built form is secondary to the landscape, protection of the Littoral Rainforest to the south of the site, BASIX compliant development and provision of off-street parking which was not previously present. The benefits of the proposal outweigh any disadvantage and as such the proposal will have an overall public benefit.

9. CONCLUSION

This Clause 4.6 variation request demonstrates, as required by Clause 4.6 of the *Pittwater Local Environmental Plan 2014*, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard and is consistent with the objectives of the E4 Environmental Living Zone;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any State or Regional Significance.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.

⁴ *Ex Gratia P/L v Dungog Council* (NSWLEC 148) established that the question that needs to be answered to establish whether there is a public benefit is "whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development"

ITEM 3.4**DA2018/1743 - 396-402 SYDNEY ROAD, BALGOWLAH -
DEMOLITION WORKS AND CONSTRUCTION OF SHOP TOP
HOUSING****AUTHORISING MANAGER** Daniel Milliken**TRIM FILE REF** 2019/309787**ATTACHMENTS**
1 [↓ Assessment Report](#)
2 [↓ Plans](#)
3 [↓ Clause 4.6](#)**PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% and is a development to which *State Environmental Planning Policy No 65 – Design Quality of Residential. Apartment Development* applies and is 4 or more storeys in height.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/1743 for demolition works and construction of shop top housing at Lots A & B DP 85983, 396-402 Sydney Road, Balgowlah subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1743
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot A DP 85983, 402 Sydney Road BALGOWLAH NSW 2093 Lot B DP 85983, 396 - 400 Sydney Road BALGOWLAH NSW 2093
Proposed Development:	Demolition works and construction of shop top housing
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	398 Balgowlah Pty Limited
Applicant:	398 Balgowlah Pty Limited
Application lodged:	25/10/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	13/04/2019 to 27/04/2019
Advertised:	13/04/2019
Submissions Received:	6
Recommendation:	Approval
Estimated Cost of Works:	\$ 5,940,000.00

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 - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

Manly Development Control Plan - 4.2.6.1 Wall Height on the Street Frontage

Manly Development Control Plan - 4.2.6.2 Exceptions to LEP Building Height

SITE DESCRIPTION

Property Description:	<p>Lot A DP 85983 , 402 Sydney Road BALGOWLAH NSW 2093</p> <p>Lot B DP 85983 , 396 - 400 Sydney Road BALGOWLAH NSW 2093</p>
Detailed Site Description:	<p>The subject site consists of two (2) allotments located on the northern side of Sydney Road.</p> <p>The site is regular in shape with a frontage of 19.34m along Sydney Road and a depth of 42.66m. The site has a surveyed area of 813m².</p> <p>The site is located within the B2 Local Centre zone and accommodates two x two storey buildings. Currently the buildings are used for a mix of commercial uses including office and retail premises. The ground floor of the building at 402 Sydney Road is currently used as a Recreation Facility (indoor) known as "The booty parlour". The subject site has no parking or vehicular access.</p> <p>The site slopes from south-west to north-east and includes a crossfall of 3.4m.</p> <p>The site includes a 4m, 7m and 8m tree to the rear of the existing buildings.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by</p>

a mix of residential and commercial development.

Directly to the north of the site is a right of carriageway that provides pedestrian access to Totem Lane. Further to the north, fronting Woodland Street is land zoned R1 General Residential. This land is developed with two storey attached dwellings to the west and a car parking/service area to the east.

To the north east of the subject site is the 'Totem Development' which is up to 8 storeys in height and comprised of a mix of commercial uses on the lower levels, including a shopping centre, gymnasium and a number of restaurant and cafes, with residential apartments located on the floors above.

To the east and to the south east (approximately 60 metres south-east) on the southern side of Sydney Road is land zoned B2 Local Centre which forms part of the 'Balgowlah Town Centre'. Development located within the town centre is predominantly characterised by a mix of commercial and shop top housing developments varying between 3 to 5 storeys in height.

To the south of the site, opposite Sydney Road, is land zoned R1 General Residential which is predominantly characterised by single dwelling houses in landscaped settings.

To the west of the site is a one, two and three storey commercial building with car parking located off Woodland Street to the north. On the 17 October 2018 the Northern Beaches Local Planning Panel (NBLPP) granted consent to a five storey shop top housing development comprising three levels of basement car parking, ground floor retail premises and 17 apartments on this site.

Map:



SITE HISTORY

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

DA2018/1743 - Current Application - Amended plans were received on the 22nd February 2019 to address the following issues:

- Provision of a loading bay
- Compliance with Commercial Gross Floor Area
- Increased setbacks
- Waste management
- Deletion of level 4

The amended plans were re-advertised from 9 April 2019 to 27 April 2019.

PLM57/2017 - Demolition works and construction of a shop top housing development. Comprising two basement levels of car parking (29 cars and loading dock), ground floor commercial premises (477.5sqm), and 14 apartments over three storeys. The PLM Advice recommended the following:

1. Minimum 9m physical separation to the town house development to the north
2. Minimum 6m southern setback to the upper most floor
3. Non-compliance with building height not supported

Comments

1. The development complies with point 1.
2. The proposal is setback nil to the balcony and 4m-3m to the building proper. The design submitted relates to the equivalent front setback of the approved development at 404 Sydney Road. This development was granted consent after the writing of these pre-lodgement notes. Further, the proposal has been designed to minimise the bulk and visibility of the uppermost floor.

3. As discussed above, the pre-lodgement notes were completed prior to granting consent of 404 Sydney Road. This development is at a maximum height of 18.1m. With regard to this proposal, the height non-compliance is consistent with the context of the area and has been found to be consistent with Clause 4.6 of the Manly LEP 2013 below.

DA132/2015 - Alterations and additions to an existing building including changes to the existing ground floor commercial level, addition of new shop top housing at rear with ground floor commercial, two (2) storeys above comprising of four (4) residential units, tree removal, stairs and landscaping. This DA has not been commenced.

DA219/2013 - Partial demolition of existing building, construction of an attached three (3) storey building to the rear for the purposes of a Boarding House including ten (10) rooms, common room, balconies, courtyards and common outdoor area. This DA was not commenced.

PROPOSED DEVELOPMENT IN DETAIL

The proposal, as amended, includes the demolition of existing structures and construction of a four storey shop top housing development with two levels of basement parking. In particular the proposal includes the following:

Basement 2

- 15 residential spaces including 4 disabled parking spaces and 3 visitor parking spaces
- services and storage

Basement 1

- 9 commercial parking spaces and 8 residential spaces
- loading bay
- bicycle parking
- services

Ground Floor

- 6 retail/business units
- kitchen and amenities
- waste room
- landscaping

Level 1

- 4 x 2 bedroom units and 1 x 1 bedroom unit with attached balconies
- landscaped light well

Level 2

- 4 x 2 bedroom units and 1 x 1 bedroom unit with attached balconies

Level 3

- 3 x 2 bedroom units and 2 x 1 bedroom unit with attached balconies

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><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 clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been</p>

Section 4.15 Matters for Consideration'	Comments
	addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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 6 submission/s from:

Name:	Address:
Ms Deborah Ann Gordon	162 C Woodland Street BALGOWLAH NSW 2093

Name:	Address:
David Ian Ferguson	51 Sunshine Street MANLY VALE NSW 2093
Mr Dominic John White Mrs Lia White	411 Sydney Road BALGOWLAH NSW 2093
Mr Mark Arnold Verhoeven	162 C Woodland Street BALGOWLAH NSW 2093
Mr Stephen Michael Ritchie	162 B Woodland Street BALGOWLAH NSW 2093
Ms Veronica Hong Kun Cheng Mr Thomas Vui Chung Chai	394 Sydney Road BALGOWLAH NSW 2093

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

- **Loss of Sunlight**
- **Noise during construction**
- **Damage through construction and excavation**
- **Does not respond to zone interface**
- **Height of Buildings non-compliance**
- **Outdoor patio non-trafficable**
- **Plantings**

The matters raised within the submissions are addressed as follows:

- **Loss of Sunlight**
Concern was raised over the loss of sunlight to 411 Sydney Road and 394 Sydney Road.
Comment:
The development has been assessed in detail under Clause 3.4.1 Sunlight Access and Overshadowing below in this report. In summary the development was found to be consistent with the objectives of the clause and maintain an equitable access to light and sunshine within the locality.
- **Noise during construction**
Concern was raised that excessive noise would impact the operation of the adjoining dentist.
Comment:
Councils standard conditions of consent will limit construction hours and compliance with the Protection of Environment Operations Act 1997 will ensure no unreasonable noise is emitted from the construction site.
- **Damage through construction and excavation**
Concern was raised over possible damage of the adjoining properties through excavation and construction. It was requested Council place a condition of consent requiring the occupation certificate be withheld until any damage is repaired.
Comment:
A condition of consent is recommended requiring a dilapidation report on the adjoining properties and 162B Woodland Street. The range of properties included in this condition is considered adequate to capture any possible impacts by this development. This condition requires any damage to be rectified prior to the issue of the Final Occupation Certificate.
- **Does not respond to zone interface to the north**
An objection was raised that the development does not respond adequately to the zone

interface.

Comment:

The proposal has been designed to provide a minimum 9m setback from the nearest dwelling to the north and incorporates planter boxes to limit overlooking of these properties. The proposal also incorporates planting on the northern site boundary to soften the built form of the development. The design of the proposal has been assessed in detail below and found that it would not result in any unreasonable amenity impacts on the nearby properties nor will it result in any unreasonable impacts in terms of bulk and scale within the locality.

- **Height of Buildings non-compliance**

An objection raised concern that the Clause 4.6 written request does not adequately justify the building height non-compliance.

Comment:

The height of buildings non-compliance has been assessed below with regard to Clause 4.6 of the Manly LEP 2013 and the relevant case law. It was found that the applicants objection provided an adequate argument to demonstrate its consistency with Clause 4.6. Furthermore the public interest assessment under Clause 4.6 (4)(a)(ii) found the development to be consistent with the objectives of the standard and the objectives of the zone.

- **Outdoor patio non-trafficable**

It was requested that the non-trafficable patio be conditioned to be landscaped to ensure it is non-trafficable.

Comment:

The plans identify this area as non-trafficable. This is sufficient to minimise its use.

- **Plantings**

A submission requested council require the plantings be a mixed height to provide improved visual separation.

Comment:

The proposed plantings are of a mixed height that ranges from 2m - 10m. The plantings are satisfactory to soften the built form of the development.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the general protection of the existing street tree, and the completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and</p>

Internal Referral Body	Comments
	<p>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, subject to conditions.</p> <p>No Arboricultural Impact Assessment is provided with this development application. No significant trees occur within the site, and all trees on the site are impacted by the development, and require removal. The existing street tree within the road verge frontage shall be retained and protected during construction, and shall be subject to conditions.</p>
NECC (Development Engineering)	<p>Second engineering Referral The addition information of the OSD have been received on 21/12/2018. Development Engineer has no objection to the application subject to the following conditions of consent.</p> <p>First Engineering Referral Development Engineering has assessed the application. However, we cannot support the application because:</p> <p><u>On site detention system:</u> A page (H-DA-00) of the stormwater plan has missed in the submission. The submitted OSD's details are insufficient to provide an assessment. For instance, there is no dimension and size of the tank shown on the plans.</p> <p>Furthermore, the overflow from the tanks may flow into the next door property. The applicant shall clarify the details of the OSD. A long section of the connection from the OSD to the kerb outlet shall be provided.</p> <p><u>Sub Soil drainage:</u> The applicant proposed to discharge the sub soil drainage from a pump to the kerb. However, Council does not permit to discharge the sub soil drainage into the kerb. As such, the applicant shall provide alternative method to manage the sub soil drainage such as waterproofing the basement.</p> <p><u>Stormwater outlet:</u> The proposed stormwater outlet is located on the driveway crossing serves No. 394 Sydney Road. The applicant shall locate the outlet pipe to the street kerb on Sydney Road.</p> <p>Furthermore, the proposed awning (3.2 m high) may impact the street tree which shall be retained. Please refer to our Landscape section for comment.</p>

Internal Referral Body	Comments
	<p>No loading bay is proposed in this development. Please also refer to Traffic section for assessment.</p> <p>As the above, Development Engineer cannot support with the application.</p>
Traffic Engineer	<p>The proposal is for the demolition of existing site structures and the construction of a multi storey shop top housing development incorporating 6 x ground floor retail/ business tenancies, integrated basement car parking for 36 vehicles and 16 x residential apartments on the subject allotment.</p> <p>Traffic: The site is anticipated to generate up to 14 vehicle trips in the peak. this is in accordance with the RMS Guide to Traffic Generating Developments. 14 vehicles is deemed to have negligible impact on the local road network.</p> <p>Parking: The site is proposing 36 car parking spaces. In accordance with the Manly DCP, the minimum requirement totals 28 spaces. As such, the parking spaces are deemed complaint in numbers.</p> <p>Bicycle parking has also been provided in accordance with the Manly DCP with the allocation of 12 spaces (bicycle stands).</p> <p>Car Park Layout: The internal basement car park layout is complaint with AS2890.1:2004.</p> <p>Pedestrian Access: The desire lines have been addressed with the low speed environment and central access to the lift. The footpath fronting the property will need to be upgraded to meet the standards of Council's Public Domain Technical Manual. This is addressed as a condition of consent prior to Occupation of the Building.</p> <p>Servicing: No changes to the current servicing arrangements is proposed. A Loading Bay Management Plan will be conditioned to ensure all tenants are aware of the arrangements.</p>
Waste Officer	<p>Second Waste Services Referral The following comments are in relation to the amended plans received on the 22 February 2019.</p> <p>The residential bin storage room does not allow for access to all bins and maneuvering of bins.</p> <p>The additional bin bay at the front of the property provides for 6 x 240L bins, however the residential waste collection service for 16 units requires 13 (or 14 if vegetation bin required) x 240L bins to be presented each week. (See Andrew Ho previous comment - The</p>

Internal Referral Body	Comments
	<p>applicant must comply with the Northern Beaches Waste Management Guidelines. The proposal is unacceptable as the bin room is located further than 6500mm from the front property boundary. The bins cannot be stacked and must have 1000mm aisle width for accessibility and maneuverability)</p> <p>Garbage shute – There must be provision for placement of two 240L bins adjacent to each opening point into the garbage shute for recycling of 1) paper and 2) comingled containers.</p> <p><u>Planning Comments</u> After further discussions it was agreed that the above issues could be resolved by conditions of consent. Conditions are recommended to require the following:</p> <ul style="list-style-type: none"> • The bin room is to be managed to ensure access to all bins at all times. • Amended plans to include an additional temporary waste storage area in the location of the booster cupboard, on the street frontage, to allow for the temporary storage of 7 bins. • Amended plans to provide space near the garbage shute for two recycling bins on levels 1, 2, and 3. <p>The proposal subject to the conditions of consent will ensure appropriate waste management.</p> <p>First Waste Services Referral</p> <p>The applicant must comply with the Northern Beaches Waste Management Guidelines. The proposal is unacceptable as the bin room is located further than 6500mm from the front property boundary. The bins cannot be stacked and must have 1000mm aisle width for accessibility and maneuverability.</p> <p>The bulky waste area must be a separate room and not incorporated into the waste room to ensure materials do not block the bins and vice versa.</p> <p>The applicant will need to redesign the bin room and bulk waste room to comply with Council's guidelines.</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.
Concurrence – NSW Roads and Maritime Services (s100 – Dev. on proposed classified road)	Concurrence from the NSW Roads and Maritime Services was granted on the 21 November 2018. The concurrence was granted subject to conditions of consent. A condition has been recommended to require compliance with the conditions specified.

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 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

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

As previously outlined the proposed development is for the erection of a four storey shop top 'housing' development plus basement car parking for the provisions of 15 self-contained dwellings.

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

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment

Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

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

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment:

The subject site is located within the established Balgowlah local centre. Development located within the town centre is predominantly characterised by a mix of commercial and shop top housing developments varying between 3 to 5 storeys in height.

To the north of the site is land zoned R1 General residential. This land is developed with a two storey townhouse development fronting woodland street with a common driveway and services to the rear. The majority of the subject site adjoins the common service areas. To the north east of the subject site is the 'Totem Development' which is up to 8 storeys in height and comprised of a mix of commercial uses on the lower levels, including a shopping centre, gymnasium and a number of restaurant and cafés, with residential apartments located on the floors above. The east of the site is bound by two properties. The property fronting Sydney Road is a two storey mixed use building. Behind this property is a two and four storey brick building. To the south is land zoned R1 General Residential and is developed with one and two storey dwellings and to the west is a three storey commercial building that was recently approved (DA2018/0890) for a 5 storey shop top housing development.

As is evident, the surrounding area consists of a large variety of development ranging from single dwellings to 5 and 8 storey mixed use buildings. However, a precedent has emerged within the wider Balgowlah Local Centre through the more recent development. This precedent is in the form of a four storey shop top housing development with the fourth storey stepped back from the street.

The proposed building is a four storey shop top housing development with a recessed fourth storey. While

this development is non-compliant with the maximum permitted building height, it will provide a transition in scale from the approved five storey development to the west to the predominant scale of development within the Balgowlah Local Centre. The proposal appropriately responds to, and fits comfortably within, the context.

The scale, bulk and height of the building is consistent with the nearby development. Furthermore, the design of the building facade is reflective of a high quality modern shop top housing development and will achieve the desired future character of the street.

The development satisfies this Principle.

Principle 2: Built Form and Scale

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

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

Comment:

The development is a four storey shop top housing development that is of a scale bulk and height that is consistent with development within the Balgowlah Local Centre. The site directly to the west has been approved for a 5 storey shop top housing development. This property is at a height of 18.1m and is a "gateway site" to the Balgowlah Local Centre. The proposed development provides a step down in scale from this site that will ensure a gradual transition from the gateway to the local centre.

The proposal includes suitable articulation of the building and balconies and the use of materials to provide for a high quality building facade that will enhance the streetscape of the locality. In particular the additional setback of the fourth storey will ensure the development does not dominate the streetscape and is consistent with the built form of the streetscape.

The proposal satisfies this principle.

Principle 3: Density

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

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

Comment:

The proposal provides suitable room dimensions to achieve the amenity outcomes of the Apartment Design Guide. The proposal will achieve a density appropriate to the site and context.

The subject site is located within the Balgowlah Local Centre. This area is well serviced by infrastructure, public transport, community facilities and has good access to jobs. This area also enjoys the use of nearby public spaces. There is no density prescribed by the Manly DCP 2013 for this area. However, it can reasonably be expected that development of this type can be supported within the local centre. Furthermore, the Manly S94 Contributions Plan 2004 provides a mechanism for Council to ensure additional demand on infrastructure is accounted for.

The development satisfies this principle.

Principle 4: Sustainability

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

Comment:

The development achieves the required cross-ventilation and sunlight access to achieve the desired amenity for the future residents.

The application is supported by a waste management plan and ongoing waste management plan that will ensure the appropriate disposal of waste.

The proposal was also supported by a BASIX Certificate that confirms that the development is capable of achieving the water, energy and thermal comfort requirements.

The development satisfies this principle.

Principle 5: Landscape

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

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

Comment:

The development provides a landscaped area along the rear boundary of the ground floor, within landscaped lightwells on the first floor and raised planters on the balconies. The proposed landscaping will enhance the amenity of the development site and and promote a positive image of the development.

Due to the requirement for parking, and the nature of the dense urban environment, deep soil zones have not been provided on this site. However, the proposed landscaping is considered to be an adequate response to the site constraints that will soften the built form of the development and provide a high level of amenity to the occupants.

The development satisfies this principle.

Principle 6: Amenity

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

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

Comment:

The development has been assessed in accordance with the objectives of the Apartment design guide below. This assessment has found that the development will provide a good level of amenity to the future occupants and neighbouring properties. The development incorporates suitable room dimensions and orientation to ensure sufficient access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

The development satisfies this principle.

