

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 19 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

Peter Biscoe	Chair
Annelise Tuor	Town Planner
Graham Brown	Town Planner
Ray Mathieson	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 19 June 2019
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1:30pm**

1.0	DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 12 June 2019	
3.0	DEVELOPMENT APPLICATIONS	5
3.1	DA2019/0039 - 14 Herbert Street, Manly - Alterations and additions to the existing dwelling house	5
3.2	DA2017/0947 - 1114-1118 Pittwater Road, Collaroy - Construction of coastal protection works.....	50
3.3	DA2019/0478 - 8 Pacific Parade, Manly - Demolition works, construction of a semi-detached dwelling and land subdivision	106
3.4	MOD2018/0654 - 41 Marine Parade, Avalon - Modification of Development Consent N0279/16/R granted for demolition of existing structures and construction of a new dwelling	163
3.5	DA2019/0123 - 80-84 Mona Vale Road and 22 Jubilee Avenue, Mona Vale - Use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market.....	188

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 12 JUNE 2019

RECOMMENDATION

The Panel notes that the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 12 June 2019 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	DA2019/0039 - 14 HERBERT STREET, MANLY - ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING HOUSE
REPORTING OFFICER	Sarah McNeilly
TRIM FILE REF	2019/323464
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 member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*.

RECOMMENDATION OF INDEPENDENT PLANNING CONSULTANT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0039 for alterations and additions to the existing dwelling house at Lot 24 DP 456038 & Lot 23 DP 4449, 14 Herbert Street, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0039
Responsible Officer	Sarah McNeilly (Consultant Planner)
Land to be developed (address)	Lot 24 in DP 456038 & Lot 23 in DP 4449 14 Herbert Street, Manly
Proposed Development	Alterations and additions to an existing dwelling including in ground pool.
Zoning:	R1 General Residential (MLEP2013)
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Christopher Munro Sarah Munro
Applicant:	Sarah Munro
Application lodged:	18 January 2019
Application Type:	Local
State Reporting category:	Residential – Alterations and Additions
Notified:	24 January 2019 to 11 February 2019
Advertised:	Not Advertised
Submissions:	0
Recommendation:	Approval
Estimated Cost of Works:	\$390,000

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.

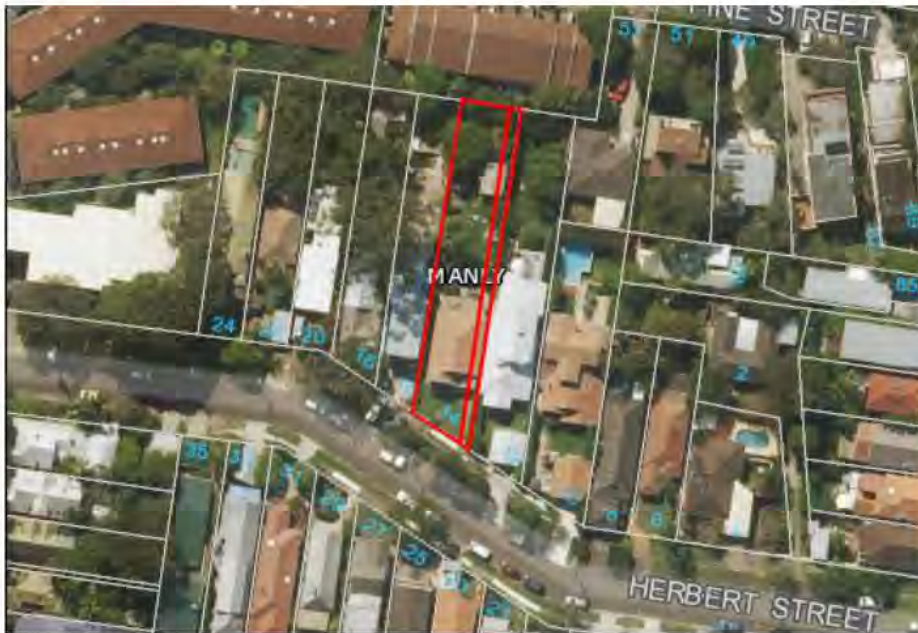
SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan – 4.3 Height of Buildings
Manly Development Control plan – Schedule 3

Manly Development Control Plan - 4.1.4.1 Street front setbacks

SITE DESCRIPTION

Property Description:	Lot 24 in DP 456038 & Lot 23 in DP 4449 14 Herbert Street, Manly
Detailed Site Description:	<p>The subject site is located on the northern side of Herbert Street, approximately 100 metres west of its intersection with Birkley Road in Manly. The site is made up of 2 lots and is irregular in shape with a splayed frontage of 12.35 metres and rear boundary of 11.455 metres and side boundaries of 62.29 metres (west) and 68.594 metres (east). Lot 24 has an area of 146.6 m² and lot 23 has an area of 598.9 m², resulting in a total area of 745.5m². The site slopes from the street front to the rear (north to south).</p> <p>The site is zoned R1 General Residential and is currently developed with a two storey dwelling constructed with brick and a tiled roof with a granny flat on the lower ground floor. Two sheds are located in the rear yard, which is a gradually sloping informally turfed garden area. On site parking is not currently available, although a driveway crossover is provided to the site across the large grass pedestrian strip.</p> <p>The frontage of the lot is turfed, and a low sandstone block fence with fairly dense garden screens the view of the dwelling from the street.</p> <p>Adjoining and surrounding development is characterised as detached dwellings.</p>



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for the site. The land has been used for residential purposes for an extended period of time.