Principle 7: Safety

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

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

Comment:

The development provides well designed, secure and clearly defined entrances to residential and commercial spaces. Through the balconies, the development will provide passive surveillance to the streetscape and will give the impression of a continued presence within the street.

The development will promote a safe and secure environment within the locality.

The development satisfies this principle.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

The development provides a mix of one and two bedroom units. This mix is considered to be consistent with the demand within this location. The proposal also includes the provision of adaptable housing to ensure the development caters for a broad range of people.

The development satisfies this principle.

Principle 9: Aesthetics

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

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

Comment:

The development incorporates a mix of materials and design elements to achieve a high level of aesthetics. The development will result in a significant enhancement of the Sydney Road streetscape. In particular the development will provide a continuation of high quality street facades from the approved development at 404 Sydney Road.

The development satisfies this principle.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	<p>The surrounding area consists of a large variety of development ranging from single dwellings to 5 and 8 storey mixed use buildings. However a precedent has emerged within the Balgowlah Local Centre through the more recent development. This precedent is in the form of a four storey shop top housing with the fourth storey stepped back from the street.</p> <p>The proposed building is a four storey shop top housing development with a recessed fourth storey. While this development is non-compliant with the maximum permitted building height, it will provide a transition in scale from the approved five storey development to the west to the predominant scale of</p>

		<p>development within the Balgowlah Local Centre. The proposal appropriately responds to, and fits comfortably within, the context.</p> <p>The scale, bulk and height of the building is consistent with the nearby development. Furthermore, the design of the building facade is reflective of a high quality modern shop top housing development and will achieve the desired future character of the street.</p>
Orientation	<p>Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?</p>	<p>The proposed development provides a high quality building facade that is reflective of the desired streetscape character of the area.</p> <p>The north-south orientation of the lot ensures the proposal receives good solar access from the north. Sydney Road is located to the south of the site and provides adequate physical separation to ensure no unreasonable impacts to solar access.</p> <p>The development optimises solar access within the development and to neighbouring properties.</p>
Public Domain Interface	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p>The development provides active street frontages and clearly defined residential and commercial entrances into the building. The proposal will enhance the amenity of the public domain and will ensure safe and secure entrance into the</p>

		building.
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) 	<p>Non-Compliant (complies on merit)</p> <p>The required communal open space is 203sqm. The original plans provided 107sqm of communal open space. This space was removed as it was in close proximity to habitable rooms including bedrooms of the apartments. Given the constrained nature of the site and the likely amenity impacts of any communal open space, it is not considered appropriate in this circumstance. The ADG provides the following design guidance:</p> <p><i>"Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</i></p> <ul style="list-style-type: none"> • <i>provide communal spaces elsewhere such as a landscaped roof top terrace or a common room</i> • <i>provide larger balconies or increased private open space for apartments</i> • <i>demonstrate good proximity to public open space and facilities and/or provide contributions to public open space"</i> <p>The apartments incorporate balconies at or</p>

		above the minimum required open space areas and the site has good access to public open spaces associated with the Balgowlah Local Centre. The development provides suitable open space areas and access to community facilities to ensure suitable amenity for the occupants.												
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<p>Non-Compliant (complies on merit)</p> <p>The ADG requires 203sqm (7%) of the site area to be provided as deep soil zones. The proposal does not include any deep soil zones. In this regard, the ADG provides the following guidance:</p> <p><i>"Achieving the design criteria may not be possible on some sites including where:</i></p> <ul style="list-style-type: none"> <i>the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres)</i> <i>there is 100% site coverage or non-residential uses at ground floor level</i> <p><i>Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure"</i></p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													

		<p>The development includes 100% commercial on the ground floor and is located within the Balgowlah Local Centre. The constraints on the site and in particular the requirement for adequate parking means the proposal cannot achieve the deep soil zones.</p> <p>To overcome this the development includes good stormwater management plan that has been assessed and approved by Councils Development Engineer. The proposal also includes 92sqm of landscaped area in the form of landscaped light wells in the centre of the site and 54sqm of landscaped area along the rear boundary. The proposal also incorporates planter boxes on the northern facing balconies and the top floor southern facing balconies. The proposed landscaping is adequate to provide for the internal amenity of the occupants and to soften the built form of the proposed development.</p> <p>The proposal satisfies this clause.</p>									
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> </tbody> </table>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	<p>Non-compliant (complies on merit)</p> <p>The proposed development does not comply with this requirement due to the eastern landscaped light well.</p> <p>The northern and southern windows within the eastern landscaped</p>
Building height	Habitable rooms and balconies	Non-habitable rooms									
Up to 12m (4 storeys)	6m	3m									
Up to 25m (5-8 storeys)	9m	4.5m									

	<table> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Over 25m (9+ storeys)	12m	6m	<p>lightwell provide 10.5m of physical separation. The windows incorporate screening to ensure no direct viewing. The applicant also provided advice from an Acoustic Engineer advising that the non-compliance of 1.5m will not result in any discernible difference in acoustic impact from a compliant situation. As such this non-compliance is deemed to achieve an appropriate level of privacy between the apartments.</p> <p>The eastern facing openings of the circulation area/breezeway are setback 5.17m and 5.25m from the eastern boundary of levels 1-3. The guide requires these openings to be treated as habitable rooms and setback 6m from the boundary. The proposal incorporates screening to these openings to minimise overlooking of the development to the east. Furthermore their location within the circulation area serving a maximum of 5 units per level will not generate significant overlooking of the neighbouring properties.</p> <p>With the exception of the above, the development is consistent with design guidance under 3F Visual Privacy.</p>
Over 25m (9+ storeys)	12m	6m			
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Compliant</p> <p>The pedestrian access to the site is clearly defined and easily accessible.</p>			

Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Compliant</p> <p>The sites only access point is from Sydney Road. As such, vehicle access is required from Sydney Road. The vehicle access has been designed to be clearly defined and to ensure good sight lines to minimise conflicts with pedestrians. The vehicle access is integrated into the design of the development and will not dominate the streetscape of the locality.</p> <p>The development satisfies this objective.</p>
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Non-Compliant (complies on merit)</p> <p>In accordance with the Manly DCP 2013, the proposal is required to provide 11 commercial parking spaces and 15 residential parking spaces. The proposal provides 9 commercial parking spaces and 23 residential parking spaces. The development has demonstrated that sufficient car parking is available to meet the demand of both uses, but has not allocated the spaces as per the Manly DCP 2013. As such, it is recommended that two parking spaces be re-allocated to commercial or a contribution be paid for the shortfall in parking. The proposal subject to the condition of consent will ensure the adequate provision of car parking.</p> <p>The proposal also incorporates bicycle parking as per the Manly</p>

		<p>DCP 2013.</p> <p>The vehicular access to the site is integrated into the design of the development and will not result in any unreasonable visual or environmental impacts within the locality.</p>
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> • Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. • A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter 	<p>Non-Compliant (complies on merit)</p> <p>The development is designed to ensure 11 apartments (73%) capture a minimum of 2 hours of solar access to the living rooms between 9am and 3pm of the winter solstice.</p> <p>The apartments located on the Sydney Road side of the development have private open spaces orientated to the south. As a result 9 apartments (60%) capture a minimum of 2 hours of solar access to the private open spaces between 9am and 3pm of the winter solstice.</p> <p>To orientate the private open spaces to the north would result in privacy impacts on the apartments within the development and the neighbouring properties. Further the orientation to the south will capture the southern outlook.</p> <p>The south-western apartments on levels 1 and 2 will not receive any direct sunlight.</p> <p>Given the constrained nature of the site the</p>

		development is considered to achieve adequate levels of solar access.												
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none">At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Compliant Complies with 80% of the apartments achieving natural cross ventilation.												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><thead><tr><th colspan="2">Minimum ceiling height</th></tr></thead><tbody><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>If located in mixed used areas</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></tbody></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Compliant The minimum required ceiling height is 2.7m. The proposal provides 2.7m ceiling heights to all apartments.
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
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If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><thead><tr><th>Apartment type</th><th>Minimum internal area</th></tr></thead><tbody><tr><td>Studio</td><td>35m²</td></tr><tr><td></td><td></td></tr></tbody></table>	Apartment type	Minimum internal area	Studio	35m ²			Non-compliant (complies on merit) The proposal is consistent with the total minimum internal areas.						
Apartment type	Minimum internal area													
Studio	35m ²													

	<table><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none">• 3.6m for studio and 1 bedroom apartments• 4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>The proposal is compliant with the minimum room dimensions with the exception of units 105 and 205. This room has a depth of 8.4m from the window. The guide permits a maximum 8m depth from windows in an open plan layout. The non-compliance is minor and limited to the kitchen bench. As a result the non-compliance will not result in any significant impacts on internal amenity within the apartments.</p> <p>The layout of the proposed apartments are functional, well organised and will ensure a high standard of amenity.</p>									
1 bedroom	50m ²																
2 bedroom	70m ²																
3 bedroom	90m ²																
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>Non-compliant (Complies on merit)</p> <p>The apartments 103, 203 and 303 provide 8sqm of open space at a dimension of 2m and an additional 4.5sqm at a dimension of 1.5m. These apartments provide a total of 12.5sqm of balcony space.</p> <p>The apartments 102 and 202 provide 8sqm of open space at a dimension of 2m and an additional</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															

		<p>2.5sqm of private open space at a dimension of 1m. These apartments provide a total of 11.5sqm of private open space.</p> <p>The above mentioned apartments are required to provide 10sqm of balcony space at a dimension of 2m.</p> <p>The development provides the majority of the balcony space at a compliant dimension directly adjacent to the living area. This in conjunction with the provision of greater than required total area will ensure adequate balcony space to service the dwellings. Furthermore, the northern facing apartments 103, 203 and 303 provide a 500mm planter box on the northern edge of the balcony. This will enhance the sense of space to the balconies and provide greater amenity to the apartments.</p> <p>The proposed balconies are adequate to service the dwellings.</p>								
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>Compliant</p> <p>The proposal complies with a maximum of five apartments gaining access from the circulation core on each level.</p>								
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m³</td></tr><tr><td>1 bedroom apartments</td><td>6m³</td></tr><tr><td></td><td></td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ³	1 bedroom apartments	6m ³			<p>Compliant</p> <p>The submitted plans demonstrate compliance with the minimum storage requirements.</p>
Dwelling Type	Storage size volume									
Studio apartments	4m ³									
1 bedroom apartments	6m ³									

	<table><tr><td>2 bedroom apartments</td><td>8m³</td></tr><tr><td>3+ bedroom apartments</td><td>10m³</td></tr></table>	2 bedroom apartments	8m ³	3+ bedroom apartments	10m ³	
2 bedroom apartments	8m ³					
3+ bedroom apartments	10m ³					
	At least 50% of the required storage is to be located within the apartment.					
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Apartment 102 is located above the driveway and apartments 105 and 205 have bedrooms located adjacent to circulation areas. The proposal was accompanied by an acoustic report that specifies that compliance with the Building Code of Australia will overcome any potential noise impacts on apartments.				
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	The development is suitably designed to mitigate noise transmission and minimise the impacts of external noise pollution.				
Configuration						
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	The development includes a mix of one and two bedroom apartments with three adaptable units. The mix of apartments is appropriate to support the needs of the community.				
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	The facade is articulated and incorporates high quality materials to provide a building facade that is appropriate for the streetscape. The proposal will significantly enhance the streetscape character of the locality.				
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accommodation and open space.	The roof is of an appropriate design for the locality.				
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	The landscape plan is of a highly considered design that will provide internal				

		amenity and provide a buffer to the properties to the rear. The landscape design responds well to the existing site and context.				
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:					The landscape plan has been assessed by Councils Landscape Officer as acceptable subject to conditions. The landscape plan provides adequate soil depths for the proposed landscaping.
	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	
	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	
	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	
	Shrubs			500-600mm		
	Ground Cover			300-450mm		
	Turf			200mm		
Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.					Compliant The development includes the provision of 20% of the apartments as adaptable housing. The proposal meets the 20% benchmark of apartments incorporating the Livable Housing Guideline's silver level universal design features
Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.					Not applicable.
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain?					The commercial component of the development is located on

	Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	the ground floor. The subject site is easily accessible through public transport and the street frontage is appropriately designed to contribute to the public domain.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	The proposal includes a small awning. The awning is an adequate design within the streetscape of the area.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	A BASIX certificate was submitted with the application along with ABSA stamped plans.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Water management has been detailed throughout the design of the proposal. Councils Development Engineer, has considered this design and raised no objections.
Waste Management	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	The waste management has been assessed by Councils waste officer and found to be satisfactory subject to the conditions of consent.
Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	The building is of a suitable design to minimise building maintenance.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

Design Guide,

(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

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

Comment:

The proposal satisfies the above matters in (a)-(c).

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

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

(3) To remove doubt:

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

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

Comment:

This assessment has found that the proposal has been designed with adequate regard to the design quality principles and the objectives specified in the Apartment Design Guide.

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.

Roads and Maritime Service (RMS)

Clause 104 and Schedule 3 of the SEPP requires that the following development(s) are referred to the RMS as Traffic Generating Development:

"(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or

(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3."

Comment:

The application was referred to the RMS. The RMS provided concurrence on 21 November 2018 and raised no objection to the proposal subject to conditions of consent.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	12.5m	12.3m - 15.6m	0% - 24.8%	No
Floor Space Ratio	FSR: 2:1 (1626sqm)	FSR: 2:1 1626sqm	N/A	Yes
Gross floor area in Zone B2	25% Commercial GFA (406.5sqm), maximum 1000sqm per premises	Commercial GFA: 24.9%(406sqm) Max. sqm per premises: 55sqm	N/A	Yes

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

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	12.5m
Proposed:	15.6m
Percentage variation to requirement:	24.8%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"There are sufficient environmental planning grounds to justify the variation sought namely the topography of the land which falls away in multiple directions towards the rear of the site making strict compliance difficult to achieve and the contextually appropriate building height proposed which is consistent with the existing and desired future streetscape as demonstrated through Council's approval of the 4/5 storey shop top housing development at No. 374 Sydney Road to the east of the site and No. 404 Sydney Road immediately to the west of the site. The exceptional design quality of the development and absence of any unreasonable or unacceptable streetscape or residential amenity impacts also gives 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 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 subject site is located within the established Balgowlah local centre. Development located within the town centre is predominantly characterised by a mix of commercial and shop top housing developments varying between 3 to 5 storeys in height.

To the north east of the subject site is the 'Totem Development' which is up to 8 storeys in height and comprised of a mix of commercial uses on the lower levels, including a shopping centre, gymnasium and a number of restaurant and cafes, with residential apartments located on the floors above. There are a number of sites that are currently occupied by older style two storey commercial/shop top housing developments which it can be reasonably expected will be redeveloped.

To the west is a three storey commercial building. This site was recently approved for a 5 storey shop top housing development. The proposal will present a step down in scale from this approved development, consistent with the topographic landscape, to provide a gradual transition into the Balgowlah Local Centre.

The proposed building, a four storey shop top housing development, appropriately responds to, and fits comfortably within, the prevailing building height of the locality. The scale, bulk and height of the building is consistent with the nearby development. The design of the building facade is reflective of a high quality modern shop top housing development and will achieve the desired future character of the street.

b) to control the bulk and scale of buildings,

Comment:

As discussed above, the proposal is of a design that is consistent with the prevailing building height within the area. The proposal is also consistent with the maximum permitted floor space ratio. This development standard is designed to ensure a consistent building bulk within the area. Furthermore the uppermost level is recessed back to maintain a three storey frontage on Sydney Road. This frontage is consistent with the existing and desired townscape character of the locality. The proposal is of a bulk and scale that can be reasonably expected within the B2 Local Centre.

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 development will not result in the unreasonable disruption of views to nearby residential development from public spaces, views from nearby residential development to public spaces, views between 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 was accompanied by shadow diagrams that demonstrate that the proposal will maintain adequate sunlight access to private open spaces and 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.

Comment:

Not applicable.

Zone objectives

The underlying objectives of the B2 Local Centre zone are:

The underlying objectives of the B2 Local Centre zone

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment:

The proposal will provide opportunities for commercial premises on the ground floor to serve the needs of people who live in, work in and visit the local area.

- *To encourage employment opportunities in accessible locations.*

Comment:

The proposed commercial premises will provide employment opportunities in an area that is highly accessible to the public.

- *To maximise public transport patronage and encourage walking and cycling.*

Comment:

The location within a highly accessible area and the active street frontages created will encourage public transport patronage and pedestrian activity within this local centre.

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

Comment:

The amenity impacts of the proposed development has been assessed in detail within this report. In summary the proposal has been found to be suitably designed to ensure no unreasonable impacts within the locality. With regard to the interface with the R1 General Residential zone to the north, the proposal provides a 9m radial setback and incorporates plantings capable of reaching a height of 6m-8m. Furthermore the northern facing balconies incorporate planter boxes to ensure no unreasonable overlooking. The proposal is suitably designed to address the zone interface to the north and maintain a reasonable level of amenity to these properties.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone and the objectives of clause 4.3 Height of Buildings.

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, greater than 10%, under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument by the Independent hearing and assessment panel. In this regard, given the consistency of the variation to the objectives of the zone, the application is recommended for approval to the Northern Beaches Local Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 813sqm	Requirement	Proposed	% Variation*	Complies
4.2.3 Setbacks	Built to boundaries	complies	N/A	Yes
4.2.4 Car parking, vehicular and loading	Units 15 residential (1 space per dwelling) 3 visitor (0.16 space per dwelling) Commercial 11 (10.15 rounded) Commercial (1 space per 40sqm of GFA)	Residential 23 Visitor 3 Commercial 9	Commercial 18%	Yes
4.2.6.1 Wall height on street frontage	10.5m	10.1m - 11.5m	9.5%	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.6 Balgowlah Local Centre	Yes	Yes
4.2.6.1 Wall Height on the Street Frontage	No	Yes
4.2.6.2 Exceptions to LEP Building Height	No	Yes
4.2.6.3 Setbacks	Yes	Yes
4.2.6.4 Design Excellence in the Design of Street Facades and Onsite Carparking	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Merit consideration:

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

Objective 4) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.

Comment:

The parking design will minimise its visibility and impact on the townscape. Given Sydney Road is the only street access, the parking design and vehicular access is considered to be the most suitable design for the location.

Objective 5) To assist in maintaining the character of the locality.

Comment:

The development is designed to relate to the levels of the approved development to the west and provide a step down in scale to the Balgowlah Local Centre. Furthermore, the high quality design of the street facade incorporating articulation and varied building elements will soften the built form and ensure the development results in a good outcome for the townscape of Balgowlah. The proposal will enhance the Townscape Character of the locality.

Objective 6) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.

Comment:

The proposal is suitably design to provide an active street frontage and activate this section of the Balgowlah Local Centre. The proposal will strengthen the local centre.

Objective 7) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.

Comment:

As discussed above, the proposal is suitably designed to enhance the townscape character of the locality and provide a sense of continuity from the entry point.

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

3.4.1 Sunlight Access and Overshadowing

Merit consideration:

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

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

Comment:

The proposal will result in additional overshadowing to the front of 411 Sydney Road at 9am during the winter solstice and the side windows of 394 Sydney Road. No 411 Sydney Road is north facing, on the opposite side of the road and will retain solar access from 10am onwards during the winter solstice. The property at 394 Sydney Road will retain northerly solar access and some solar access to the side boundary windows during the late morning to early afternoon of the winter solstice. Given the Manly DCP 2013 requires development to construct to the side boundaries along Sydney Road, the retention

of sunlight to side boundary windows is not considered reasonable. The submitted shadow diagrams demonstrate that the development will not result in any unreasonable overshadowing of neighboring properties. The proposal will provide equitable access to light and sunshine within the locality.

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:

As discussed above, the submitted shadow diagrams demonstrate that the development will allow adequate sunlight to penetrate the nearby 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 proposal is of a suitable design to maximise the penetration of sunlight within the development site. This is discussed in detail within the SEPP 65 Apartment Design Guide Assessment above. The southern side is bounded by Sydney Road where development must build to this boundary. This is not applicable 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:

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

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

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

Comment:

The proposal is suitably designed to maintain the privacy of the neighbouring properties.

The trafficable balconies on the northern northern elevation are setback a minimum of 9m from the nearest dwelling. These balconies also incorporate planter boxes to minimise any downwards overlooking. These balconies will not result in any unreasonable privacy impacts.

The eastern facing lightwell is screened and designed so any trafficable areas have minimal ability to overlook the neighbouring properties. This element will not result in any unreasonable loss of privacy to the neighboring property.

The southern elevation is bound by Sydney Road. This ensures adequate physical separation to minimise overlooking of the properties to the south.

The visual privacy analysis submitted with the application demonstrates that no overlooking will occur between 404 Sydney Road and the development site.

The proposal is consistent with this objective.

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

Comment:

The proposal is suitably designed to increase privacy and ensure adequate access to light and air. The proposal will achieve a balanced outlook from habitable rooms and private open spaces.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The southern elevation will encourage passive surveillance of the streetscape and 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.

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

Description of Non-compliance

The Manly DCP 2013 require 11 carparking spaces be provided for the commercial component of this development. The proposal provides 9 car parking spaces.

Merit Consideration

With regard to the consideration for the variation, the development is considered under the objectives of the control as follows:

Objective 1) To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.

Comment:

The proposal is required to provide 15 residential parking spaces and provides 23. The development has demonstrated that sufficient car parking is available to meet the demand of both uses but has not allocated the spaces as per the Manly DCP 2013. As such, it is recommended that two parking spaces be re-allocated to commercial or a contribution be paid for the shortfall in parking. The proposal includes three visitor parking spaces within basement 2. To ensure this parking is able to serve its purpose as visitor parking, a condition is recommended requiring it be accessible at all times. The proposal, subject to the conditions of consent, will ensure the adequate provision of car parking.

Objective 2) To minimise conflicts between pedestrian and vehicular movement systems within the business areas.

Comment:

The access to the proposed parking is suitably designed to ensure pedestrian and vehicular safety within the locality.

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.

4.2.6.1 Wall Height on the Street Frontage

Description of Non-compliance

The Manly DCP 2013 permits a maximum wall height of 10.5m. The proposal includes a maximum wall height of 10.1m - 11.5m.

Merit Consideration

With regard to the consideration of the variation, the development is considered under the relevant objective below:

Objective 1) To introduce guidelines for the assessment of building heights, setback and other controls relating to building form and height in order to achieve a consistent and coherent townscape appropriate to the locality.

Comment:

The development is designed to relate to the levels of the approved development to the west and provide a step down in scale to the Balgowlah Local Centre, this in conjunction with the sloping site results in the non-compliance of 1m. The non-compliance is not considered to be significant and will not result in a significant departure from the desired townscape character. Furthermore, the high quality design of the street facade incorporating articulation and varied building elements will soften the built form and ensure the development results in a good outcome for the townscape of Balgowlah.

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.

4.2.6.2 Exceptions to LEP Building Height

Description of Non-compliance

This assessment relates to the above assessment under clause 4.2.6.1 Wall Height on the Street Frontage.

Merit Consideration

With regard to the consideration of the variation, the development is considered under the relevant objective below:

Objective 1) To ensure that the height of buildings including the height at the street frontage fulfils Council's townscape objectives.

Comment:

The development is designed to relate to the levels of the approved development to the west and provide a step down in scale to the Balgowlah Local Centre, this in conjunction with the sloping site results in the non-compliance of 1m. The non-compliance is not considered to be significant and will not result in a significant departure from the desired townscape character. Furthermore, the high quality design of the street facade incorporating articulation and varied building elements will soften the built form and ensure the development results in a good outcome for the townscape of Balgowlah. An assessment of the Townscape objectives under Clause 3.1 Streetscapes and Townscapes of the Manly DCP 2013 has been carried out above. This assessment has found the development to be consistent with these objectives.

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

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) *the dedication of land free of cost, or*
 - (b) *the payment of a monetary contribution,*

or both.

- (2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

Comments:

In this case, the proposed development is likely to increase the demand for public amenities and public services within the area. The applicable contributions have been calculated as follows

The proposal includes 406sqm of commercial GFA. The Manly S94 Contributions plan 2004 requires a contribution of \$15,233.49 per 100sqm of commercial gross floor area. This equals a contribution of \$61,847.97 (406/100 x 15,233.49).

The Manly S94 Contributions plan 2004 requires a contribution of \$20,000 per additional dwelling. The proposal includes 15 additional dwellings on the site resulting in a contribution of \$300,000.00.

The existing development on the site includes 626.9sqm of commercial gross floor area. This equates to a credit of 95,498.75 (626.9/100 x 15,233.49).

In light of the existing credit, there is no applicable contribution for the commercial gross floor area and a total residential contribution of \$266,349.22 for the residential component.

Accordingly, suitable conditions have been included within the recommendation requiring payment of a section 94 contribution of **\$266,349.22** in line with Manly Section 94 Contributions Plan.

Please see assessment under Clause 4.2.4 Car Parking Vehicular Access and Loading of the Manly DCP 2013 for assessment of shortfall in Commercial parking.

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

This report is submitted to the Local Planning Panel for the consideration of Development Application DA2018/1743 for construction of a shop top housing development 396-402 Sydney Road, Balgowlah .

The site consists of two lots on the northern side of Sydney Road and has a total area of 813m². The site is within the Balgowlah Local Centre and falls to the north-east.

The proposed development was notified for a period of 14 days. During this period, six (6) submissions were received, which have been addressed in detail in the notification section of this report. The submissions primarily raised concerns regarding construction impacts, amenity impacts and the scale of development on the zone interface.

The proposal has been assessed under the design quality principles of SEPP 65 Design Quality of Residential Apartment Development and the Apartment Design Guide. The proposal is non-compliant with the apartment design guide in a number of areas. However, the assessment found that the non-compliances would not result in unreasonable impacts within the locality nor would they result in a development that is inconsistent with the design quality principles.

The proposed development has been assessed against the applicable planning controls for the site including the relevant provisions of Manly LEP 2013.

The MLEP 2013 permits a maximum building height of 12.5m. The proposal includes a building height of 15.6m resulting in a non-compliance of 24.8% with the development standard. The applicant has lodged a request under Clause 4.6 for variation to the development standard. It is considered that the applicants written request provides adequate justification as per Clause 4.6 of the MLEP 2013.

Within the context of the Balgowlah Local Centre, the departure of the development standard was found to maintain a built form consistent with the nearby development. Further, the articulated high quality design will minimise the bulk and scale of the development and ensure no unreasonable impact on the smaller scale nearby properties.

The application has also been assessed against the planning controls of the Manly Development Control Plan, and whilst there are some minor variations to the built form as a result of the proposal, they are found to be generally consistent with the relevant requirements. In this regard, the built form will integrate into the townscape and provide a transition into the Balgowlah Local Centre.

The assessment report concludes that the proposed design is of a high quality and will enhance the townscape while ensuring no unreasonable impacts to the nearby properties. This report recommends that consent be granted to this application in accordance with recommended conditions.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1743 for Demolition works and construction of shop top housing on land at Lot A DP 85983, 402 Sydney Road, BALGOWLAH, Lot B DP 85983, 396 - 400 Sydney Road, BALGOWLAH, 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
DA003 - Site Plan & Site Analysis Plan - Issue B	12/02/2019	PBD Architects
DA100 - Basement 2 Plan - Issue B	31/10/2018	PBD Architects
DA101 - Basement 1 Plan - Issue C	12/02/2019	PBD Architects
DA102 Ground Floor Plan - Issue E	12/02/2019	PBD Architects
DA103 - Level 1 Plan - Issue C	12/02/2019	PBD Architects
DA104 - Level 2 Plan - Issue C	8/02/2019	PBD Architects
DA105 - Level 3 Plan - Issue C	12/02/2019	PBD Architects
DA106 - Roof Plan - Issue C	12/02/2019	PBD Architects
DA200 South & North Elevation - Issue B	12/02/2019	PBD Architects
DA201 East & West Elevation - Issue B	8/02/2019	PBD Architects
DA300 Section A Section B - Issue B	12/02/2019	PBD Architects
DA301 Section C - Issue B	12/02/2019	PBD Architects
DA302 Section D, E, F, G - Issue B	12/02/2019	PBD Architects
DA400 Material Schedule - Issue B	8/02/2019	PBD Architects

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Report on Geotechnical Assessment	13 September 2018	Douglas Partners
BCA Assessment Report for DA Submission	24 September 2018	Building Control Group
Acoustic Assessment of Development Application	21 September 2018	Renzo Tonn & Associates
Statement of Compliance Access for People with a Disability	6 September 2018	Accessible Building Solutions

Construction of Shop Top Housing 396-400 & 402 Sydney Road Balgowlah	21 November 2018	Roads & Maritime Services
Operational Waste Management Plan - Revision E	19 February 2019	Elephants Foot Recycling Solutions

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
LPDA 19-46 Pg 1 - Landscape Plan - Revision D	29/03/2019	Conzept Landscape Architects
LPDA 19-46 Pg 2 - Landscape Plan - Revision F	29/03/2019	Conzept Landscape Architects
LPDA 19-46 Pg 3 - Landscape Plan - Revision D	1/04/2019	Conzept Landscape Architects

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Roads and Maritime Services	RMS Response	21 November 2018

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

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

3. Prescribed Conditions

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

- a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
- A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
- A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent

unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

A bond (determined from cost of works) of \$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.

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

A Bond of \$10000 as security against any damage or failure to complete the construction of road pavement/shoulder reconstruction works as part of this consent.

Reason: Protection of Council's Infrastructure

7. **Development Contribution - Residential**

A contribution is to be paid for the provision of or increase the demand for public amenities and public services as a consequence of the development in the area. The total contribution for this development of is \$266,349.22, being \$20,000.00 per additional dwelling and adjusted for the site credit. This contribution shall be paid to Council prior to the release of the Construction Certificate.

Reason: To enable the provision of public amenities and services required/anticipated as a consequence of increased demand resulting from the development.

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

8. **On Slab landscape works**

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.

Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule, including planter layout, slab levels, top of wall heights, and soil area to support the proposed planting indicated on the Landscape Plan.

The following soil depths are required to support landscaping as proposed:

- 600mm (0.6m) for shrubs
- 1000mm (1.0m) for small trees

Design certification shall be submitted to the Certifying Authority by a structural engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: to ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system.

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

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 and the concept drawing by Itm Design, drawing number H-DA-00 to H-DA-02 dated 25/9/2018. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

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

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

An Application for Works to be approved within Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Civil Engineering plans for the design of a 5.5 m wide vehicular crossing and footpath on road reserve along Sydney Road t which are to be generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and/ or Council's Minor Works Policy.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. 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.

11. **Tanking of Basement Level**

The basement area is to be permanently tanked. Details of the tanking are to be prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Water. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Principal Certifying Authority. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements

12. **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)

13. **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. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

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

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. **Commercial Carparking**

The plans are to be amended to re-allocate the parking spaces to provide 11 commercial carparking spaces. Alternatively a contribution for the shortfall in parking is to be paid to the value of \$37,804.34 (2 x 18,902.17).

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

Reason: To ensure the adequate provision of parking within the Balgowlah Local Centre.

16. **Dilapidation Survey**

A photographic survey of adjoining properties (394 Sydney Road, 162 Woodland Street, 162A Woodland Street, 162B Woodland Street, the common driveway and services area to the north and 404 Sydney Road) detailing the physical condition of those properties, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to Council/Accredited Certifier prior to the issue of a Construction Certificate. This survey is to be prepared by an appropriately qualified person.

On completion of the excavation and building works and prior to occupation of the building, a certificate prepared by the appropriately qualified person to the effect that no damage has resulted to adjoining premises, is to be provided to the Principal Certifying Authority.

If damage is identified by the appropriately qualified person which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to a final Occupation Certificate being issued.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent. In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to the satisfaction of Council/Accredited Certifier that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

(Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible)

Reason: Proper management of records.

17. **Temporary Bin Storage**

The plans are to be amended to include temporary storage of an additional 7 bins on the street frontage. An additional bin storage area is to be provided on the western wall identified as the booster cupboard and the booster cupboard relocated.

Plans demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate waste management

18. **Garbage disposal**

The plans are to be amended to provide space for two recycling bins within the lobby/breezeway near the garbage disposal on levels 1, 2 and 3.

Plans demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate waste management

19. **Traffic Management.**

Traffic management procedures and systems must be in place and practised during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans.

Note: A plan of traffic management is to be submitted to and approved by the Consent Authority.

Reason: To ensure pedestrian safety and continued efficient network operation.
(DACTRCPC1)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for 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.

21. **Tree Protection Measures**

A Project Arborist with AQZ Level 5 qualification in arboriculture/horticulture is to be appointed to supervise and certify tree protection measures for the existing European Nettle Tree (*Celtis australis*) located within the road verge frontage, nominated for retention and protection, including:

- tree protection fencing to a distance as determined by the Project Arborist and/or
- either or all of ground, trunk and branch protection.

The Project Arborist shall attend site during excavation and construction works within the tree protection zone (TPZ) of the existing street tree. The tree protection measures specified in this clause must:

- i) be in place before work commences on the site, and
- ii) be maintained in good condition during the construction period, and
- iii) remain in place for the duration of the construction works.

The Certifying Authority or Project Arborist must ensure that:

- i) the activities listed in section 4.2 of AS4970- 2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of the street tree,
- ii) any temporary access to, or location of scaffolding within the tree protection zone of street tree is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard, and under the supervision of the Project Arborist.
- iii) 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.
- iv) should the above limits require exceedance based on the recommendations of the Project Arborist, a written request to Council's Tree Services shall be issued for approval and shall contain recommendations from the Project Arborist on the extent of pruning required and any tree protection measures or treatments to be undertaken.

The Project Arborist shall submit certification during all stages of the works and prior to Occupation Certificate to the Certifying Authority that all tree protection measures as listed above have been completed prior to the commencement of excavation and construction works, and have been appropriately maintained during the works.

Reason: to ensure tree protection is provided and maintained.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

22. 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.

23. Property Boundary Levels

The property boundary levels shall match the existing levels except where modified for the vehicular crossing. The applicant shall design and construct having regard for the existing levels. No approval is granted for any change to existing property alignment levels to accommodate the development. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To maintain the existing profile of the nature strip/road reserve

24. Footpath Construction

The applicant shall install footpath along the frontage of the property at Sydney Road in accordance with Council's ManlyPaving Design Guidelines. The works shall be in accordance with the following:

- (a) All footpath works are to be constructed in accordance with Council's Specification
- (b) Council is to inspect the work to ensure the works are in accordance with Council's specification for footpath.

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

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

25. **Traffic Control During 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 and to the satisfaction of the Principal Certifying Authority.

Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

26. **Temporary Sediment**

Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.

Reason: To reduce erosion and prevent sediment runoff into public assets

27. **Tree and vegetation protection**

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

- i) all trees and vegetation located on adjoining properties,
- ii) all road reserve street trees,

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,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,
- iv) 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,
- v) 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,
- vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- viii) excavation for utility lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, to provide for root protection measures,
- ix) should either or all of vi), vii) and viii) 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,
- x) 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,
- xi) 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.

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

28. Landscape works

Landscaping is to be implemented in accordance with the Landscape Plan LPDA 19 - 46, sheets 1, 2 and 3, prepared by Conzept Landscape Architects, inclusive of the following requirements:

- i) the proposed tree planting along the northern boundary (*Elaeocarpus reticulatus* and *Waterhousia 'sweeper'*) shall be planted at a minimum 200 litre container size.

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

Reason: to ensure that the landscape treatments are installed to provide landscape amenity and soften the built form.

29. Condition of retained street tree

Prior to the issue of an Occupation Certificate, a report prepared by an AQF Level 5 Arborist, shall be submitted to the Certifying Authority, assessing the health and impact of the existing street tree required to be retained as a result of the proposed development, including the following information:

- i) compliance to Arborist recommendations for tree protection and excavation works.
- ii) extent of damage sustained by vegetation as a result of the construction works.
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

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

30. 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.

31. 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.

32. **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)

33. **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.

34. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines
(https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

35. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site

www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

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

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

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

36. **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 the NSW Fire Brigade.

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 the NSW Fire Brigade 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.

37. **Loading Bay Management Plan.**

A Loading Bay Management Plan shall be prepared by the applicant and submitted to and approved by Council prior to the issue of any Occupation Certificate. The Plan will need to identify the type of vehicles that can enter the premises and the location in which they can service the site. (DACTRFPOC1)

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

38. **Landscape maintenance**

All landscape components are to be maintained for the life of the development. A 12 month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme of the landscape plan.

Reason: to maintain the environmental amenity and ensure landscaping continues to soften the built form.

39. **Environmental and priority weed control**
All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: preservation of environmental amenity.
40. **Hours of Operation**
The hours of operation of the ground floor premises are to be restricted to:

□ Monday to Sunday – 8.00am to 7.00pm

Reason: Information to ensure that amenity of the surrounding locality is maintained.
41. **Waste Room Management**
The waste room is to be managed to ensure access is provided to all bins at all times.

Reason: To ensure appropriate waste management
42. **Visitor Car Parking**
The visitor car parking spaces are to remain accessible to visitors at all times.

The visitor spaces must not be behind a locked or swipe card accessible only gate.

Reason: To ensure the appropriate allocation of parking spaces.







Attachment 1

22nd February 2019

The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Dear Sir,

**Amended Clause 4.6 variation request – Height of buildings
Proposed Shop top housing development
396 – 402 Sydney Road, Balgowlah**

Pursuant to Clause 4.3 of Manly Local Environmental Plan 2013 the height of a building on the subject land is not to exceed 12.5 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

The amended development has a maximum building height of 15.7 metres measure to the north eastern roof edge above Unit 303 and the lift overrun beyond. This represents a variation of 3.2 metres or 25%. The variable extent of non-compliance is diagrammatically depicted in Figure 1 over page with the recently approved shop top housing development at No. 404 Sydney Road shaded for comparative analysis.

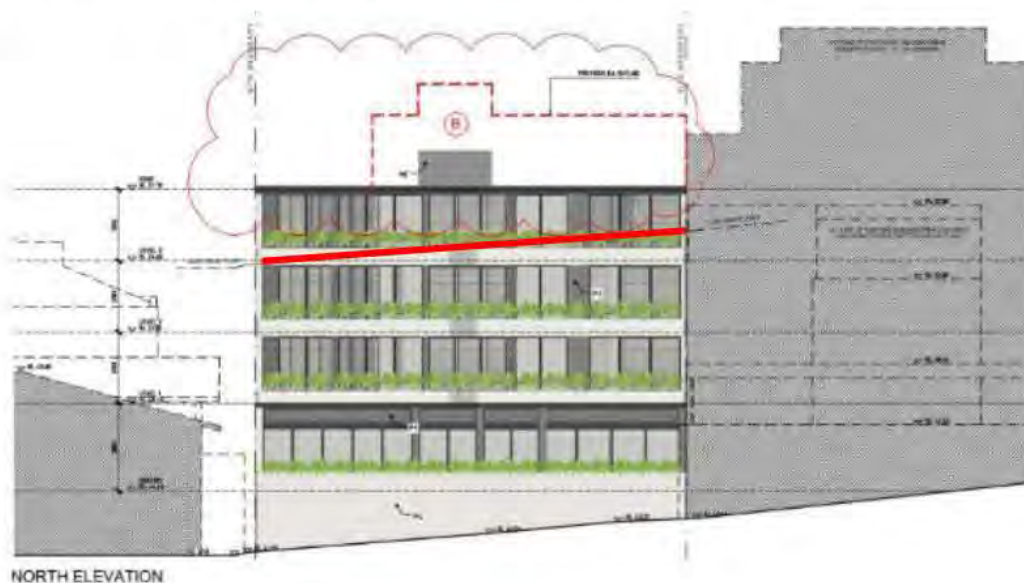




Figure 1 – Height compliance diagrams

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 subject property is zoned B2 Local Centre pursuant to Manly Local Environmental Plan 2013 ("MLEP 2013") with commercial premises and shop top housing permissible in the zone with consent. The stated objectives of the B2 zone are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Shop top housing is defined as one or more dwellings located above ground floor retail premises or business premises.