PROPOSED DEVELOPMENT IN DETAIL

The Development Application seeks consent for alterations and additions to the existing dwelling including a two storey addition at the rear, internal alterations, a car space and an in-ground pool in the rear yard.

The lower ground floor will be altered to:

- Demolish rooms at rear
- Reconfigure existing rooms as bedroom 4, bathroom, laundry
- Construction of rumpus room at rear
- Use as secondary dwelling/granny flat abandoned

The ground floor will be altered to:

- Demolish sunroom
- Reconfigure existing living/ kitchen
- Provide internal stair access to lower ground floor
- Construction of new covered deck

Pool (rear yard)

- New partly in-ground pool with timber decking
- Landscaping of rear yard including paved areas, retaining walls, stairs, firepit

Front yard

- Car space is provided on eastern side of site
- New pedestrian path
- Bin storage area
- landscaping

Note: Amended plans were submitted on 9 April and 8 May 2019 in response to the referral comments received for Council's Engineers and additional details required to assess swimming pool impacts, following assessment of the original DA plans.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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	Not 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 regulations	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. Should the Development Application be approved, these matters will be addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, 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. Should the Development Application be approved, this</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>matter will be 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. Should the Development Application be approved, this matter will be 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). Should the Development Application be approved, this matter will be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>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>The proposed development will have a positive impact on the built environment and is appropriate in its scale and design.</p> <p>The proposed development will not have a detrimental social impact on the locality.</p> <p>The proposed development will not have a detrimental economic impact on the locality.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	The application was notified for a period of 14 days from 24/1/2019 to 11/02/2019. The public exhibition resulted in no objections.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in the assessment which would justify the refusal of the application.

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

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

MEDIATION

Not applicable.

REFERRALS

Internal Referrals

Internal Referral Body	Comments
Landscape Officer	<p><u>Officer comments</u></p> <p>The landscape component of the proposal is acceptable subject to the completion of landscaping, and the protection of existing trees and vegetation.</p> <p>The 2.4 metre high mesh fencing along common boundary, as proposed within the landscape plans is not supported, as common owners agreement should be sought on this matter. Screen planting as an alternative is to be considered.</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</p>

	<p>Vegetation; 4.1.5 Open Space and Landscaping; and 4.1.9 Swimming Pool, Spas and Water Features.</p> <p>A Landscape Plan is provided with the development application. No Arboricultural Impact Assessment is required as no existing vegetation of significance is proposed for removal. One small Bottlebrush of 3m height (non prescribed / protected tree) is proposed for removal.</p> <p><u>Recommendation</u> Recommended for approval, subject to conditions</p> <p><u>Planners Comment:</u> A condition of consent will be included requiring the deletion of note 7 on the landscape plan which proposes 2.4 metre high mesh fencing along common boundary. The condition will require screen planting in this location instead.</p>
Engineers	<p><u>Officer comments</u> The application proposed a combined charged system and absorption system to discharge the on site stormwater.</p> <p>The proposed boundary pit of the charged system is located in the front yard at RL 23.70 which is about 600-700 mm lower than the gutter invert on the street. The charged system does not have adequate head to discharge the water from the boundary pit into the street gutter. It may also cause a flooding issue in the front yard area.</p> <p>Also, the absorption system has been proposed in the rear of the property to discharge the collected stormwater from the shed and hard surface areas. In accordance with Council's Manly Specification for On site stormwater Management 2003, a geotechnical information at the location of the proposed absorption system must be provided to ensure the soil has sufficient absorptive characteristics. However, there is no information about the absorption rate of the soil has been provided.</p> <p>As the above, Development Engineering cannot support the application. The applicant shall amend the stormwater management plan.</p> <p><u>2nd referral</u> A revised stormwater plan has been submitted on 9/4/2019. Development Engineering has no objection to the application subject to the following conditions of consent.</p>

External Referrals

Referral Body External	Comments	Consent Recomm ended
Ausgrid	The proposal was referred to Ausgrid. No response has been received within the 21 day period and it is therefore assumed that no objections are raised and no conditions recommended.	Yes

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 – Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate number A321984 dated 15 January 2019 has been submitted for the alterations and additions to the dwelling and construction of the pool. The certificates indicates compliance with the state government's requirements for sustainability.

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 was referred to Ausgrid on 23 January 2019. No response has been received within the 21 days and it is accordingly assumed there are no issues or objection to the proposal proceeding.

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	8.5 metres	Existing 8.54m Proposed 8.75m	- 0.25m	Unchanged No
Floor Space Ratio	0.6:1	0.31:1	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No *
4.4 Floor Space Ratio	Yes
4.6 Exceptions to development standards	Yes
6.1 Earthworks	Yes
6.4 Stormwater Management	Yes
6.12 Essential Services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Requirement	8.5m
Proposed	8.75m
Is the planning control in question a development standard?	Yes
If numerical enter a % variation to the requirements	2.94%

The following assessment of the variation to Clause 4.3 - Building Heights development standard has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 and an assessment of the request to vary the development standard in accordance with the requirements of Clause 4.6 is provided below:

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 Building Height 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.

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

cl 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. The applicant's written request has demonstrated consistency with the objectives of the Building Height development standard as detailed below.:

- The applicant's written request submits that the proposed height of the building is consistent with that of neighbours, and that the variation to the standard is a result of the topography of the land.
- The request states that height variation does not change the scale of the structure itself, being only a small portion of roof line at the rear of the site.
- The request submits that the additional height will not be visible from the street and allows for continuation of the existing roofline.
- The request submits that sunlight access is achieved to public and private open spaces.