The development incorporates dwellings located above ground floor retail/ business premises with all residential apartments located within a single building form and above basement car parking incorporating both retail and commercial car parking spaces. Accordingly, the development is appropriately defined as shop top housing and permissible with consent in the zone.

The proposed development meets the relevant zone objectives given the retention of ground floor retail/ business uses and the appropriate concentration of residential densities within an established business zone. The height and scale of the development is responsive to context, compatible with that of adjoining development and will not result in unacceptable or jarring residential amenity, streetscape or broader urban design impacts.

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

Height of Buildings Standard and Objectives

The standard, objectives and proposed building height variation 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,*

Comment: Detailed site analysis identified a number of site-specific constraints and opportunities the majority of which relate to the height, proximity and orientation of adjoining development and the heights approved/ established by development along this section of Sydney Road. Through such analysis appropriate setbacks, building envelopes and transitional building heights were identified providing for the highly articulated and modulated building form currently proposed.

In this regard, we have formed the considered opinion that the proposed building heights and roof forms are consistent with the topographic landscape, prevailing building height and desired future streetscape character of this section of Sydney Road as demonstrated by the recent approval of development application DA2018/0890 proposing the construction of a 5 storey shop top housing development immediately to the west of the site at No. 404 Sydney Road and the 5 storey shop top housing development at No. 374 Sydney Road. The fall of the land towards the rear of the site also contributes to the extent of building height breach. The proposal is consistent with this objective.

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

Comment: The proposed development, as amended, is compliant with the 2:1 floor space ratio development standard with the additional building height reflecting the contextually responsive and appropriate distribution of floor space across this particular site. The height, bulk and scale of the building are entirely consistent with the built form characteristics proposed by adjoining development and more recently constructed development along this section of Sydney Road as depicted in Figures 2 and 3 over page.



Figure 2 – Perspective showing proposed development in context of approved/constructed development at No's 374 and 404 Sydney Road



Figure 3 – Perspective showing subject development in context of the recently approved development at No. 404 Sydney Road

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 height of the proposed development offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of existing and approved development within the sites visual catchment. A compliant 3 storey podium height is maintained to the street with the upper level highly recessive and set well back from the street, rear and eastern boundaries such that it will not be readily discernible in a streetscape context or as viewed from adjoining properties.

Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings and able to co-exist in harmony with surrounding development.

The proposal is consistent with objectives (a) and (b).

(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: Careful consideration has also been given to the impact of non-compliant portion of the development on existing public and private view lines over and across the site. In this regard, the juxtaposition of adjoining development relative to the subject site and available view lines ensures that the development will not give rise to any unacceptable public or private view impacts

Accordingly, we have formed the considered opinion that a view sharing scenario is maintained in accordance with the principles established by the Land and Environment Court in the matter of *Tenacity Consulting v Warringah* [2004] NSWLEC 140.

The proposal is consistent with this objective.

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

Comment: The accompanying shadow diagrams on plan DA560(A) prepared by the project Architect demonstrate that due to the orientation of the site and position to the south of the adjoining town house development that there will be

no additional shadowing impact on these northern adjoining properties at any time between 9am and 3pm on 21st June.

Further, the solar gain diagrams on plans DA550(A) and DA551(A) demonstrate that at least 70% of apartments within the recently approved shop top housing development at No. 404 Sydney Road will receive a minimum of 2 hours of solar access between 9am and 3pm on 21st June in strict accordance with the ADG requirement. The building height variation will not give rise to unacceptable shadowing impact on the public domain.

The proposal is consistent with this objective.

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

Comment: N/A

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 there are sufficient environmental planning grounds to justify the variation sought namely the topography of the land which falls away in multiple directions towards the rear of the site making strict compliance difficult to achieve and the contextually appropriate building height proposed which is consistent with the existing and desired future streetscape as demonstrated through Council's approval of the 4/5 storey shop top housing development at No. 374 Sydney Road to the east of the site and No. 404 Sydney Road immediately to the west of the site. The exceptional design quality of the development and absence of any unreasonable or unacceptable streetscape or residential amenity impacts also gives weight to the acceptability of the variation sought.

We have formed the considered opinion that a better environmental planning/ built form/ urban design outcome is achieved through approval of the variation proposed with enforcement of strict compliance resulting in a development unable to achieve anywhere near the anticipated FSR of 2:1 on a site located in an established centre and ideally suited to increased residential densities. 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.

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.

Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

ITEM 3.5

**DA2018/1667 - 181 ALLAMBIE ROAD, ALLAMBIE HEIGHTS -
PARTIAL EXTERNAL DEMOLITION WORKS AND
CONSTRUCTION OF A SENIORS HOUSING DEVELOPMENT**

AUTHORISING MANAGER **Steve Findlay**

TRIM FILE REF **2019/309972**

ATTACHMENTS

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2018/1667 for partial external demolition works and construction of a seniors housing development at Lot 2615 DP 752038, 181 Allambie Road, Allambie Heights for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1667
Responsible officer:	Lashta Haidari
Land to be development (Address)	Lot 2615, DP 752038, No. 181 Allambie Road, Allambie Heights
Proposed Development:	Partial demolition works and construction of a Seniors Housing Development
Zoning:	Warringah Local Environmental Plan 2011 - R2 Low Density Residential
Development Permissible:	Yes (Pursuant to SEPP HSPD 2004)
Existing Use Rights:	No
Consent Authority:	Northern Beaches Local Planning Panel (NBLPP)
Land and Environment Court Action:	No
Owner:	Department of Lands
Applicant:	Allambie Heights Village Ltd
Application lodged:	11 October 2018
Integrated Development:	Yes (Bushfire)
Designated Development:	No
State Reporting Category:	Residential – Seniors Living
Notified:	7 November to 10 December 2018
Advertised:	10 November 2018
Submissions Received:	43
Recommendation:	Refusal
Estimated Cost of Works:	\$16,376,387

Executive Summary

The Development Application (DA) seeks consent for part demolition works and construction of 24 independent living units (ILU's) within two individual blocks under the provisions of SEPP (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD 2004). The site has been used for social housing since 1966 and presently consists of 55 serviced self-care units. Therefore, the total number of units onsite will be increased to 79 under this proposal.

The proposed development is to be situated behind the existing 2 storey buildings which front Allambie Road, but generally remaining on the eastern half of the site. The site is owned by the Department of Industry-Lands (Crown Land) and it is currently leased to Allambie Heights Village.

Under the provisions of Warringah Local Environmental Plan 2011 (WLEP 2011), the subject site is within the R2 Low-Density Residential Zone. The proposed development is defined as "seniors housing", which is a prohibited land use under the WLEP 2011, however, the proposal is made permissible in the R2 zone pursuant to the SEPP HSPD 2004.

The application was referred to internal departments of Council and external authorities. The NSW Rural Fire Service (RFS) has declined to issue their General Terms of Approval (GTA) due to insufficient information to properly assess the application and determine its suitability. Therefore, the consent authority is prevented from issuing consent under the provisions of Section 4.45 of the *Environmental Planning and Assessment Act, 1979*.

There are a number of other referral issues raised in relation to the proposed development, which also form reasons for refusal, in that the application is deficient in identifying the relevant environmental impacts associated with the subject site.

Notwithstanding the above issues and the recommendation for refusal, the remainder of the assessment has found that the proposal is generally acceptable and can be supported subject to conditions. In this regard, the assessment has found that the proposed development is satisfactory from an urban design and planning perspective with regards to its character, built form and landscape setting.

The applicant has lodged a request under Clause 4.6 of the WLEP 2011 for a variation to the building height development standard under the SEPP HSPD 2004.

The variation to the building height control is up to 0.65m above the permissible height of 8.0m, representing a relatively minor variation of 8.1%. The variation is considered acceptable largely due to the topography of the land and is offset by other aspects of the development. The variation is not considered to result in excessive bulk and scale and does not result in adverse shadow and amenity impacts on surrounding properties. The height variation does not result in additional floor space in terms of a non-compliant storey.

The public exhibition of the DA resulted in 43 individual submissions, all of which raised concerns with the proposed development. The majority of the submissions raised concerns with regards to the environmental aspects of the proposal. The issues raised in the submissions have been addressed in the "Public Notification" section of this report.

Based on a detailed assessment of the proposal against the applicable planning controls, it is recommended that the Northern Beaches Local Planning Panel (NBLPP) refuse the application for the reasons provided in the recommendation section of this report.

ASSESSMENT INTRODUCTION

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

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

SITE DESCRIPTION

The subject site is generally rectangular, with long northern and southern boundaries and narrow western and eastern boundaries. The site is known as No. 181 Allambie Road, Allambie Heights, and has a legal description of Lot 2615 in DP 752038. The land has total area of 3.72 hectares (37,200m²).

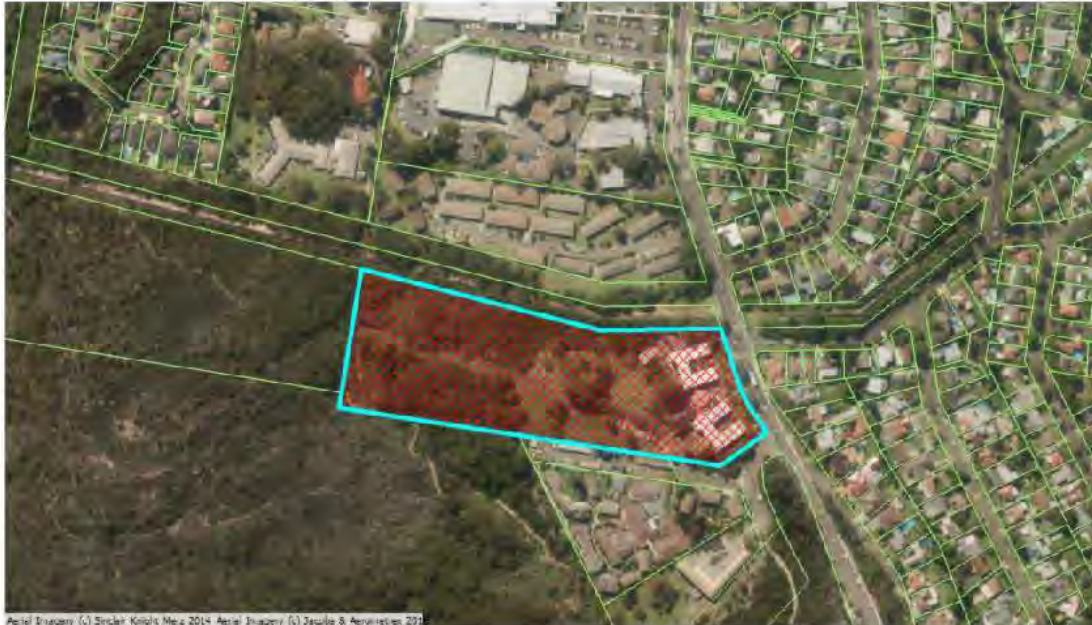


Figure 1 – Location Map

The site slopes in a westerly direction and contains large areas of bushland for approximately half of the area of the site, being the western portion. Bushland also extends along the northern boundary of the site adjacent to an existing Sydney Water pipeline corridor.

The site is currently occupied by an aged care facility known as William Charlton Village, which provides seniors housing in the form of two (2) older style U-shaped buildings. The existing buildings are located on the eastern portion of the site and include ILUs in 2 storey walk-up buildings, administration/staff buildings and detached outbuildings. Vehicular access to the site is via Allambie Road and also Martin Luther Lane to the south.

The site is adjoined on its southern boundary by another seniors development, also operated by Allambie Heights Village, that provides a variety of ILUs, assisted living units, dementia care and a full range of catering, recreation, transportation and administration facilities. Located to the north of the site is a Sydney Water pipeline corridor, which runs parallel to the northern boundary of the subject site and is surrounded by bushland. Further to the north of the pipeline is a retirement village known as Fred Hutley Village, which comprises a range of affordable ILUs.

The bushland to the west and south-west of the site forms part of the Manly Dam Catchment and is under the ownership of the Crown.

SITE HISTORY

Pre-Lodgement Meeting

A pre-lodgement meeting (PLM) was held with Council relating to the current proposal on 21 November 2017.

Development Application

The application was lodged with Council on 10 November 2018.

Initial assessment of the proposal revealed a number of problematic issues with the application, which were presented to the applicant in a letter dated 25 February 2019. The applicant was invited to withdraw the application, with a view to preparing the required information, then re-submitting a new application at a later date.

In response, the applicant chose to lodge the additional information on 11 March 2019 in an attempt to address the concerns raised without withdrawing.

The following additional information was submitted:

- Bushfire Assessment Report by D. B. Macarthur J.P
- Total Earth Care response to RFS Referral
- Total Earth Care response to Riparian Referral
- Jackson Teece Architects response to Urban Design Referral
- Woods and Grieve Engineers response to Engineering Referral

This report is based on the amended information that was submitted on 11 March 2019.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for a senior's housing development, which consists of partial demolition works, site preparation works, the removal of trees and the construction of a 2 storey development comprising 24 independent living units to be used for seniors housing in two separate blocks (known as Building A and Building B).

Specifically, the development includes the following works:

- **Building A** – provides for a total of 8 units over two storeys (4 units per floor). Units are accessible from two lifts located on the parking level.
- **Building B** – provides for total of 16 units over two storeys (8 units per floor). Ground floor units are accessible directly from the parking level, through private courtyards. First floor units are accessible by two lifts and raised walkways above ground floor courtyards.
- **Carparking** - the carpark provides 30 resident parking spaces, which includes 2 visitor parking spaces and a loading bay.

- **Access** – existing vehicular access to the site is via Martin Luther Place and the existing internal driveway. A new loop road is proposed to extend from this internal driveway to the parking area for the proposed development.
- **Landscape works** - the landscape design comprises new tree plantings, turf areas, feature rock outcrops, a 4-hole putting golf course and community activity areas and structures.



Figure 2 – Site Plan showing new buildings behind existing U-shaped buildings
(Source: Jackson Teece)



Figure 3 – Photomontage showing south-western elevation (Source: Jackson Teece)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See the discussion on “Environmental Planning Instruments” in this report.
Section 4.15(1) (a)(ii) – Provisions of any draft environmental planning instrument	No Draft Environmental Planning instruments apply to the proposed development.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 (WDCP 2011) applies to this proposal.
Section 4.15 (1) (a)(iiia) - Provisions of any Planning Agreement or Draft Planning Agreement	None Applicable.
Section 4.15 (1) (a)(iv) - Provisions of the regulations	Clause 98 of the Environmental Planning and Assessment Regulation 2000 states that a prescribed condition of consent is that the work is to be undertaken in accordance with the Building Code of Australia (BCA). If the application is approved a condition of consent could be included in the recommendation to ensure that the proposal complies with the BCA.

Section 4.15 'Matters for Consideration'	Comments
<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>	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the relevant sections in this report. A number of inconsistencies with the relevant controls have been identified which indicate the impact of the development on the built environment is not acceptable.</p> <p>(ii) The development will provide housing designed specifically for seniors or people with a disability and therefore the development ensures that the housing stock caters for a broad cross section of the community. The proposed development will not therefore have a detrimental social impact on the locality.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the proposed land use.</p>
<p>Section 4.15(1) (c) – The suitability of the site for the development</p>	<p>The suitability of the site in terms of likely impacts on the environment and amenity has been discussed in detail in the various section of this report. In summary, the suitability of the site for the development as proposed in its current form remains uncertain, due to fact that the proposal has not conclusively addressed the environmental impacts of the proposed development.</p> <p>Furthermore, the suitability of the site for additional seniors housing in this size, scale and form has not been established as the NSW RFS has not issued a Bush Fire Safety Authority as required for a 'Special Fire Protection Purpose' development, and given the environmental significance of the site and area and lack of information provided to determine its impacts and mitigation measures.</p> <p>Therefore, a conclusive determination that the site is suitable cannot be made at this stage.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EP&A Act 1979 or EP&A Regulations 2000</p>	<p>In regards to public submissions please refer to the discussion on "Notification & Submissions Received" within this report.</p>

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1) (e) – The public interest	<p>The public interest has been considered as part of the application process.</p> <p>Overall, the public interest is best served by the thorough and consistent application of the requirements of the relevant planning controls, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised and/or managed.</p> <p>The proposal has been assessed against the provisions of the relevant planning controls and is deemed to be unacceptable in terms of its impact on the natural environment. On this basis, the approval of the application is not consistent with maintaining and protecting the public interest.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan 2011.

As a result of the public exhibition of the application, Council received 43 submissions as follows:

Name:	Address:
Mr David Anthony Parsons	7 Canea Crescent ALLAMBIE HEIGHTS NSW 2100
Marjorie Colman	24 Island Parade NORTH NARRABEEN NSW 2101
Adrian Fellowes	83 Campbell Parade MANLY VALE NSW 2093
Malcolm John Fisher	37 King Street MANLY VALE NSW 2093
Karen Montgomery	15/9 Jodie Court MERMAID WATERS NSW 4218
Mrs Robin Anne Oxenbury	117 Carawa Road CROMER NSW 2099
Shauna Wilson	21/29-31 Collins Street ST MARYS NSW 2760
Ms Virandathi Asha Kovel	24 King Street MANLY VALE NSW 2093
Adrian Breakspear	1 / 49 Eurobin Avenue MANLY NSW 2095
Belinda Clarke	2 Seebrees Street MANLY VALE NSW 2093
Ms Nicole Edson Bates-Brownsword	1 Buna Place ALLAMBIE HEIGHTS NSW 2100
Rovert Remin	138 Grandview Drive NEWPORT NSW 2106
Leonie Gail Cowan	37 King Street MANLY VALE NSW 2093
Ms Linda Jozy Sutton	2 / 65 Addison Road MANLY NSW 2095
Mrs Sandra Shergill	10 Iona Avenue WEST PYMBLE NSW 2073
Mr Robert Allen Peck	106 Bangaroo Street NORTH BALGOWLAH NSW 2093
Kathryn Mary Burton	1 Pitt Street MANLY VALE NSW 2093
Mr Grahame Wilfrid Collier	23 Urunga Street NORTH BALGOWLAH NSW 2093

Name:	Address:
Denise Keen	29 / 80 Evans Street FRESHWATER NSW 2096
Mr Michael Houston	12 Palm Parade NORTH NARRABEEN NSW 2101
Mr Raymond James Cox	3 Austin Avenue NORTH CURL CURL NSW 2099
Rebecca Anne Tissington	16 A Gladys Avenue FRENCHS FOREST NSW 2086
Emily Ann Fewster	25 Tottenham Street NORTH BALGOWLAH NSW 2093
Ms Rozetta Mary Payne	28A Prince Street MOSMAN NSW 2088
Save Manly Dam Catchment Committee	13 Mildred Avenue MANLY VALE NSW 2093
Mrs Ann Frances Collins	41 Gordon Street MANLY VALE NSW 2093
Mrs Sandra Madeline Hudspith	1 / 10 Hilltop Crescent FAIRLIGHT NSW 2094
Ann Elizabeth Sharp	77 Brighton Street CURL CURL NSW 2096
Withheld	NORTH MANLY NSW 2100
Mr Brett Hart	1 Pitt Street MANLY VALE NSW 2093
Mr Samuel Wilkins	25 Oconnors Road BEACON HILL NSW 2100
S Rick	
Ms Tiziana Beninati	13 Nenagh Street NORTH MANLY NSW 2100
Robyn Ball	35/6 Murray Street LANE COVE NORTH NSW 2066
Irene Tims	
Mr Angus Noel Dunn	13 Riverview Parade NORTH MANLY NSW 2100
Ali Fleming	25 Ryrie Avenue FORESTVILLE NSW 2087
Mr Jeffrey William Keating	34 Bangaroo Street NORTH BALGOWLAH NSW 2093
Mr Peter Joseph McGee	2 / 141 Griffiths Street BALGOWLAH NSW 2093
Ms Nicole Sally Butcher	3 / 7 Reddall Street MANLY NSW 2095
Mr Nick Reid	25 Eurobin Avenue MANLY NSW 2095
Mrs Susan Narelle Byrne Miss Ellin Byrne	7 Arana Street MANLY VALE NSW 2093
Jacqueline Ruth Marlow	154 Woorarra Avenue ELANORA HEIGHTS NSW 2101

Assessment of Residents Issues

The matters raised within the submissions have been considered and addressed as follows:

1. Insufficient parking

Concerns have been raised that there is insufficient parking provided for the development.

Comment:

The parking requirements for the development are stipulated under the provisions of SEPP HSPD 2004. An assessment of the car parking provisions for the development and having regard to the location of the site has been undertaken.

In summary, the amount of car parking is sufficient for the development, as addressed elsewhere in this report.

Accordingly, this issue does not warrant the refusal of the application.

2. Impact of construction on existing residents (noise, dust, amenity)

Concern is raised regarding the excavation and construction impacts associated with the development and the potential impact on adjoining development.

Comment:

With regards to excavation and construction management, appropriate conditions to minimise impact can also be imposed on a consent should this application be considered for approval.

Therefore, this issue should not be given determining weight

3. Impact on the Natural Environment

A significant number of submissions received have raised concerns in relation to the impact of the development on the environment. Particularly, the following specific concerns have been raised:

- *Impact on threatened flora and fauna in the area and Manly Dam Catchment and sensitive bushland surrounds;*
- *Extensive tree removal as a result of Asset protection Zones;*
- *The existing landscape area provides a transition between the bushland and existing buildings;*
- *Bushland and riparian buffer areas in Manly Dam Catchment should be zoned E2 for conservation not R2 (residential);*
- *Surrounding detention basins adversely affected (Manly Warringah War Memorial Park and Manly Dam);*
- *Extensive excavation will intercept subsurface flow and result in irreversible changes to the natural hydrology of the site; and*
- *Natural features of the subject site should be protected.*

Comment:

These issues are addressed in the Natural Environment Section and the NSW RFS comments in the referrals section of this report. In summary, the impacts on the natural environment are found to be unsatisfactory and for reasons of lack of certainty and so this issue is included as a reason for refusal.

4. Development is not suitable for this Site

Concerns have been raised that the site is Crown Land and should be maintained as open space and used for bushwalking and picnic areas. In addition, a submission received has raised concern that the development is inconsistent with the current lease agreement for the site.

Comment:

The site is owned by the Department of Industry – Lands and is currently leased to Allambie Heights Village. The site is zoned R2-Low Density Residential and seniors housing development is permissible under the SEPP HSPD 2004 and the applicant has lodged the application with valid owners consent from the Department of Lands.

Therefore, the issue as it relates to the lease agreement and whether the site should be used for public recreation purposes are not matters for Council to consider as part of this application.

Therefore, this issue should not be given determining weight.

5. Bushfire/Bushland Impacts

Concerns have been raised that the location of this type of development within an area that is bushfire prone is dangerous, due to the limited mobility of residents. In addition, concerns have been raised that the Asset Protection Zones (APZ) required for the development will impact on the environmental qualities of the site and its surrounds.

Comment:

The site is identified as Bushfire Prone Land. A Bushfire Assessment Report was submitted with the application. A Biodiversity Development Assessment Report, Vegetation Management Plan and an assessment of the bushland implications of the bushfire assessment was provided by Total Earth Care. In the reports, recommendations are provided to ensure the safety of the residents of the facility in accordance with the provisions of 'Planning for Bush Fire Protection 2006' as published by the NSW Rural Fire Service (NSWRFS).

However, as detailed in the referral response from the NSWRFS, in order to satisfy the requirements of 'Planning for Bush Fire Protection 2006' and in order to obtain a Bushfire Safety Authority, the NSWRFS has requested additional information to properly assess the application and to confirm that the development is suitable on this site.

In this regard, the NSWRFS has not issued a Bushfire Safety Authority for the development.

Accordingly, this matter forms a reason for refusal.

6. Visual impacts and Impact on War Memorial area (Heritage)

Concerns have been raised in relation to the visual impact of the development from the many vantage points within the Manly-Warringah War Memorial Park. The submissions has also raised concern in relation to the impact of the development on the War Memorial Area, which is heritage listed.

Comment:

The applicant has not submitted a visual impact assessment, however the proposed development is unlikely to have any significant visual impact when viewed from the Manly dam catchment area extending to the west of the site. In fact, the impact will not be any worse than the development that is already located on the site.

The issue of the impact of the development on the War Memorial Area is addressed under the WLEP 2011 section of this report and found to be acceptable.

Therefore, this issue should not be given determining weight.

7. Not consistent with the requirements of SEPP (HSPD) 2004

The submissions received have raised concerns that the development does not comply with the following provisions of the SEPP:

- Clause 12 is not addressed
- Development is not compatible with the surrounding land uses
- Development exceeds the maximum height standard

Comment:

The issues raised have been discussed at length under the SEPP HSDP 2004 section of this report. In summary, it has been found that the development is consistent with the character of the area as required by the provisions of SEPP 65 and SEPP HSPD 2004 and the non-compliance in relation to the 8.0m height is supported in this instance.

Clause 12 of the SEPP is not applicable to the proposed development.

Therefore, the specific issues raised in relation to the SEPP should not be given determining weight.

8. Insufficient Community Consultation

Concern is raised that the development has not undergone sufficient community consultation. In particular, concern has been expressed that details of the application were not notified to an adequate number of residents.

Comment:

The WDCP requires advertising in the Manly Daily and for adjoining properties to be notified by letter. However, the letter notification can be extended at the discretion of the relevant Council officer should it be warranted due to the potentially wider impacts of the development.

The notification associated with the subject DA was extended to all properties that were likely to be affected by the development. Other residents were captured by the advertisement in the Manly Daily.

The public exhibition of the application was carried out in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan 2011.

Therefore, this issue should not be given determining weight.

9. Inconsistent with the R2 Zone Objectives

Concerns have been raised that the proposed development is incompatible with the objectives and future form of development envisaged for the zone.

Comment:

The proposal's consistency with the objectives of the R2 zone is considered under the WLEP 2011 section of this report. In summary, the proposed development has been found to be consistent with the objectives of the zone and this issue should not be given determining weight.

10. Affordable Housing

Submissions have been made that the proposed development is not affordable so there is no benefit to the local community.

Comment:

The proposed development seeks consent under the provisions of SEPP HSPD 2004 which does not specify requirements for affordable housing.

Therefore, this issue should not be given determining weight.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Approval (subject to conditions)</p> <p>No objections to proposed construction of 24 independent living units and Community Building (pool/facilities building), car parking and associated works.</p> <p>Proposal is capable of compliance with the National Construction Code via an 'Alternate Solution' and is therefore acceptable with condition/s.</p>
Development Engineers	<p>Approval (subject to conditions)</p> <p>A Development Engineering assessment has been undertaken for the protection of the development from overland flows. The submitted Overland Flow Flooding & Stormwater letter dated 5/3/19 indicates that no works will be undertaken within the existing drainage channel. Please refer to Council's Coast & Catchments section for comments with respect to impact on the watercourse.</p> <p>No objections are raised to the proposed development, subject to conditions.</p>
Health and Protection (Food Premises, Skin Pen.)	<p>Approval (subject to conditions)</p> <p>No objections subject to conditions.</p>
Landscape Officer	<p>Approval (subject to conditions)</p> <p>The Arborist's Report and landscape plans provided with the application are noted.</p> <p>The DA is considered acceptable with regard to the relevant controls relating to landscape issues, subject to conditions. I defer to the comments of Council's Natural Environment section for comments regarding impacts on natural bushland and systems.</p>
Natural Environment (Bushland and Biodiversity)	<p>Refusal</p> <p>The proposed development footprint is in proximity to the western portion of the site, which is covered with high quality native vegetation. Direct and indirect impacts to native vegetation will result from tree removals, clearing and modification for asset protection zones, sewer infrastructure and ongoing management of native vegetation and fauna habitat as part of the overall bushfire management measures.</p> <p>The application in its current format is not supported due to unacceptable impacts to the natural environment. The location and design of the proposed development does not satisfy the objectives and/or requirements of the Warringah Development Control Plan 2011, including:</p> <ul style="list-style-type: none"> • E2 Prescribed Vegetation • E5 Native Vegetation • E6 Retaining unique environmental features, and

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • E7 Development on land adjoining public open space. <p>The proposed development will directly and indirectly impact native vegetation and fauna habitat, including threatened species or vegetation communities with potential for a “<i>serious and irreversible impact</i>” as mapped on the Biodiversity Values Map. The application included an amended Biodiversity Development Assessment Report (BDAR) however additional impacts mainly in relation to the required asset protection and proposed sewer construction have not been adequately addressed.</p> <p>The development is located on land adjoining public open space, and should protect, preserve and enhance the native bushland and natural qualities adjoining the Park, and not threaten the protection or preservation of the bushland. The Asset Protection Zone (APZ) requirements of the NSW Rural Fire Service, as detailed in their correspondence dated 3 May 2019, will require extension of the APZ into the adjoin RE1 zoned land, and this is not supported. A section of the site is mapped as waterways and riparian lands, and any asset protection zone (APZ) should avoid and minimise impacts on the riparian area.</p> <p>In addition to an amended BDAR, the application must include an amended Biodiversity Management Plan prepared in accordance with Council guidelines that will protect native vegetation on the subject property. The RFS also require a Plan of Management in relation to the bushfire management actions.</p> <p>The development should be designed and sited to reduce impacts to native bushland within and adjoining the site. The location of habitable buildings should be concentrated within the eastern portion of the site and located close to the existing buildings in order to maximise separation distances from the adjoining hazard and utilise shielding provided by the existing development adjoining to the south. The sewer connection should be relocated to the east of the existing man-made drainage line, with construction through the existing cleared areas to connect with an existing sewer access chamber within the Park at the rear of the Martin Luther Hostel.</p> <p>The proposed works to improve the local habitat associated with the eastern drainage channel are supported, and it is accepted that these works may result in better water management, including improved flow rates, better aquatic habitat, healthier bushland and a reduced weed seed source to the important Curl Curl Creek catchment downstream. The management of vegetation within the proposed 10-metre wide riparian corridor can also form part of the asset protection zone between the bushland on the western portion of the site upslope of the existing road, and this was discussed during the pre-lodgement meeting.</p>

Internal Referral Body	Comments
	Based on the comments above, the development application is recommended for refusal, as it does not satisfy the Warringah Development Control Plan 2011 requirements.
Natural Environment (Riparian Lands/Creeks)	<p>Refusal</p> <p>According to the Warringah Creek Management Study 2004, the site possess a first order stream, which flows in a southerly direction. The creek forms part of the Curl Curl Creek/Manly Dam catchment and according to the Creek Management Study is a Category A Catchment which is characterised as:</p> <p><i>"very high ecological value; with less than 10% connected impervious area. This provides a high level of connectivity of natural vegetation in the floodplain and riparian zone of Curl Curl Creek and reasonable habitat for dispersal of native terrestrial fauna species. Geomorphic diversity is also very high, providing a wide range of habitats and supporting excellent native species richness. Curl Curl Creek and its tributaries also provide high landscape and passive recreation value to the area".</i></p> <p>In addition, the catchment is known habitat to a range of native and threatened fauna species including Red Crowned Toadlet.</p> <p>The APZ of the proposed development extends into riparian lands, contrary to Council's DCP and Protection of Waterway and Riparian Lands Policy. The applicant was advised during the Pre-Lodgement Meeting process that this is unlikely to be supported.</p> <p>On this basis, the development application is recommended for refusal.</p>
Parks, reserve, beaches, foreshore	<p>Approval (subject to conditions)</p> <p>No objections subject to conditions.</p>
Strategic Planning (Section 94 Contribution)	<p>Approval</p> <p>The Applicant has identified that they are exempt from the provision of development contributions under the Northern Beaches Council Contributions Plan 2018.</p> <p>The Ministerial Direction issued by the NSW Minister for Planning dated 14 September 2007 identifies that development contributions are not applicable to DA's made by social housing providers. A social housing provider is defined in the SEPP (Affordable Rental Housing) 2009 as, among other things, a not-for-profit organisation that is a direct provider of rental housing to tenants.</p> <p>The Applicant has provided, in Appendix F of the Statement of Environmental Effects, ATO confirmation that the Applicant (Allambie Heights Village Ltd) is a registered charitable organisation. A search of the Australian Government charitable</p>

Internal Referral Body	Comments
	<p>organisations register has confirmed that this registration is still current.</p> <p>On this basis I support the requested exception to development contributions in accordance with the NSW Ministerial Direction.</p>
Strategic Planning - Urban Design	<p>Approval</p> <p>The revised and further developed drawings represented by perspectives demonstrate the previous Urban Design issues have been addressed.</p> <p>The articulation and modulation of the balconies assist to delineate an individual identity for the residences and provide a sense of separation and clarity to the proposed development.</p> <p>The issues of mass, scale and form are addressed adequately and as such the proposed development can be supported.</p>
Traffic Engineer	<p>Approval</p> <p>The proposed development (as depicted in Annexure A for reference), includes the construction of infrastructure and other works required to facilitate the proposed senior living development consisting of 24 dwellings.</p> <p>The proposed development has the following features relevant to this Traffic and Parking Impact Assessment:</p> <ul style="list-style-type: none"> • 24 x two-bedroom seniors living units distributed across two apartment buildings; • Construction of an ancillary Pool building; • Construction of an ancillary putting golf course; • 30 x resident parking spaces located in a basement / lower ground level carpark and one (1) car wash bay on the ground floor; • 16 x visitor parking spaces with 2 provided within the basement / lower ground level carpark and the remaining 14 provided on ground level; • Construction of an emergency egress road to the north of the site. <p>All vehicular access to the site will be from the proposed two-way driveway off Martin Luther Place with the exception of waste collection and loading by vehicles up to a Small Rigid Vehicle (SRV) which will utilise the driveway of the adjacent William Charlton Village site which is located at the intersection of Allambie Road/Mortain Avenue.</p> <p>Traffic: The general peak generation period of a Seniors Living Development does not coincide with the Network Commuter Peak Period. As such, the impact of the traffic volumes is deemed</p>

Internal Referral Body	Comments
	negligible on the local traffic network. Parking: The parking numbers are in surplus of the SEPP and DCP requirements. As such, no objections are raised.
Waste Officer	Approval (subject to conditions) No objection raised to the proposal.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	No Response Received The proposal was referred to Ausgrid. No response has been received within the 21-day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage	Request for more Information - (can be addressed by condition) The Aboriginal Heritage Office (in an e-mail dated 12/11/2018) indicated there are known Aboriginal sites in the area. No sites are recorded in the current development area, however, the area of the proposed development is identified as having high potential for unrecorded Aboriginal sites. The Aboriginal Heritage Office recommends a preliminary inspection ('Due Diligence' under the <i>National Parks and Wildlife Act 1974</i>) by a qualified Aboriginal heritage professional. The assessment would provide information on what potential Aboriginal heritage issues exist on the land and recommendations for any further action if required. The requirement of the Aboriginal Heritage Officer can be addressed by way of conditions, if the application is considered for approval.
Integrated Development NSW Rural Fire Service (Subdivisions and Special Fire Protection Purposes under Section 100B of Rural Fires Act)	Refusal The application was referred to the NSW RFS as Integrated Development. Section 100B of the Rural Fires Act 1997 enables the Commissioner of the NSW RFS to issue a Bush Fire Safety Authority for 'Special Fire Protection Purpose' development. Section 100B (6) of that Act identifies Seniors Housing (within the meaning of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004) as such development. In their response on 3 May 2019, the NSW RFS advised that they are not in a position to properly assess the application and require additional information to accurately assess the impact of the proposal on the environment.
Natural Resources Access Regulator (NRAR)	Approval (No GTA required) NRAR has reviewed the Application as an integrated development under the provisions of section 4.47 of the EPA Act.

External Referral Body	Comments
	NRAR by letter dated 4 February 2019 advised that a Controlled Activity approval under the <i>Water Management Act 2000</i> (WM Act) will not be required and no further assessment by NRAR is needed.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All relevant 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 relevant Environmental Planning Instrument's (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)**State Environmental Planning Policies (SEPPs)**

Further consideration is required for the following State policies:

SEPP 55 - Remediation of Land

SEPP 55 establishes State-wide provisions to promote the remediation of contaminated land.

SEPP 55 states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. The Managing Land Contamination: Planning Guidelines were prepared to assist councils and developers in determining when the land has been at risk.

Clause 7 of the SEPP requires that a consent authority must not grant consent to a development unless it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

Council's records indicate that the site has been used for residential (Seniors Housing) purposes for a significant period of time and there is no history that indicates any contamination may have taken place since the establishment of the current development. It is therefore considered that the site poses no risk of contamination and as such no further consideration is required under Clause 7(1) (b) and (c) of the SEPP 55.

SEPP (Infrastructure) 2007**Clause 45 – Ausgrid**

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

- *Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists);*
- *Immediately adjacent to an electricity substation;*
- *Within 5m of an overhead power line;*
- *Includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line.*

The application was referred to Ausgrid under clause 45(2) of SEPP Infrastructure.

To date, no response has been received and it is assumed that Ausgrid does not raise any objection nor impose any conditions.

Clause 102 - Roads and Maritime Service (RMS)

With regards to requirements of Clause 104(2) (b) and Schedule 3 of the SEPP, the development does not have a capacity for 200 or more motor vehicles. Therefore, SEPP Infrastructure does not apply in this respect and does not require the referral of the application to the RMS.

SEPP (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD 2004)

SEPP HSPD 2004 commenced on 31 March 2004 and aims to increase the supply and diversity of housing for aged or disabled persons, to make efficient use of existing infrastructure and to encourage the provision of seniors housing development that will be of good design.

The following section of this report provides an assessment of the proposal against the relevant criteria and standards specified in this Policy:

Chapter 1 – Preliminary

The aims of the SEPP 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 proposal is consistent with the aims of the SEPP, in that the proposal will increase the supply and diversity of residences that meet the needs of seniors or people with a disability and is of a good design.

The proposal makes efficient use of existing infrastructure and services. The site is well serviced by existing public transport and is located within 400m of the nearest bus stop.

When considering the proposal against the aim of achieving good design, the proposal must be considered in context with other provisions of the SEPP. The SEPP encourages seniors housing to be of a good design outcome, which maintains and minimises the impacts on the amenity and character of the area.

The proposed built form effectively minimises impacts on the amenity and character of the area as detailed later within the assessment, and is considered to be of a good design.

The proposal has been found to be consistent with the aims of the SEPP and is supported in this instance.

Chapter 2 – Key Concepts

The proposal is for seniors living and ancillary uses, which are to be occupied by seniors or people with a disability as provided by the SEPP. On this basis, it is considered that the proposal is consistent with Chapter 2 of the SEPP.

Chapter 3 – Development for Seniors Housing

Chapter 3 of the SEPP contains a number of development standards applicable to the development application made pursuant to the SEPP. Clause 18 of the SEPP outlines the restrictions on the occupation of seniors housing and requires that a condition is to be included in the consent if approved to restrict the types of people who can occupy the development. A condition could be included in the consent if it is to be approved.

Part 1a - Site Compatibility Certificates

Clause 24 Site Compatibility Certificates required for certain development applications

The requirement of Clause 24 is not applicable to the proposed development.