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:

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

The Applicant's written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard, as detailed below:

- The applicant's written request submits that the overall result is an architecturally pleasing development, which will not be to the detriment of neighbours or the public domain.
- The request states that the shadow resulting from the minimal additional height is also negligible, the highest point being the roof ridge which is comparable to neighbours.
- The request states that the variation to the height is only at the rear of the dwelling for a limited portion at a low level and will have a negligible impact on the key private open space of adjoining properties.

In doing so, the applicant's written request has demonstrated that the proposed development is of a good design and will protect the amenity of the surrounding built environment therefore satisfying cl 1.3 (c)(g) of the EPA Act.

In this regard, the applicants 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). cl 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 involves a two storey rear addition. The proposed ridge line is similar to other dwellings along the northern side of Herbert Street, with the non-compliant section of the building resulting from the fall of the land and retention of the existing roof ridge line. Given the above, the proposed dwelling ensures that the building height is consistent with surrounding development and has regard to the topography of the land.

b) to control the bulk and scale of buildings,

Comment:

The bulk of the building from all viewpoints is consistent with the neighbouring developments and the desired character of the area. The front elevation will retain its existing form and the remainder of the dwelling will step with the site.

c) to minimise disruption to the following:

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

Comment:

The proposal will not result in any unreasonable loss of views to and from private and public spaces.

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

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impact on habitable rooms of the adjoining properties and public open spaces.

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.

Conclusion:

The proposed development satisfies the underlying objectives of the Building Heights development standard.

Zone objectives

The underlying objectives of the R1 General Residential zone

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

Comment:

The proposal retains the existing residential use of the site.

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

Comment:

The proposal retains the existing housing type and density.

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

Comment:

N/A

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation to a numerical standard is not greater than 10%. Following the release of PS18- 003, Council received correspondence from a delegate of the Secretary which granted Council staff, for 12 months from 1 March 2018, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary the special height provisions standard by more than 10% via determination at the DDP.

As the development varies the development standard by no more than 10% the concurrence of the Secretary can be assumed by Council.

Mainly Development Control Plan

Built Form Controls

Built Form Control – site area 745.5m²	Requirement	Proposed	Complies
4.1.2.1 Wall Height	7.1 m (west) 7.1m (east)	6.3m 5.8m	Yes
4.1.2.2 Number of storeys	2	2	Yes
4.1.2.3 Roof Height	2.5m	2.5m	Yes
4.1.4.1 Street front setbacks	Prevailing building line	Dwelling (unchanged) 8m - 11.6m Car space 0.5m	Yes No
4.1.4.2 Side setbacks and secondary street frontages	East - 2.m 0.9m West – 2m	Ground 2.105m Lower Ground 0.9m Ground 2m Lower Ground 2m	Yes Yes Yes
4.1.4.4 Rear Setback	8m	31m (dwelling) 21m (pool)	Yes

4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space area OS Area 3	Total Open Space 55% of site area 410m ²	460.8m ²	Yes
	Open Space Above ground - maximum (40% of open space) 164m ²	28m ²	Yes
4.1.5.2 Landscaped Area	Landscaped Area 35% of Open Space 143m ²	258m ²	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	➤ 18m ²	Yes
4.1.6.1 Parking Design and the Location of garages, Carports or Hardstand Areas	Maximum 50% frontage	23%	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1m	Yes
	1m curtilage/1.5m water side/rear setback	2m	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	Existing – 0 Proposed – 1	No*

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

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

Description of non-compliance

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

The development proposes an open car space within the front setback at 0.5m.

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 proposed space within the front setback is similar to other development within the street. It is open and does not dominate the frontage and is not to the detriment of allowing a landscaped view from Herbert Street. Herbert Street is very narrow, and parking is at a premium. Off street parking is needed where possible to provide and the proposal for this site is consistent with the objectives and a reasonable and appropriate planning solution for the site.

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.*
- See also objectives at paragraph 3.4 Amenity.*

Comment:

The proposed space within the front setback maintains an open area with no structure proposed. Additionally, the lower level of the site and the significant grass verge allows ensures minimisation of impacts.

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

Comment:

The space is proposed within the front setback is due to the location of the existing dwelling and the restriction this places on the site. The location is reasonable, particularly given the limited street parking available in the location.

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:

Ample and appropriate landscaped area and planting is achieved on the site. The provision of the parking space within the frontage is not to the detriment of the achievement of this objective.

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

Comment:

N/A

3.4.1 Sunlight Access and Overshadowing

Merit consideration:

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

Objective 1) To provide equitable access to light and sunshine.

Comment:

The proposed development will allow for adequate levels of light and sunshine to penetrate the subject site and adjoining properties.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The proposed ground floor extension and first floor addition will minimally impact on shadowing to both Herbert Street neighbours at alternate times of the day. Due to the orientation of the site, this is shared, and neither will have an unreasonable loss of solar access.

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:

Compliant setback are provided to both side and rear boundaries and all neighbours retain ample solar access.

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.

Schedule 3 Parking

Description of Non-compliance

The DCP requires 2 parking spaces. The existing dwelling has nil car spaces and the proposal includes 1 car space.

Merit consideration

The relevant objectives of the control are considered below.

- *To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).*
- *To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.*

The existing dwelling was approved with nil car spaces. The proposed additions will intensify the use of the site with additional bedrooms proposed and it would be desirable to add a parking space to the site.

One additional space is provided, less than the 2 spaces required for a dwelling house, but is appropriate as there is an increase for the existing dwelling and fits well within the context of the dwelling setting.

4.1.9 Swimming Pools, Spas and Water Features

Merit consideration:

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

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

The proposed pool and surrounds are located with ample setbacks to all boundaries and a combination of planting and screening to ensure privacy for neighbours. The pool filter box is proposed to the north of the swimming pool under the deck. A suitable condition has been imposed as part of this application to not emit any noise of 5dba above background noise at the nearest residential receiver for acoustic privacy.

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

Comment:

The proposed works will not be readily visible from the street. The swimming pool and associated works are centrally located and will have not impact upon the streetscape.

Objective 3) To integrate landscaping; and

Comment:

Proposed planting between the swimming pool and the boundaries is integrated in this proposal to help offset any unreasonable visual bulk of the swimming pool. The planting and screening may also supplement privacy between properties.

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

Comment:

The subject site is not located in a bush fire prone area, however it may be used as a emergency water source.

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 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is worthy of consent, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contribution 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. Accordingly, it is concluded that the proposal will not result in any unreasonable

impact on the streetscape, the neighbouring 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 DA2019/0039 for alterations and additions to an existing dwelling house including swimming pool at Lot 24 DP 456038 and Lot 23 DP4449, no. 14 Herbert Street, Manly, subject to the conditions printed below:

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
Cover Page	Jan 19	Anderson Architecture
Summary Page	Jan 19	Anderson Architecture
Site Plan	Jan 19	Anderson Architecture
Existing Lower Ground Floor	Jan 19	Anderson Architecture
Existing Ground Floor Plan	Jan 19	Anderson Architecture
Existing Roof Plan	Jan 19	Anderson Architecture
Proposed Lower Ground Floor Plan	Jan 19	Anderson Architecture
Proposed Roof Plan	Jan 19	Anderson Architecture
Proposed & existing Long Section	Jan 19	Anderson Architecture
Proposed & existing Cross Section	Jan 19	Anderson Architecture
Proposed & existing North Elevation	Jan 19	Anderson Architecture
Proposed & existing West Elevation	Jan 19	Anderson Architecture
Proposed & Existing South Elevation	Jan 19	Anderson Architecture

Reports/ Documentation – All recommendations and requirements contained within:

Statement of Environmental effects	10 January 2019	Chris Munro
Clause 4.6 Variation	21 May 2019	Anderson Architecture
Stormwater Plan	4 April 2019	Taylor Consulting
Survey	26/3/2016	True North Surveys

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

Landscape Plans

Landscape Concepts (sheets 1-4)	6/5/2019	Formed Gardens
---------------------------------	----------	----------------

--	--	--

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.

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.warringah.nsw.gov.au/your-council/forms).

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

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

5. Mesh Fencing

The proposed 2.4 metre high mesh fencing along common boundary as detailed in note 7 on the Landscape Plan is to be deleted. Screen planting to complement the garden area is to be planted in this location.

Reason: to retain an appropriate landscaped setting.

6. On-site Stormwater Disposal

Certification of Drainage plans detailing the provision of On-site Stormwater Disposal in accordance with Northern Beaches Council's Manly On site stormwater management Specification 2003 and the concept drawing by Taylor Consulting, drawing number Sheet-1/A dated 4 April 2019. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

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

7. Native tree planting

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

Details of new planting are to include appropriate siting and pot size (minimum of 25 litres) in accordance with section 2.1.3 of the Manly Development Control Plan 2013, and schedule 4, Part B, Native Tree Selection.

Details are to be submitted with the Construction Certificate to the satisfaction of the Certifying Authority.

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

8. On slab landscape planting and associated works

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate for the planter shown on the architectural ground floor plan:

- i) indicating the proposed method of waterproofing to concrete slabs and planters to which soil and planting is provided,
- ii) indicating the soil type, plant species, irrigation, services connections, maintenance activity schedule and soil depth compliance with iii) below:
- iii) the following minimum soil depths are required to be provided in approved landscape areas
 - 300mm for lawn
 - 600mm for shrubs
 - 1 metre for trees

Certification shall be provided 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, and away from habitable areas.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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 landscape 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) 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.

10. 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.

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

11. Authorisation of Legal Documentation Required for Onsite Disposal

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. 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.

12. Registration of Encumbrances for On-site Stormwater Disposal

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water disposal 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.11. On-Site Stormwater Disposal Compliance Certification

13. On-Site Stormwater Disposal Compliance Certification

Upon completion of the on-site stormwater disposal 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 disposal 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)

14. Positive Covenant and Restriction as to User for On-site Stormwater Disposal

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater disposal system 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 disposal 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 disposal and/or pump system is maintained to an appropriate operational standard

15. Landscape works

Landscaping is to be implemented in accordance with the landscape concept plan shown on drawing number 001, sheet 1 of 2 and sheet 2 of 2, revision A, as prepared by Formed Gardens, inclusive of the following conditions:

i) the proposed 2.4 metre high mesh screen is not approved as part of this DA along common boundaries.

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 concepts plan and the conditions of consent.

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

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

16. Landscape maintenance

All landscape components are to be maintained for the life of the development.