Part 2 - Site Related Requirements

Development Criteria			
Clause	Requirement	Proposal	Complies
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: 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.	Yes
26(2)	Access complies with this clause if: a) The facilities and services referred are located at a distance of not more than 400m from the site or b) There is a public transport service available to the residents not more than 400m away.	The subject site is an existing Seniors Housing site and is located within 400m of various bus stops on Allambie Road and these stops are accessible by means of a suitable access pathway.	Yes
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	The site is identified as being bushfire prone and has been assessed as a "Special Fire Protection Purpose". In this regard, the NSW RFS has reviewed the proposal including the requirement of this clause and has declined to issue their GTA's due to insufficient information. Therefore, the proposal is inconsistent with the requirement of this Clause.	No
28	Consideration is given to the suitability of the site with regard to the availability of reticulated	The site has been operating as a seniors housing for a significant period of time and is fully serviced by potable water and sewer Infrastructure.	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	water and sewerage infrastructure.	The proposal is satisfactory with regards to the requirements of Clause 28.	
29	The consent authority to consider certain site compatibility criteria for development applications to which Clause 24 does not apply.	The proposed development is not found to be consistent with the requirement of Clause 25 (5) (b) (ii), as the proposal will have impacts on its natural environment and due to insufficient information submitted with the application, the proposal is found to be unacceptable in this regard.	No

Clause 30 A Site Analysis is to be provided

The site analysis information accompanying the application is considered satisfactory in terms of the requirements of Clause 30.

Clause 31 Design of In-Fill Self-Care Housing

Pursuant to Clause 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 key principles of the policy have been reviewed and the proposed development is considered to enhance internal site amenity and respond appropriately to its context for the reasons stipulated within the following sections of this report.

Clause 32 Design of Residential Development

In accordance with Clause 32 of the SEPP, 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 the SEPP.

Control	Requirement	Proposed	Compliance
Clause 33 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.	The proposed development is considered to appropriately respond to the existing character of the area. The substantial articulation of the built form relates favourably to its context and will positively contribute to the quality and identity of the site, which is already used for seniors development, and the locality. The current proposal represents a satisfactory design outcome for the site and locality from that presently existing on the site by virtue of a modern contemporary design that exhibits adequate articulation and good façade treatment.	Yes
	b) Retain, complement and	The development site is not within a Heritage Conservation Area, however,	Yes

Control	Requirement	Proposed	Compliance
	sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that is identified in a local environmental plan.	the site is located in the vicinity of a heritage conservation area being 'Manly Dam and Surrounds'. The proposed development is not considered to introduce any significant adverse impacts on the heritage significance of the adjoining conservation area given the physical separation of the site from Manly Dam and its surrounds.	
	c) Maintain reasonable neighbour amenity and appropriate residential character by; <i>Providing building setbacks for reducing bulk and overshadowing,</i> <i>Using building form and siting that relates to the site's land form,</i> <i>adopting building heights at the street frontage that are compatible in scale with adjacent development</i> <i>Considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours.</i>	The siting and location of buildings within the site have had due regard to the front building line, side setbacks and has provided sufficient landscape buffers in order to preserve the amenity of the adjoining properties in terms of privacy, solar access, and view lines. The development is found to be consistent with the requirements of this Clause.	Yes
	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 proposed setbacks to the front of the development and the extent of landscaping provided within the setback are considered satisfactory to minimise the visual impact of the development. The articulation and stepping of the built form are sympathetic to the character in the area and provides an effective and sensitive transition between the subject development and surrounding development.	Yes
	e) Embody planting that is in sympathy with, but not necessarily the	The proposal includes areas of landscaping which are consistent and sympathetic to the existing provision of	Yes

Control	Requirement	Proposed	Compliance
	same as, another planting in the streetscape.	landscaping throughout the streetscape.	
	f) Retain, wherever reasonable, major existing trees.	The impact of the proposed development on existing trees has been assessed by Council's Landscape officer and found to be acceptable.	Yes
	g) Be designed so that no building is constructed in a riparian zone.	The proposed buildings are not located within a riparian zone, however the APZ associated with the proposed building has the potential to impact on the riparian zone as discussed in the referral section of this report.	No
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	The development has been designed to maintain a reasonable level of acoustic and visual privacy between properties. Appropriate building setbacks and effective use of privacy treatments maintain a satisfactory level of privacy to adjoining properties.	Yes
Clause 35 Solar access and design for climate	The proposed development should ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space.	The proposed development will allow for adequate levels of daylight to living areas of residents and neighbours as required by the SEPP.	Yes
Clause 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water reuse.	The application has been reviewed by Council's Development Engineer who raises no objections to the proposal subject to appropriate conditions being imposed, should the application be considered worthy of approval.	Yes

Control	Requirement	Proposed	Compliance
Clause 37 Crime prevention	<p>The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:</p> <ul style="list-style-type: none"> a) Site planning that allows observation of the approaches to a 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. 	<p>The proposal will provide a satisfactory level of personal property security for residents and visitors, which has been designed to discourage crime.</p> <p>The ongoing maintenance of the development is subject to a private arrangement with the body corporate of the proposal.</p>	Yes
Clause 38 Accessibility	<p>The proposed development should:</p> <ul style="list-style-type: none"> 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 	<p>The proposal provides safe and obvious pedestrian links from the site that provides access to public transport, services or local facilities.</p> <p>The proposal provides a safe environment for pedestrians and motorists with convenient access and car parking for residents and visitors.</p>	Yes

Control	Requirement	Proposed	Compliance
	pedestrians and motorists with convenient access and parking for residents and visitors.		
Clause 39 Waste Management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	Council's Waste Officer has reviewed the proposal and has raised no objection with regards to waste facility provided for the development.	Yes

Part 4 - Development standards to be complied with

Clause 40 – Development standards – Minimum Sizes and Building Height

Pursuant to Clause 40(1) of the SEPP a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposal complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of the SEPP.

Control	Required	Proposed	Compliance
Site Size	1000m ²	37,200m ²	Yes
Site frontage	20.0m	The site has a frontage greater than 20.0m wide	Yes
Building Height	8.0m or less (measured vertically from ceiling of top most floors to ground level immediately below).	The building height is 8.65m, which exceeds the control by 0.65m (maximum) at various sections of the building.	No* Refer to Clause 4.6 objection
	A building that is adjacent to a boundary of the site must not be more than two storeys in height.	Buildings adjacent to the northern and southern property boundaries are two storeys in height	Yes
	A building located in the rear 25% of the site must not exceed one storey in height (development within 15.51m of the rear boundary).	No new work will encroach upon the rear 25% of the site.	Yes

*The non-compliance with Clause 40 is addressed in detail Clause 4.6 of WLEP 2011 section of this report.

Clause 41 - Standards for hostels and self-contained dwellings

Clause 41 prescribes various standards concerning accessibility and useability having regard to relevant Australian Standards. The applicant has submitted a report and checklist prepared by an accredited access consultant verifying that the proposal will comply with the relevant standards. These standards may be reinforced via suitable conditions of consent, should the application be worthy of approval.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

Clause 50 prescribes that consent to development for the purpose of self-contained dwellings must not be refused on the grounds of building height, density and scale, landscaped area, deep soil zones, solar access and parking, if certain numerical standards are met. The following table outlines compliance with the standards specified in clause 50 of SEPP (HSPD):

Control	Required	Proposed	Compliance
Building Height	8.0m or less (measured vertically from ceiling of topmost floor to ground level immediately below).	8.65m	No (refer to Clause 4.6)
Density and scale	0.5:1 or less	0.16:1	Yes
Landscaped area	30% of the site area is to be landscaped (1,925sqm required)	7,578m ²	Yes
Deep soil zone	15% of the site area and two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3.0m.	Over 14,680m ² is provided, which is well in excess of 15% of the site area	Yes
Solar Access	70% of the dwellings of the development to receive a minimum of 3 hours of direct sunlight between 9am and 3pm in mid-winter	Over 70% of apartments receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter	Yes
Private open space	15m ² of private open space per dwelling not less than 3m long and 3m wide.	All the units are provided with the minimum 15m ² of private open space	N/A
Parking	0.5 car spaces for each bedroom. 0.5x 48 bedroom = 24 spaces required	30 spaces provided	Yes

Chapter 4 – Miscellaneous

The proposed development is consistent with the provisions contained in Chapter 4. The site is not on “*environmentally sensitive land*”, is not affected by amendments to other SEPPs, and the special provisions do not apply to the land.

SEPP 65 - Design Quality of Residential Apartment Development

The proposed development is required to comply with SEPP 65 and the associated Apartment Design Guide (ADG), due to part of the proposed car parking level being more than 1.2m above ground level with two storey residential above the car park, therefore the development is in-part a three (3) storey development.

Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a Design Verification Statement from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires that, in determining a development application for consent to carry

out development to which SEPP 65 applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

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

DESIGN REVIEW PANEL

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

DESIGN QUALITY PRINCIPLES

Photomontage of the Proposal

Principle 1: Context and Neighbourhood Character

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

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

Comment:

The subject site and adjoining sites on the western side of Allambie Road has been developed as seniors housing development for a significant period of time and therefore the proposed additions to the development are considered to appropriately respond to the existing character of the area.

The revised scheme contains substantive articulation of the built form that relates favourably to the existing village and will positively contribute to the quality and identity of the site.

Council's Urban Designer has assessed the revised proposal as being satisfactory in terms of context and character.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 2: Built Form and Scale

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

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

Comment:

The proposed development, which involves new buildings towards the rear of the site, will not result in any significant change to the visual catchment of the locality.

The overall height and scale of the proposed building (as revised) is not considered excessive and is consistent with development that currently exists on this site and on the adjoining site to the south.

The building bulk is considered satisfactory in relation to the massing of the buildings, which are broken up by significant variation of the building form. The external colour scheme and finishes are such that the buildings will blend with the surrounding natural environment to reduce the visual impact.

Council's Urban Designer has assessed the revised proposal as being satisfactory in terms of built form and scale.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 3: Density

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

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

Comment:

The planning controls under WLEP 2011 and the WDCP 2011 do not specify a maximum housing density for the zone. However, SEPP HSPD 2004 specifies a maximum density in the form of an FSR control of 0.5:1 under Clause 50, which is comfortably met by the proposal, at 0.16:1.

The proposed density is satisfactory, as the development fits comfortably within the site and its local context. The overall height and scale of the proposed development is not considered excessive and is consistent with the remainder of the development that will be retained within the site.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 4: Sustainability

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

Comment:

The proposed works include part demolition and excavation works to accommodate the new development.

In this regard, a condition of consent would appropriately be imposed requiring the submission of a Construction Management Plan (CMP) and a Waste Management Plan (WMP), detailing the handling, disposal and recycling of demolition and excavation materials, should the application be considered for approval.

In addition, a BASIX certificate for the development has been submitted with the application. The certificate confirms that the development is capable of achieving the water and energy targets and has obtained a pass for thermal comfort.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 5: Landscape

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

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

Comment:

The landscape plans submitted with the application provide for a high quality landscape outcome for the site, which will ensure that the proposed development is characterised by a landscape setting that is consistent with the size and scale of development and enhance the landscape qualities of this part of the site and locality.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 6: Amenity

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

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

Comment:

The development has been assessed against the various amenity requirements of the ADG and the development is capable of complying with the relevant controls.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 7: Safety

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

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

Comment:

The application is not accompanied by a formal Crime Risk Assessment as required by the ADG.

Generally, the development provides safe and secure vehicular and pedestrian access, which is separated from all vehicular access points. All apartments provide balconies and windows which provide passive surveillance over the village and public road.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

The development involves the provision 24 apartments, in the form of three bedroom units that will be occupied by seniors or people with the disability, which is considered to be a positive outcome in terms of providing a diversity in the type of housing within a locality with an ageing population.

Accordingly, it is considered that the proposal satisfies this principle.

Principle 9: Aesthetics

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

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

Comment:

The proposed development is considered to be appropriate in terms of the composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the resultant building. The development positively responds environment and context, contributing in an appropriate manner to the character and visual quality of the area.

Council's Urban Designer has assessed the revised proposal as being satisfactory in terms of aesthetics.

Accordingly, it is considered that the proposal satisfies this principle.

APARTMENT DESIGN GUIDE

SEPP 65 also requires consideration of the ADG prepared by NSW Department of Planning and Environment in 2015. The ADG includes development controls and best practice benchmarks for achieving the good design consistent with the design principles of SEPP 65.

The following table outlines the proposal's consistency with the ADG:

Criteria / Guideline	Comments
Part 3 Siting the Development	

Site Analysis Does the development relate well to its context and is it sited appropriately?	Consistent A context plan is provided to accompany the application. The building form reflects the current character as anticipated by the SEPP.												
Orientation Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent The proposal development is located behind the existing development on site and will not be visible from the street.												
Public Domain Interface Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Consistent The development has been found to transition well.												
Communal and Public Open Space Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site; 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid-winter).	Consistent The site as a whole provides a significant amount of communal space, which is considered satisfactory.												
Deep Soil Zones Deep soil zones are to meet the following minimum requirements: <table><tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr><tr><td>Less than 650m² – 1,500m²</td><td>-</td><td rowspan="4">7%</td></tr><tr><td>Greater than 1,500m²</td><td>3m</td></tr><tr><td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr><tr><td></td><td>6m</td></tr></table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ² – 1,500m ²	-	7%	Greater than 1,500m ²	3m	Greater than 1,500m ² with significant existing tree cover	6m		6m	Consistent In excess of 7% of the site area is deep soil zone.
Site area	Minimum dimensions	Deep soil zone (% of site area)											
Less than 650m ² – 1,500m ²	-	7%											
Greater than 1,500m ²	3m												
Greater than 1,500m ² with significant existing tree cover	6m												
	6m												

<p>Visual Privacy</p> <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table><tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> <p><i>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</i></p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Consistent</p> <p>The proposed building separation is satisfactory.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms											
Up to 12m (4 storeys)	6m	3m											
Up to 25m (5-8 storeys)	9m	4.5m											
Over 25m (9+ storeys)	12m	6m											
<p>Pedestrian Access and entries</p> <p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Consistent</p> <p>The development provides level pedestrian access to all floor levels from the basement car parking area.</p>												
<p>Vehicle Access</p> <p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Consistent</p> <p>The proposed vehicular access has been assessed by Council's Traffic Engineer who has raised no objections to the proposal in terms of the location of the vehicular access.</p>												

<p>Bicycle and Car Parking For development in the following locations:</p> <ul style="list-style-type: none"> • On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or • On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre. <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Consistent</p> <p>An assessment of car parking provision, having regard to SEPP HSPD 2004 and location of the site, has been undertaken.</p> <p>In summary, the amount of car parking is sufficient for the development, as addressed elsewhere in this report.</p>
Part 4 Designing the Building	
Amenity	
<p>Solar and Daylight Access</p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> • Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter; • A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter. 	<p>Consistent</p> <p>Over 70% of the proposed units will receive the required amount of sunlight.</p>

<p>Natural Ventilation The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at 10 storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed; Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line. 	<p>Consistent</p> <p>Over 60% of the units are naturally cross-ventilated.</p>												
<p>Ceiling Heights Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" data-bbox="268 880 826 1496"> <thead> <tr> <th colspan="2">Minimum ceiling height</th></tr> </thead> <tbody> <tr> <td>Habitable rooms</td><td>2.7m</td></tr> <tr> <td>Non-habitable</td><td>2.4m</td></tr> <tr> <td>For two storey apartments</td><td>2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.</td></tr> <tr> <td>Attic spaces</td><td>2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.</td></tr> <tr> <td>If located in mixed used areas</td><td>2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.</td></tr> </tbody> </table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For two storey apartments	2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.	Attic spaces	2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.	If located in mixed used areas	2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.	<p>Consistent</p> <p>The floor to ceiling heights of the apartments within the development meet the minimum 2.7m as required by the ADG.</p>
Minimum ceiling height													
Habitable rooms	2.7m												
Non-habitable	2.4m												
For two storey apartments	2.7m for main living area floor, 2.4m for second floor, where its area does not exceed 50% of the apartment area.												
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<p>Apartment Size and Layout</p> <p>Apartments are required to have the following minimum internal areas:</p> <table border="1" data-bbox="264 439 831 624"> <thead> <tr> <th>Apartment type</th><th>Minimum internal area</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>35m²</td></tr> <tr> <td>1 bedroom</td><td>50m²</td></tr> <tr> <td>2 bedroom</td><td>70m²</td></tr> <tr> <td>3 bedroom</td><td>90m²</td></tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p> <p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space). Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments; • 4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Consistent</p> <p>The minimum size of all bedrooms is consistent with the requirements of this Clause.</p>
Apartment type	Minimum internal area										
Studio	35m ²										
1 bedroom	50m ²										
2 bedroom	70m ²										
3 bedroom	90m ²										

<p>Private Open Space and Balconies</p> <p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>Not Applicable</p> <p>The private open space requirement is stipulated under SEPP HSPD 2004.</p>
Dwelling Type	Minimum Area	Minimum Depth														
Studio apartments	4m ²	-														
1 bedroom apartments	8m ²	2m														
2 bedroom apartments	10m ²	2m														
3+ bedroom apartments	12m ²	2.4m														
<p>Common Circulation and Spaces</p> <p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>Consistent</p> <p>The maximum number of apartments off a circulation core on a single level is less than eight.</p>															
<p>Storage</p> <p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	<p>Consistent (subject to condition)</p> <p>The proposed building includes resident storage areas for all units within the building and as well as within the basement levels.</p> <p>A condition of consent could be imposed, if the application was recommended for approval to ensure the proposed storage areas are allocated in accordance with the size requirements of the ADG for the respective units.</p>					
Dwelling Type	Storage size volume															
Studio apartments	4m ²															
1 bedroom apartments	6m ²															
2 bedroom apartments	8m ²															
3+ bedroom apartments	10m ²															
<p>Acoustic Privacy</p> <p>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms</p>	<p>Consistent (subject to condition)</p> <p>The nature of the proposed use is unlikely to generate significant noise emissions associated with the occupation of the development, with the exception of air conditioning systems. A suitable condition could be imposed if the application was worthy of approval.</p>															
<p>Noise and Pollution</p> <p>Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.</p>	<p>Consistent</p> <p>The noise and pollution impact of the development is satisfactory.</p>															
<p>Configuration</p>																

<p>Apartment Mix</p> <p>Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.</p>	<p>Consistent</p> <p>The apartment mix is satisfactory.</p>
<p>Facades</p> <p>Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.</p>	<p>Consistent</p> <p>The development is respectful of the surrounding character, therefore the facade treatment is considered to be appropriate to enhance the streetscape and character of the area.</p>
<p>Roof Design</p> <p>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accommodation and open space.</p>	<p>Consistent</p> <p>The roof design of the development responds to the adjacent building and is considered to be satisfactory.</p>
<p>Landscape Design</p> <p>Was a landscape plan submitted and does it respond well to the existing site conditions and context.</p>	<p>Consistent</p> <p>Landscape plans have been submitted with the application, providing detailed plans for the landscape treatment and is satisfactory.</p>

Planting on Structure When planting on structures the following are recommended as minimum standards for a range of plant sizes:					Consistent Refer to Principle 5 above and Landscape referral comments.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	
Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	
Shrubs			500-600mm		
Ground Cover			300-450mm		
Turf			200mm		
Awning and Signage Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.					Not Applicable The DA does not propose any awning or signage.
Performance					
Energy Efficiency Have the requirements in the BASIX certificate been shown in the submitted plans?					Consistent A BASIX certificate report has been prepared for the development. The BASIX certificate confirms that required targets for water, thermal comfort and energy efficiency will be met.

Water Management and Conservation Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Consistent Water management and conservation through the means of retention of stormwater for reuse has been assessed as compliant and further, compliance with the supplied BASIX Certificate can be conditioned, if the application considered for approval.
Waste Management Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	Consistent Subject to condition.
Building Maintenance Incorporates a design and material selection that ensures the longevity and sustainability of the building.	Consistent The application includes a Schedule of Materials and Finishes which ensures the longevity and sustainability of the building.