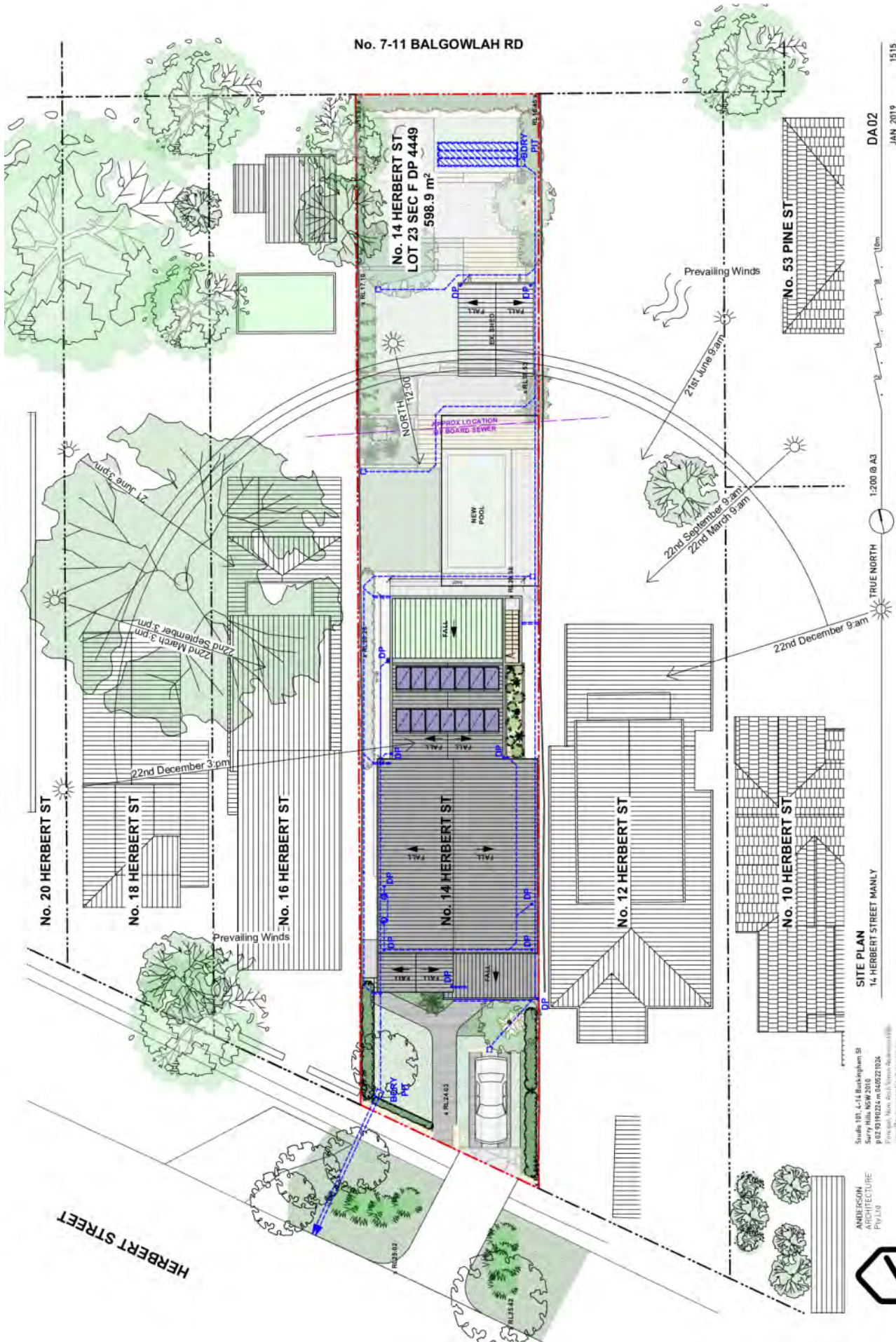
A maintenance program is to be established. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme of the landscape concept plan.

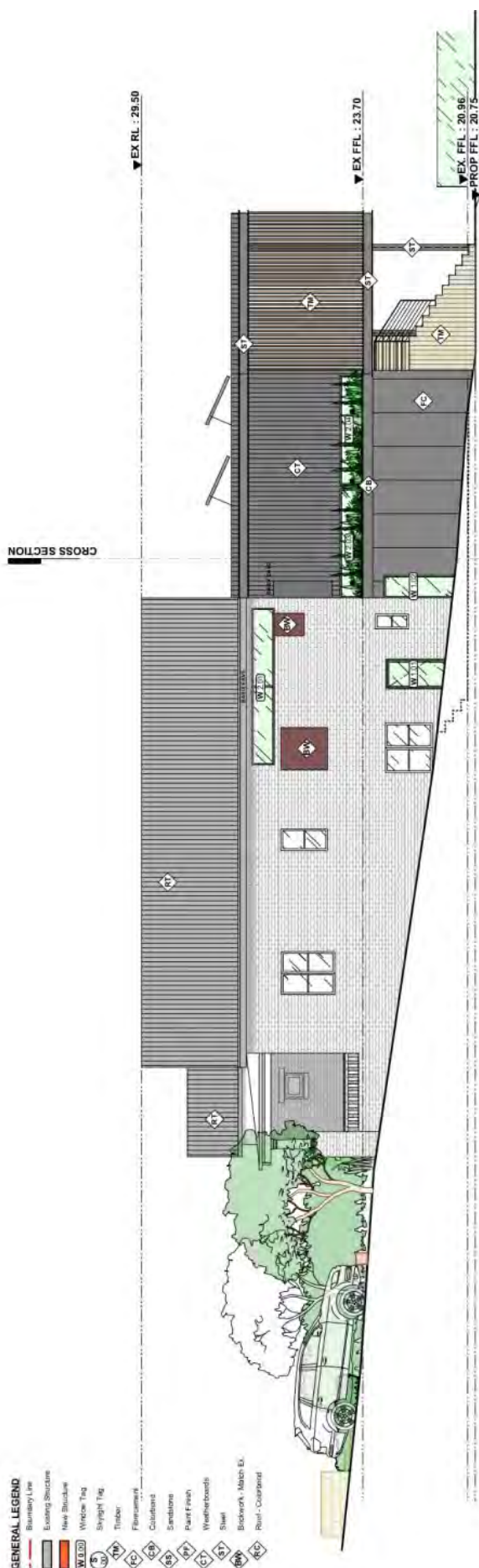
Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

17. Environmental and priority weed control

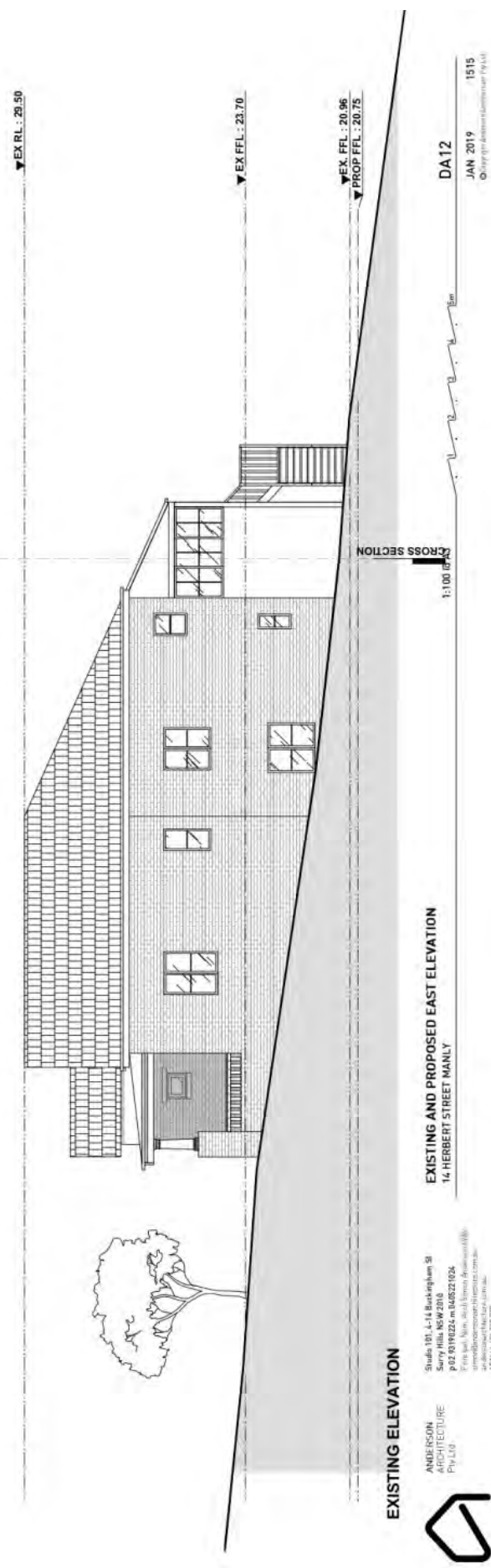
All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act

Reason: preservation of environmental amenity.