Warringah Local Environment Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal is the development consistent with:	
Aims of the LEP?	<p>No*</p> <p>The proposal in its current is found to be inconsistent with the aims of the WLEP 2011.</p> <p>In this regard, Council's assessment in relation to critical issues of bushland, biodiversity, riparian and bushfire, indicate that the proposal does not satisfactorily protect, conserve and manage biodiversity and the natural environment of the site.</p>
Zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	The height of 8.65m is addressed under the SEPP HSPD 2004 section of this report	1.77%	N/A (refer to SEPP)

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	N/A
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
5.9 Preservation of trees or vegetation	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone R2 Low-Density Residential

Land use definition: WLEP 2011	Permitted or Prohibited
Senior's Housing	Prohibited [Permissible via SEPP HSPD 2004]

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

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

The development will provide self-contained dwellings designed specifically for seniors or people with a disability and therefore the development ensures that the housing stock caters for a broad cross-section of the community.

The proposed design of the development has sought to minimise the impact on the adjoining low-density residential environment, through the incorporation of landscape buffers, generous setbacks and recessed facades.

The development is considered to be consistent with this objective.

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

The proposal does not provide any other land use, therefore this objective is not applicable to the proposed development.

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

The landscape plans submitted with the application provide for an improved and high-quality landscape outcome for the site, which will ensure that the proposed development is characterised by a landscape setting.

The development is considered to be consistent with this objective.

ASSESSMENT OF CLAUSE 4.6 VARIATION REQUEST

The application has been lodged pursuant to SEPP HSPD 2004, which contains a Building Height Development Standard, which prevails over the height standard within WLEP 2011.

The following assessment of the request to vary the requirements of Clause 40 – Building Height of SEPP HSPD 2004 is assessed under the provision of Clause 4.6 taking into consideration the questions established in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

Clause 40 (4) (a) of SEPP HSPD 2004

A request to vary the development standard for the 8.0m building height limit has been made under clause 4.6 in relation of clause 40 (4) (a) of the SEPP HSPD 2004, as mentioned earlier in this report.

The development proposes a maximum height of 8.65m (to the underside of the ceiling), which does not comply with the 8.0m height requirement by 0.65m, which equates to an 8.1% variation to the building height standard.

Clause 4.6, 'Exceptions to development standards of the standard instrument LEP' is the mechanism by which an applicant's request to vary a development standard can be considered. Clause 4.6 provides flexibility in applying certain development standards on the following grounds:

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.*
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 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 the concurrence of the Director-General has been obtained.*

The provisions of clause 4.6 fall into two distinct parts, those for which the consent authority must be 'indirectly satisfied' (clause 4.6(4)(a)(i)) through the clause 4.6 variation request and those for which the consent authority must be "directly satisfied" (clause 4.6 (4)(a)(ii)).

If the consent authority finds that the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority cannot be satisfied that the development will be in the public interest for the purposes of clause 4.6(4)(a)(ii) and cannot uphold the clause 4.6 variation request.

Whether compliance with the standard is unreasonable and unnecessary in the circumstances of the case

The appropriate methodology for the consideration of this question is enunciated in the decision of Chief Justice Preston in *Wehbe v Pittwater Council*. In this decision, the Chief Justice summarised the case law on the consideration of this question and expressed the view that there are five ways in which an applicant may demonstrate that compliance with a development standard is unreasonable or unnecessary.

Applicant's Written Request

The Applicant's written request of Clause 4.6 as contained in the Statement of Environmental Effects or Clause 4.6 Report argues, in part:

- *In terms of bulk and scale, the proposed development has a two storey form which is visually compatible with existing two storey built form on the site located to the east at William Charton Village, which will be retained. The two storey form is also compatible with the built form and scale of buildings on adjoining allotments, including the site to the south which is also a Seniors Housing development.*
- *The building height breach can be attributed in part to site topography which slopes significantly from north to south. The development has been designed to respond to topography by terracing building mass, however where height breaches occur they are largely unavoidable without incorporating level changes throughout the development, which is not desirable in a development housing the elderly, where level graded access is necessary.*
- *The proposal will provide a well-designed and appropriate independent living development which will not create a significant impact on adjoining properties.*

The Applicant's written request (attached to this report) has demonstrated that the objectives of the development standard are achieved. As discussed below, the non-compliance is considered to be minor and found to be consistent with the objectives of the standard.

1. Whether there are sufficient environmental planning grounds to justify contravening the development standard

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ stated:

- i. *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.*

- ii. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

The applicant's justification has been prepared on the grounds of there being sufficient environmental planning grounds. As such, the grounds for the variation that are particular to the circumstances of the proposed development are that the site is sloping and the proposed height responds to the existing topography. In view of the particular circumstances of this case, strict compliance with Clause 4.3 of the LEP is considered to be both unnecessary and unreasonable on the following environmental planning grounds:

- The proposal is consistent with the intent of Clause 4.3 which is to maintain the character of the area. The proposal achieves this outcome, notwithstanding the proposed numerical variation;
- In this instance, it is considered that removal of the non-complying elements to achieve strict compliance would not result in an improved planning outcome – the additional height does not cause any material impact in terms of privacy or view loss to neighbouring residential areas, or adverse overshadowing to residential properties or the public domain. The variation results in an improved internal amenity for the occupants of this development and a built form in keeping with adjoining development and in essence would result in a better planning outcome;
- The development has been designed to respond to the topography by ‘terracing’ the building mass, where the height breaches occur they are largely unavoidable without incorporating level changes throughout the development, which is not possible in an seniors housing development, where level graded access is necessary; and
- The amenity of adjoining properties is not significantly impacted on by the non-compliance, and the proposed non-compliance will not result in any view impacts.

Objectives of the development standard

There are no underlying objectives of the standard within Clause 40 of SEPP HSPD 2004, therefore it is appropriate for the purpose of this assessment to use the underlying objectives as prescribed by Clause 4.3 – ‘Height of Buildings’ of the WLEP 2011 to relevantly determine the suitability of the non-compliance associated with the proposed development.

The objectives of Clause 4.3 are as follows:

- (a) To ensure that buildings are compatible with the height and scale of surrounding and nearby development**

Comment:

It is not uncommon for senior's housing developments to be somewhat different in character, form or scale to the types of development generally envisaged in R2 Low Density Residential Zones. The

development within the site, through its historical development, is already inconsistent with the general built form principles of the R2 zoning.

The proposed built form and breaking-up of the building mass will ensure the development fits comfortably within its local context. The overall height and scale of the proposed development is not considered excessive and is consistent with the remainder of the development that will be retained within the site.

The proposed development is considered to be compatible with the height and scale of surrounding and nearby development. The substantial articulation of the built form relates favourably to the scale and height of surrounding and nearby development.

The proposed height and scale of the buildings is considered to be an improved design outcome for the site and is consistent with that envisaged for the site.

The development is considered to be consistent with this objective.

(b) To minimise visual impact, disruption of loss of privacy and loss of solar access

Comment:

The proposed development raises no significant external amenity impacts on adjoining developments in terms of loss of views, privacy or overshadowing.

The development is considered consistent with this objective.

(c) To minimise the adverse impact of development on the scenic quality of Warringah's coastal and bush environments.

Comment:

The development will not have an unreasonable impact on the scenic quality of the area covered by the WLEP 2011 and its coastal and bush environments. The buildings are broken-up through variation of the building form and use of appropriate colours and finishes, which are consistent with the surrounding coastal and bush environment and will assist in reducing any impact on these environments.

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

Comment:

The substantial articulation of the built form, including the breaking-up of the mass of the buildings, and the use of high-quality materials and finishes, will ensure the development will not have an unreasonable visual impact when viewed from the adjoining and nearby public spaces.

2. Public interest – Development consistent with the zone objectives and objectives of the development standard

In assessing the variations sought, consideration must be given to the consistency of the proposal with the underlying objectives of the R2 Low Density Residential zone.

An assessment of the proposed development against the objectives of the R2 Low Density Residential zone is provided under the zoning section of this report, where it was found that the proposed development is consistent with the zone objectives.

Public Benefits

The proposed variation to the height control of the SEPP HSPD 2004 does not result in a loss of amenity to the adjoining properties and is therefore considered to be acceptable particularly when balanced against the benefits of the development which are:

- The redevelopment of the site that will provide visual and amenity improvements to the area;
- The additional building height will not reduce privacy, increase overshadowing or present unacceptable visual impacts to surrounding properties. The shadow diagrams accompanying the application demonstrate that appropriate solar access will be retained to the adjoining properties; and
- It is considered that the proposed height variation will not be contrary to the public interest.

The assessment above demonstrates that the proposal is consistent with the objectives of the building height standard.

Concurrence of the Director-General

Clause 4.6(4) (b) requires that the concurrence of the Director-General has been obtained.

Circular PS 18-003, issued on 21 February 2018, advised that Local Planning Panels may assume the Secretary's concurrence where development standards will be contravened.

Clause 5.10 – Heritage Conservation

The site is located in the vicinity of an item of heritage significance being a heritage conservation area, namely "*Manly Dam and Surrounds*" identified under the WLEP2011 as Number "C9".

The proposed development will not significantly impact on the heritage significance of the adjoining Conservation Area for the following reasons:

- The change in levels between the Conservation Area and the subject site;
- The fact that a seniors development already exists on the site; and
- The substantial buffer between the proposal and the conservation area.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
B1 Wall Height	7.2m	The height 8.43m is covered by SEPP (HSPD) 2004	N/A
B5 Side Boundary Setbacks	0.9m - North	9.04m (Roof of Building A)	Yes
	0.9m - South	2.77m (Activity terrace)	Yes
B7 Front Boundary Setbacks	10.0m	59.44m (Roof of Building A)	Yes
B9 Rear Boundary Setbacks	6.0m	153.49m (Pool Building)	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	50%	The LOS is 65.99% (24608.6sqm), however landscaping is covered by SEPP (HSPD) 2004	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
R2 Side Boundary Envelope Exceptions	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
Side Setbacks - R2	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
R2 - All another land in R2 Zone	Yes	Yes
Front Boundary Exceptions - All Zones	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
All another land under R2	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
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
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	No	No
E5 Native Vegetation	No	No
E6 Retaining unique environmental features	No	No
E7 Development on land adjoining public open space	No	No
E8 Waterways and Riparian Lands	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
		(refer to discussion in the referrals section)
E10 Landslip Risk	Yes	Yes

Detailed Assessment

Clause - D6 Access to Sunlight

Site Specific Requirement

Clause 35 under SEPP (HSPD) 2004 establishes precedence for solar access over the WDCP 2011 and states that development is to ensure that adequate daylight is received to the main living areas of neighbours in the vicinity and residents receive an adequate provision of sunlight to substantial areas of private open space.

In the addition to the above, the development is also assessed against the requirements of clause D6 of the WDCP 2011.

Impact on the Adjoining Properties

The shadow diagrams submitted with the application show that the shadow cast by the proposed development will generally fall within or marginally beyond the boundaries of the site. Therefore, the impact of the proposed development on the adjoining properties is found to be satisfactory.

Impact on the proposed development

The shadow diagrams indicate that the development will result in overshadowing of varying degrees to the new buildings on site, including the newly proposed internal courtyard. However, given the density of the existing and proposed development, it is considered that direct sunlight at all times of the day is unachievable and that a degree of overshadowing is both inevitable and unavoidable.

In this regard, the proposed development is found to satisfy the solar access requirements of the SEPP (HSPD) 2004 and WDCP 2011.

Clause D9 - Building Bulk

Clause D9 seeks to minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

In respect to the requirements of this Clause, Council's Urban Designer has reviewed the proposed development and has assessed the proposal with respect to building bulk and has raised no objection to the design of the development. Accordingly, it is considered that proposal represents good design and innovative architecture and will enhance the urban environment. The visual impact of the building will be positive.

The proposal is found to be satisfactory in relation to the objectives of this Clause.

Clauses - E2 Prescribed Vegetation, E5 Native Vegetation, E6 Retaining unique environmental features, and E7 Development on land adjoining public open space

Council's Natural Environment sections (Biodiversity) do not support the proposed development due to the significant deficiencies in the application and uncertainties regarding the potential impact on the development on the bushland within the site and within the adjoining public land.

Based on the assessment provided by Council's Natural Environment Sections, the application is recommended for refusal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

This section requires a range of matters to be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats.

Section 1.3 of the EPA Act, 1979 contains the relevant provisions for the assessment of biodiversity issues for all applications. The matters for consideration under section 1.3 include a range of matters that must be considered and Council is required to adopt a conservative approach in its determination of the biodiversity value.

In this case, the assessment of this application has found that the application is deficient in identifying and addressing the management and mitigation of the relevant environmental impacts associated with redevelopment of this site. Therefore, the application is recommended for refusal on this basis.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

The proposal is not subject to the application of Council's Section 94A Development Contributions Plan for reason as discussed in the referral section of this report.

CONCLUSION

The assessment of the application has been carried out having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP 55, SEPP HSPD 2004, SEPP 65, SEPP Infrastructure, WLEP 2011, the relevant codes and policies of Council, including the relevant provisions of the WDCP 2011.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions.

The assessment of this application has found that the application is deficient in identifying the relevant environmental and ecological impacts associated within the subject site, as identified by relevant expert's comments in the referrals section of this report. The NSW RFS has also indicated that there is insufficient information submitted with the application to assess the bushfire management issues associated with the proposed development and has declined to issue its GTA's.

Notwithstanding the above, in terms of the remainder of the assessment, including the planning, urban design, character, landscaping, traffic, stormwater, services infrastructure and noise it has found that the proposal has significant merit and can be supported on these grounds.

The development includes non-compliances with the 8.0m Height of Buildings Development Standard as prescribed under Clause 40 (4) (a) of the SEPP (HSPD) 2004. It is noted that the non-compliance is generally a result of the sloping topography of the site. The variations sought have been assessed under the provisions of Clause 4.6 of the WLEP 2011 where it is found that:

- 1) The proposal in relation to the non-compliance is considered to be consistent with the objectives of the Development Standard and the R2 zone in the WLEP 2011.
- 2) The proposed development is considered to be in the public interest and the proposal is considered to be consistent with the objectives of the Development Standard.
- 3) That there are sufficient environmental planning grounds to justify contravening the development standard; and
- 4) That compliance with the development standard is both unreasonable (due to the topography of the site) and unnecessary (in that full compliance would not necessarily result in a better outcome) in the circumstances of the case.

The public exhibition of the DA resulted in 43 individual submissions, all of which raised concerns with the proposed development. The majority of the submissions raised concerns with regards to environmental impact, incompatibility with the surrounding character of the area, non-compliance with various aspects of SEPP HSPD 2004 and construction related impacts. The issues raised in the submissions have been addressed in the "Public Notification" section of this report.

As a direct result of the application and the consideration of the matters detailed within this report, it is recommended that the Northern Beaches Planning Panel, as the determining authority, refuse this application for the reasons detailed within the "Recommendation" section of this report.

RECOMMENDATION (REFUSAL)

That the Northern Beaches Planning Panel, as the relevant consent authority pursuant to Clause 4.16 (1) (a) of the EP&A Act 1979 (as amended), refuse to grant consent to Development Application No. DA2018/1667 for partial demolition works and construction of a Seniors Housing Development at Lot 2615, DP 752038, No. 181 Allambie Road, Allambie Heights for the following reasons:

1. Pursuant to Section 4.45 of the Environmental Planning and Assessment Act, 1979, the NSW Rural Fire Service has not granted its General Terms of Approval that are required in order for the development consent to be granted.
2. The proposed development is unsatisfactory in respect to Section 4.15 of the Environmental Planning and Assessment Act, 1979, as the application is found to be inconsistent with the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 with regards:
 - a) The proposed development does not satisfy Clause 27 due to the absence of the General Terms of Approval from the NSW Rural Fire Service; and
 - b) The proposed development is inconsistent with the requirements of Clause 29 in relation to its impact on the natural environment as stipulated in Clause 25 (5) (b) (ii).
3. Pursuant to Section 4.15 (1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the aims and objectives of the Warringah Local Environmental Plan 2011, in that insufficient information is provided with the application to fully and properly assess the environmental impacts on the site and adjoining lands.
4. Pursuant to Section 4.15 (1)(a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(1)(a) of the Warringah Development Control Plan 2011, the development is inconsistent with the following Clauses:
 - a) Clause E2 Prescribed Vegetation;
 - b) Clause E5 Native Vegetation
 - c) Clause E6 Retaining unique environmental features;

- d) Clause E7 Development on land adjoining public open space; and
- e) Clause E8 Waterway and Riparian Land

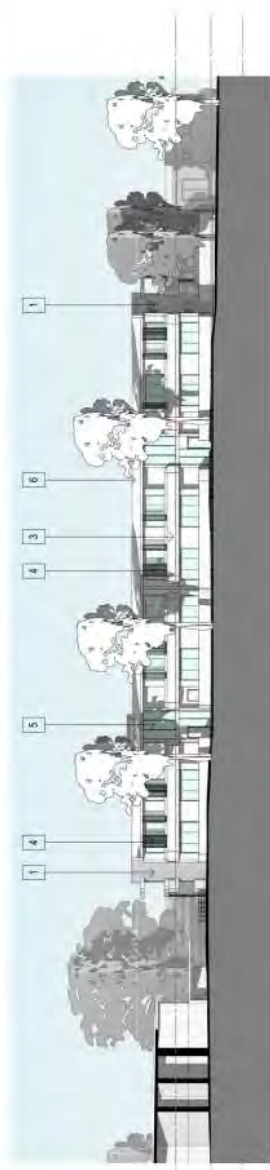


CONTRACTOR'S DECLARATION
I, the undersigned, being a duly qualified and licensed architect, engineer, or other professional person, have prepared the plans and specifications for the above project, and I am not aware of any fraud or deception in connection with the same.

ARCHITECT'S DECLARATION
I, the undersigned, being a duly qualified and licensed architect, engineer, or other professional person, have prepared the plans and specifications for the above project, and I am not aware of any fraud or deception in connection with the same.