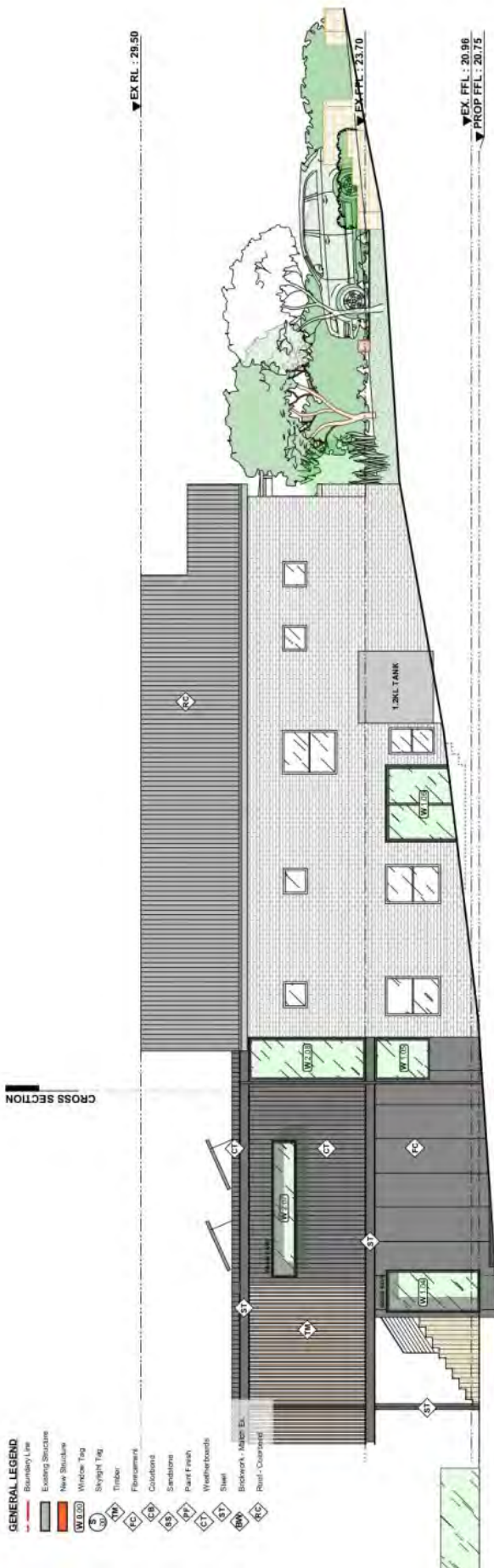




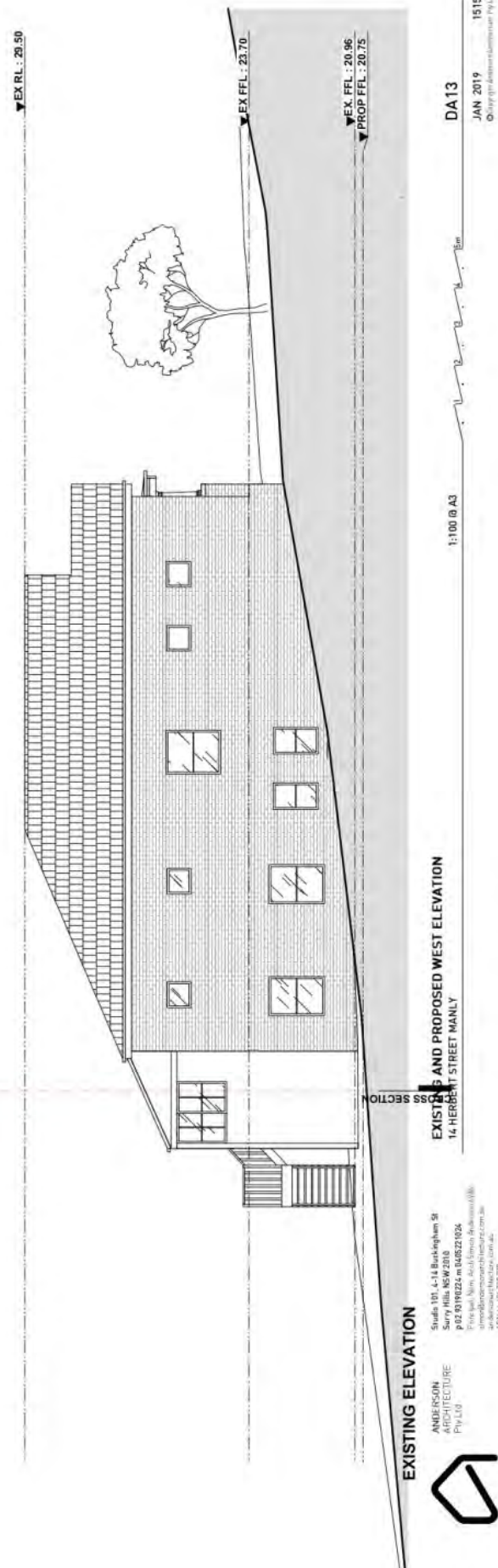
PROPOSED ELEVATION

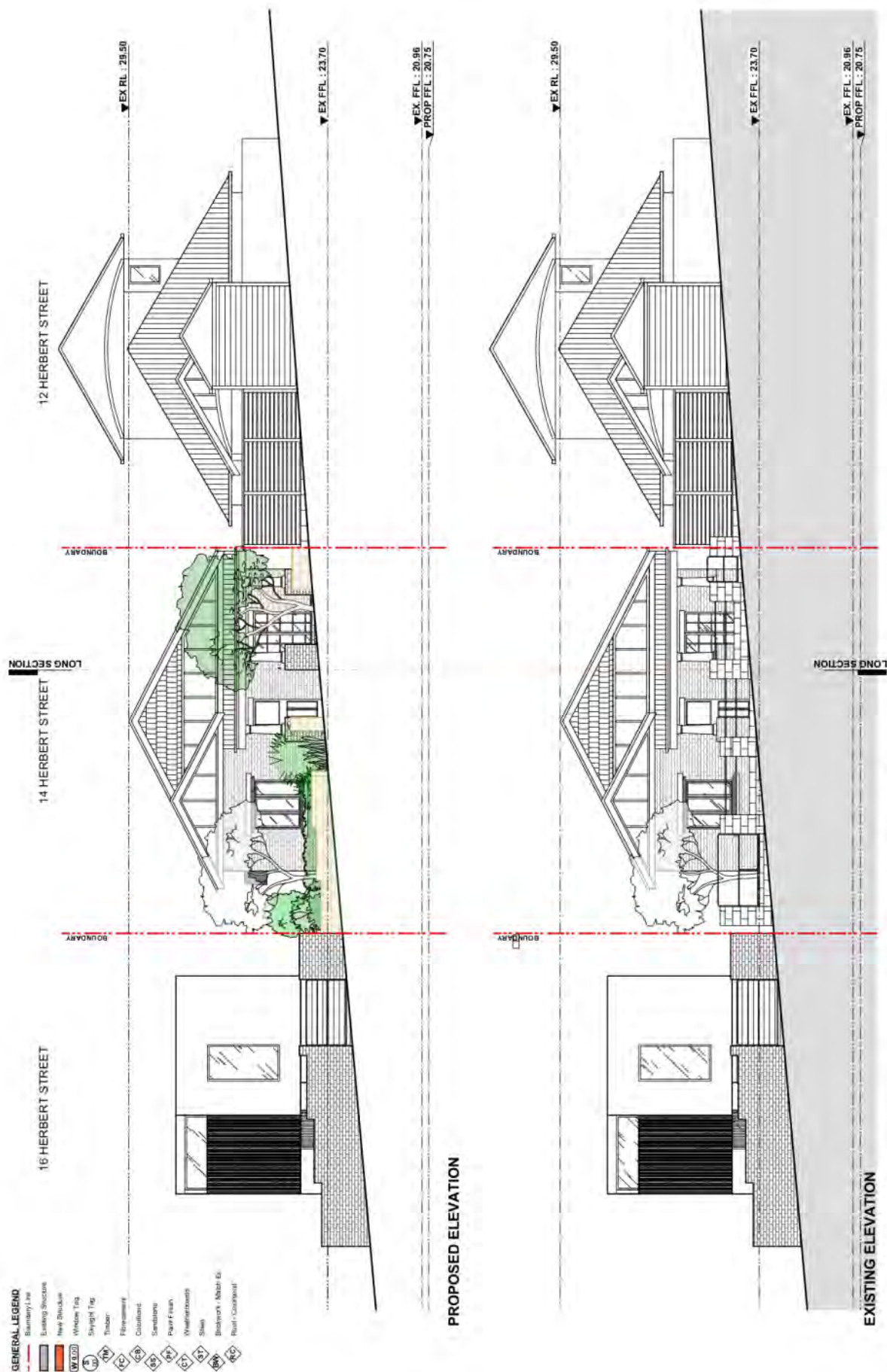


EXISTING ELEVATION



PROPOSED ELEVATION





DA 14 JAN 2019 1515

EXISTING AND PROPOSED SOUTH ELEVATION
14 HERBERT STREET MANLY

Studios 101, 4-14 Birmingham St
Surrey Hills NSW 2010
02 93 190224 m 34.65221024

ANDERSON
ARCHITECTURE





Munro Residence

14 Herbert Street, Manly

Clause 4.6 Variation Request

Revision B on 21 May 2019

Proposed Alterations and Additions upon the existing Lot 24, DP 456038 and Lot 23 Section F DP 4449.

Prepared under instructions from Chris and Sarah Munro.

Clause 4.6 Variation Statement

1.0 INTRODUCTION

This report supports the Development Application for the proposed Alterations and Additions at 14 Herbert Street, Manly.

A site-specific assessment of the proposed development has been undertaken to support a request for a variation to the Manly Local Environmental Plan 2013 Development Standard Part 4 Clause 4.3 (Height of Buildings).

Part 4 Clause 4.6 Subclause 3 of the Manly Local Environmental Plan 2013 states that:

(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.