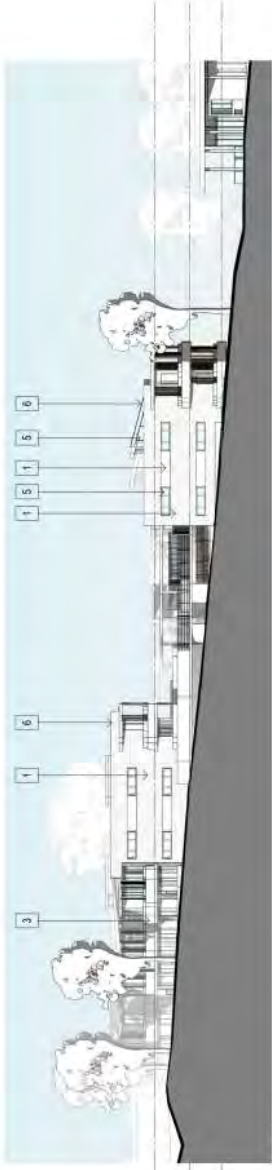
APPROVAL
DATE: 22 June 2019
SIGNATURE: [Signature]
NAME: [Name]
TITLE: [Title]

HOUSE
DA-200



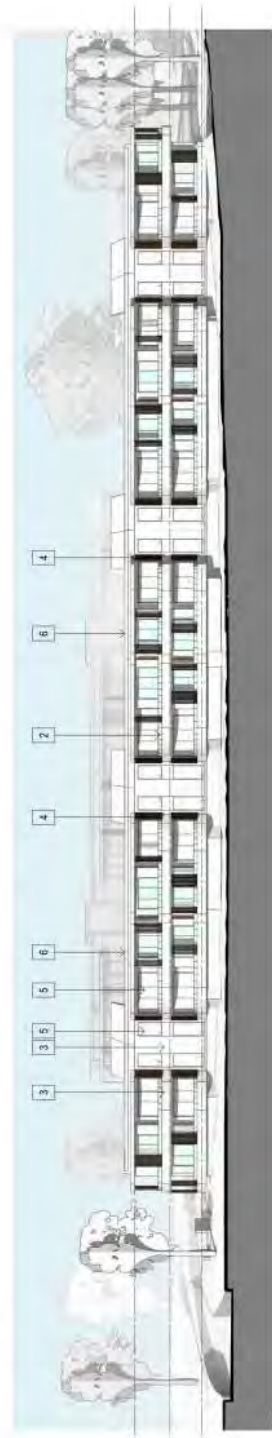
- FFL 133.100
- LEVEL 1
- FFL 130.000
- GROUND FLOOR
- FFL 127.200
- LOWER GROUND

01 NORTH ELEVATION - BUILDING A
SCALE 1:200



- FFL 133.100
- LEVEL 1
- FFL 130.000
- GROUND FLOOR
- FFL 127.200
- LOWER GROUND

02 WEST ELEVATION
SCALE 1:200



- FFL 133.100
- LEVEL 1
- FFL 130.000
- GROUND FLOOR
- FFL 127.200
- LOWER GROUND

03 SOUTH ELEVATION - BUILDING B
SCALE 1:200

AUTHORITY APPROVAL
APPROVED BY: [Signature]
DATE: 22 June 2019
NAME: [Name]
TITLE: [Title]

REVISIONS - BUILDING A & B
DATE: 08/02/16
SCALE: As indicated
PROJECT: 2017019
DRAWING NO: DA-200
PAGE: A

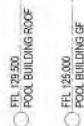
JACKSON TEECE
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4 NORTH ELEVATION - POOL BUILDING
SCALE 1" = 200'



5 SOUTH ELEVATION - POOL BUILDING
SCALE 1/200



6 EAST ELEVATION - POOL BUILDING
SCALE 1:200



4.0 REVIEW OF DETERMINATIONS

ITEM 4.1	REV2019/0002 - 257 HARBORD ROAD, DEE WHY - REVIEW OF DETERMINATION OF MODIFICATION APPLICATION MOD2018/0314 IN RELATION TO AN APPROVED BOARDING HOUSE DEVELOPMENT (DA2013/0324)
AUTHORISING MANAGER	Anna Williams
TRIM FILE REF	2019/301994
ATTACHMENTS	1 ↓ Assessment Report

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. REV2019/0002 for Review of Determination of Modification Application MOD2018/0314 in relation to an approved boarding house development (DA2013/0324) at Lot 1770 DP 752038, 257 Harbord Road, Dee Why subject to the conditions and for the reasons set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2019/0002
Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot 1770 DP 752038, 257 Harbord Road DEE WHY NSW 2099
Proposed Development:	Review of Determination of Modification Application MOD2018/0314 in relation to an approved boarding house development (DA2013/0324)
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Hong Li Zhang Fu Zhen Zhang
Applicant:	Vigor Master Pty Ltd
Application lodged:	17/01/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	20/02/2019 to 09/03/2019
Advertised:	23/02/2019
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 20,000.00

Executive Summary

This report is a review of determination of MOD2018/0314 for modifications to an existing boarding house development which was refused by the Northern Beaches Local Planning Panel (NBLPP) at its meeting dated Wednesday 19 December 2018.

The current application seeks to address the reasons for refusal and has removed the self-storage component of the previous application and proposes smaller storage spaces for exclusive use by the 'boarding house residents'. It is noted that the oversized signage previously attached to the front balcony of the building advertising availability of the storage areas for rent to the general public has been removed. While there are some concerns about the on-going use of the storage areas, a condition

of consent has been included as part of the recommendation which prohibits the leasing of these spaces to external third parties. The current proposal has also sought to address Council's concerns in relation to relocating bicycle storage in front of the building by providing it with the basement area.

Further changes incorporated to address the previous refusal of this application include the reinstatement of one (1) of the three (3) internal common living rooms providing for an increase of two (2) additional boarding rooms.

The application is referred to the NBLPP for determination as the original consent (DA2013/0324) was issued by the previous Warringah Development Application Panel and the modification application under review was determined by the NBLPP.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 1770 DP 752038 , 257 Harbord Road DEE WHY NSW 2099
Detailed Site Description:	<p>The subject site is legally known as Lot 1770 in DP 752038, and is commonly known as No. 257 Harbord Road, Dee Why.</p> <p>The site is located on the eastern side of Harbord Road and is regular in shape with a frontage of 21.645m along Harbord Road and a depth of 66.104m. The site has a surveyed area of 1430.8m².</p> <p>The site is located within the R2 Low Density Residential</p>

zone and accommodates an existing approved boarding house.

Surrounding development consists of residential dwelling houses on the eastern side of Harbord Road with Industrial development on the opposite side of Harbord Road within an Industrial land use area.

The site falls from the rear toward Harbord Road by approximately 5.6m or 8.1%.

Map:



SITE HISTORY

A search of Council's records identified the following previous applications:

DA2008/0675 - This application is for the removal of one (1) *Angophora costata* tree, approximately 15m in height from the site. The application was approved on 15 May 2008.

DA2012/0184 - This application was lodged on 22 February 2012 for demolition of the existing dwelling and construction of a new dwelling. The application was formally rejected on 27 February 2012 as the information submitted with the application was deficient in addressing Council's requirements for a Preliminary Geotechnical Assessment Report and shadow diagrams.

DA2012/0277 - This application was lodged on 14 March 2012 for demolition of the existing dwelling and construction of a new dwelling. Following an initial review of the proposal, a number of issues were raised with the scheme and the application was withdrawn on 22 June 2012.

Pre-Lodgement Meeting - PLM2012/0081

The proposed development was the subject of a pre-lodgement meeting with Council held on 25 October 2012. The plans submitted as part of the pre-lodgement meeting are consistent with the plans submitted as part of DA2013/0324.

DA2013/0324 - This application was lodged on 18 March 2013 for demolition works and construction of a boarding house. The application was granted consent, subject to conditions by the Warringah Development Application Panel on 2 October 2013.

MOD2018/0314 - This modification application was lodged on 25 June 2018 and seeks to modify DA2013/0324 by replacing three (3) of the four (4) communal living areas with new boarding rooms, increasing the capacity of the boarding house to 54 people. The modification also seeks to incorporate thirty four (34) new secure storage areas within the basement, moving the parking for bicycles to in front of the building. The application was refused by the Northern Beaches Local Planning Panel on 20 December 2018.

REV2019/0002 - This review of determination application was received on 17 January 2019 and seeks to review the determination of modification application MOD2018/0314 in relation to an approved boarding house development.

This application is the subject of this assessment.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent to modify development consent DA2013/0324 for a boarding house as follows:

Basement Level

- Convert the originally approved circulation space/maneuvering area into 28 enclosed storage spaces.
- Reconfigure the approved parking layout to accommodate parking predominantly within the rear, eastern half of the basement.
- Relocate the motorbike and bicycle parking (7 spaces each) to the eastern and western ends of the basement.

First Floor Level

- Convert the approved first floor level communal living room at the front north-west corner of the site into a new 30.5m² double boarding room.
- Convert the approved first floor communal terrace at the rear north-east corner of the site into a new 28.3m² double boarding room with a 17m² balcony extending past the existing footprint.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.2(1) of the Act, an applicant for the modification of a development consent for which a council is the consent authority may request the council to review a determination by the council. Council is the consent authority for the modification application MOD2018/0314, and can therefore conduct the review.

In accordance with Section 8.3(5) of the Act, the review must be carried out by:

The review of a determination or decision made by a local planning panel is also to be conducted by the

panel.

Comment: The determination was made by the Northern Beaches Local Planning Panel (NBLPP) and the review has been carried out by the panel.

In accordance with Section 8.3 of the Act, the request for the review must be made and determined within 6 months after the date of determination of the modification application. The application was determined on 20 December 2018 and the notice of determination was issued on 8 January 2019. The review was lodged on 17 January 2019 and is to be considered by the Northern Beaches Local Planning Panel on 12 June 2019, which is within 6 months of the date of determination.

Section 8.3(3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report. A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the S8.2(1)(a) review) and the nature of the intended land use remains the same due to the removal of the previously proposed 'storage facility' use. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3(3) of the Environmental Planning and Assessment Act 1979.

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2013/0324, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.15(1A) of the Environmental Planning and Assessment Act, 1979, are:

**Section 4.55(1A) - Other
Modifications**

Comments

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

Yes

Sufficient information has been provided to enable

Section 4.55(1A) - Other Modifications	Comments
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>Council to ascertain environmental impact.</p> <p>The proposed modification has been amended to reduce the number of includes storage rooms to be incorporated into the basement from 34 to 28. This has been further reduced by condition to 23 storage rooms.</p> <p>The proposal has also reinstated one (1) of the internal common rooms reducing the number of additional boarding rooms to two (2). Subject to further conditions relating to the ongoing use of these areas, the modifications are considered to be of minimal environmental impact.</p> <p>The development, as modified, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2013/0324.</p>
(c) it has notified the application in accordance with:	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.</p>
(i) the regulations, if the regulations so require, or	
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	<p>No submissions have been received for this application.</p>

Section 4.15 Assessment

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

The relevant matters for consideration under Section 4.15 (1A) of the Environmental Planning and Assessment Act, 1979, are:

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

Section 4.15(1a) 'Matters for Consideration'	Comments
environmental impacts on the natural and built environment and social and economic impacts in the locality	addressed under the Warringah Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15(1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15(1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15(1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Landscape Officer	No objections to the proposed modification as it appears that works proposed are internal. If amendments to approved landscape areas are proposed, the application should be re-referred for further assessment.
NECC (Development Engineering)	Development Engineering has no objection to the application as the proposal external works of the building.

Internal Referral Body	Comments
	However, the proposed changing of the internal parking must be referred to Council's Traffic Engineer for assessment.
Traffic Engineer	<p>The proposed basement layout is not acceptable as there is insufficient space to access the new motor bike parking location. in addition, the accessible space does not comply with AS2890.6 (shared space).</p> <p>The layout will be required to be modified as follows:</p> <ul style="list-style-type: none"> • The storage areas located between space 1 and 15 is to be deleted and that area along with space 14 and 15 is to be adjusted to accommodate four (4) spaces. • The proposed accessible space between space 3 and 4 is to be relocated to space 10. The adjacent space 9 is to be delineated as a shared zone for the accessible space and the motorbike parking. <p>Relevant conditions have been recommended to address the required changes to the basement parking area.</p>
Waste Officer	The application was referred to Council's Waste Officer. No objections were raised in relation to the proposed amendments.

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 (Affordable Rental Housing) 2009

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

Division 3: Boarding houses

Clause 25: Definition

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

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

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

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

Clause 26: Land to which this Division applies

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

Clause 27: Development to which this Division applies

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

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

(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.	Not applicable. The site is located within the Sydney region.
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Clause 28: Development may be carried out with consent

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

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed	Compliant/Comment
(1) Density and scale A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP.	Not applicable
	(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP.	Not applicable
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any	Floor space ratios are not applied in WLEP 2011 or WDCP.	Not applicable

	<p>form of residential accommodation permitted on the land, plus:</p> <p>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or</p> <p>(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</p>		
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) building height	if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	The building was approved with a height of 8.4m which complies with the maximum building height of 8.5m. No changes to the approved building height is proposed.	Compliant
(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	No change proposed.	Consistent
(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	<p>The proposed modifications remove two (2) communal living spaces at first floor level being a living room at the western end and a terrace area at the eastern end.</p> <p>While no detail has been provided to demonstrate solar access into these spaces, it is likely due to their orientation east and west that one of the the remaining living areas will receive morning sunlight and one will receive afternoon sunlight access.</p>	Consistent

(d) private open space	<p>if at least the following private open space areas are provided (other than the front setback area):</p> <p>(i) one area of at least 20m² with a minimum dimension of 3.0m is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m² with a minimum dimension of 2.5m is provided adjacent to that accommodation,</p>	<p>The site retains a rear setback area accessed from the rear of the building which is greater than 20m².</p> <p>Further, the on-site Manager's room provides an area adjacent measuring approximately 15m².</p>	Compliant
(e) parking	<p>if:</p> <p>(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any</p>	<p>The proposed review of determination of the modification to the boarding house will increase the total number of boarding rooms to 33 rooms including 1 Manager's Room.</p> <p>Accordingly, the development in accordance with the amendment to the ARH SEPP dated 1 June 2018 is required to provide seventeen (17) spaces for the boarding rooms and one (1) space for the on-site manager. A total of 18 spaces are required. The development as modified will provide seventeen (17) spaces. A deficiency of one (1) parking space.</p> <p>As the modifications seek to reclaim part of the basement area for storage spaces, it is</p>	Not compliant. Subject to condition to reinstate one (1) additional parking space.

	development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,	considered that one bank of storage spaces between space 1 and 15 be reinstated as a parking space. This has been recommended as a condition of consent.	
(f) accommodation size	if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least: (i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or (ii) 16 square metres in any other case.	The boarding room sizes are compliant.	Compliant
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	All boarding rooms within this development contain private bathroom and kitchen facilities.	Consistent
	(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	The development does not comply with the standard set out in (2)(e) (iia) relating to parking provisions. The application does not provide any justification or environmental planning grounds to support a variation to this clause of the SEPP. Council does not support lack of parking provision in this instance as additional space within the basement area which might have been made available for this purpose is to be utilised for storage.	Inconsistent

Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	Existing ground floor communal living space is to be retained.	Compliant
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m ² ,	The additional two (2) double boarding rooms comply with the maximum floor area.	Compliant
(c) no boarding room will be occupied by more than 2 adult lodgers,	The original consent includes a condition (No.50) which restricts the occupancy of each room within the approved boarding house. Should this modification be considered for approval, this condition would require amendment to incorporate the additional two (2) boarding rooms.	Compliant, by condition
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Each room is equipped with private bathroom and kitchenette facilities. In addition, a full kitchen, bathroom and laundry are provided at ground floor level.	Consistent
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The modified application would result in 32 boarding rooms accommodating up to 52 people. The on-site accommodation for a Manager was approved as part of the original consent. This room at ground floor level is to be maintained as part of the modifications.	Consistent
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such	Not Applicable	Consistent

a use,		
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	The modified basement layout incorporates internal parking for seven (7) motorcycles located at the rear of the basement and seven (7) bicycles adjacent to the vehicle entry to the basement.	Compliant. Subject to condition relating to the inclusion of a shared zone adjoining the motorbike parking and the relocated accessible parking space to ensure adequate space is available to manoeuvre motorbikes into the allocated area.
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	The adjective 'minor' can be defined as " <i>unimportant, having little importance, influence, or effect</i> ,". Given the nature of the full scope of the amendments sought by this modification, they are not considered minor in nature. Accordingly, clause (1) is considered to apply in this instance.	Inconsistent

Clause 30A: Character of the local area

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

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

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

Comment:

the approved 'boarding house' is a permissible land use where the full encompassing physical and visual impact of the originally approved 30 boarding room development were considered compatible based on the proposals compliance with and design response to the relevant controls applying at the time.

Subject to a condition of consent requiring the use of the storage areas to be used only by current residents of the boarding house and not made available for lease to third party interests, the addition of storage within the basement and an increase of boarding rooms does not adversely dilute the compatibility of this development within the R2 low density residential zone and does not change the physical appearance of the development.

In this regard, it is considered that the scale of the development is compatible with the streetscape and consistent with the first principle.

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

Comment:

The proposed modifications do not change the overall size of the main built form of the development as it sits physically within the street.

In this regard, the development is considered to be compatible with the scale of surrounding development and consistent with the second principle.

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

Comment:

The proposed development no longer includes any new works within the front setback of the site.

In this regard, it is considered that effective methods have been employed in the design of the development to reduce its visual dominance and is consistent with the third principle.

- *The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.*

Comment:

The proposed development does not include any changes that would be visible from the front facade of the building. The modification will not change the way the development currently integrates with the streetscape.

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

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

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

Comment:

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

Constraints on the development potential of surrounding sites

The proposed modification works are not considered to impact on the development potential of surrounding sites.

Conclusion to character assessment

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

This matter does not warrant the refusal of the Development Application.

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

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Council Contributions Plan 2018

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to REV2019/0002 for Review of Determination of Modification Application MOD2018/0314 in relation to an approved boarding house development (DA2013/0324) on land at Lot 1770 DP 752038, 257 Harbord Road, DEE WHY, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
257MOD - Basement Plan - Rev A	16.01.2019	Vigor Master
257MOD - Ground Floor Plan - Rev A	16.01.2019	Vigor Master
257MOD - First Floor Plan - Rev A	16.01.2019	Vigor Master

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:

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

B. Modify Condition 49. Allocation of Spaces to read as follows:

Car parking spaces provided within the basement shall be provided, made accessible and maintained at all times. One (1) space must be appropriately marked and permanently allocated to the on-site Manager. The remaining sixteen (16) spaces must be used solely by the current occupants of the boarding house.

Reason: To ensure that adequate parking facilities to service the development are provided on the site. (DACPLG01)

C. Modify Condition 50. Occupancy of Boarding House to read as follows:

The building is to contain a maximum of 52 persons, being no more than two (2) persons in rooms marked 1, 4, 5, 8, 9, 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, New Room 1 and New Room 2 and no more than one (1) person in rooms marked 2, 3, 6, 7, 10, 11, 12, 17, 18, 19, 29, 30 (excluding the Boarding House Managers Room). In order to maintain this occupancy rate, a sign is to be erected immediately adjacent to the doorway accessing the building detailing the maximum sleeping capacity of the occupancy.

Reason: To ensure the amenity of the occupants (DACPLG23)

D. Delete Condition 42. Occupancy of Boarding House to read as follows:

Condition Deleted.

E. Add Condition 48A. Occupancy of Boarding House to read as follows:

A maximum number of 32 boarding rooms (excluding the Boarding House Manager's Room) are to be provided for the building, being no more than 1 persons per designated single bedroom or 2 persons per designated double bedroom.

Reason: To ensure internal amenity is maintained (DACPLGOG1)

F. Add Condition 52. Maintenance of the on-site Manager's Room to read as follows:

The on-site Manager's Room located on the Ground Floor Level of the building shall be used only by the on-site Manager and is not to be let as an additional boarding room.

Reason: To ensure compliance with the requirements of SEPP Affordable Rental Housing (2009) and this consent (DACPLGOG2)

G. Add Condition 53. Use of Basement Storage Areas to read as follows:

The twenty-three (23) storage areas identified and approved within the Basement are to be used by the current occupants of the boarding house only. These storage areas are not to be made available to any external third party users.

Reason: To ensure compliance with the requirements of this consent (DACPLGOG3)

H. Add Condition 53. Maintenance of the internal common living room areas to read as follows:

The internal common living room areas identified on the Ground Floor Level at the western frontage (adjacent to Room 1) and at the rear eastern end of the building (adjacent to Room 8) are to be maintained and available for use by all occupants of the boarding house at all times. These areas are not to be closed off for any other use.

Reason: To ensure compliance with the requirements of SEPP Affordable Rental Housing (2009) and this consent (DACPLGOG2)

I. Add Condition 54. Basement Parking Layout to read as follows:

The basement parking layout is to be modified as follows:

- The storage areas indicated to be located between space 1 and space 15 are to be deleted and that area along with space 14 and 15 is to be adjusted and line marked to accommodate four (4) parking spaces.
- The proposed accessible space located between space 3 and 4 is to be relocated to space 10 and that space is to be marked as a standard parking space. The adjacent space 9 is to be delineated as a shared zone for the accessible space and the motorbike parking.
- The bicycle parking shall provide wall mounted brackets with 0.5m horizontal width between each bracket and a circulation depth of 750mm.

Reason: To ensure adequate and compliant parking is provided for the development (DACTRGOG1)

J. Add Condition 55. Fire Safety Matters to read as follows:

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 Principal Certifier prior to the issue of any Interim or 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.