This report seeks to justify the contravention of the maximum height provisions under Clause 4.6 of the Manly LEP 2013.

2.0 MANLY LOCAL ENVIRONMENTAL PLAN 2013

The following section includes an assessment of the proposed development having regard to the Manly Local Environmental Plan 2013 Clause 4.3 (Height of Buildings).

2.1 Height of Buildings

Pursuant to Clause 4.3 and Map H0B_003 of the Manly LEP 2013, the height of a building on the subject site is not to exceed 8.5 metres in height. The objectives of this control are as follows:

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

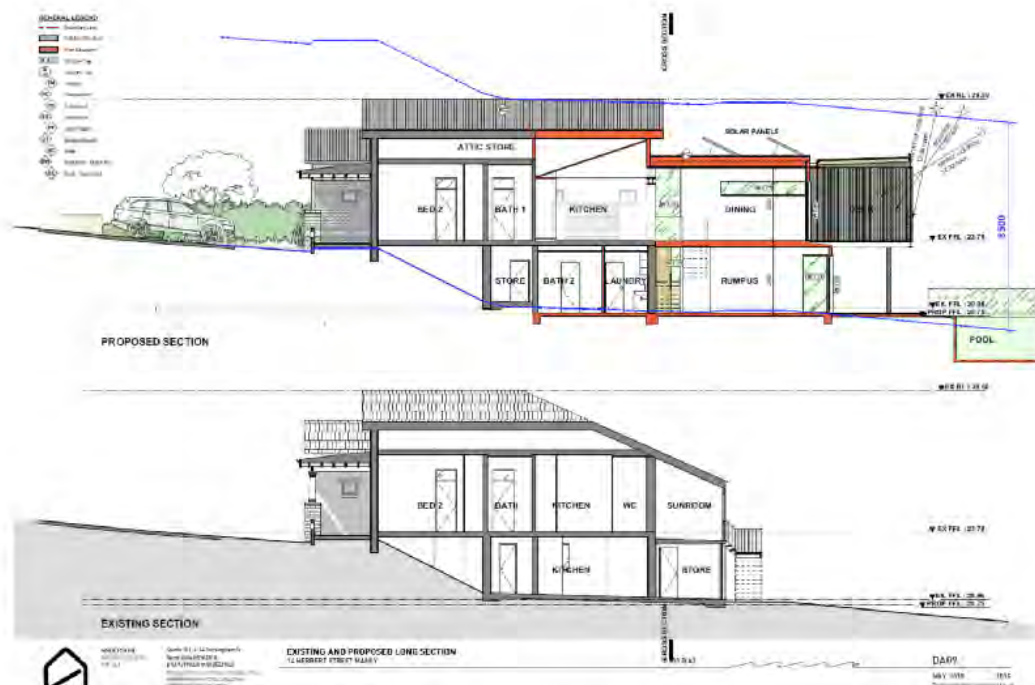
Building height (or height of building) is defined as –

- (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 a site at any point.

It has been determined that with the exception of the northern most ridge line, the development sits comfortably below the 8.5 metre height standard. The extension of the existing ridge line has a maximum building height of 8.75 metres, representing a non-compliance of 0.25 metres. The extent of non-compliance is depicted in the following section:



The extent of the non-compliance includes a small section of the ridge line. Overall the proposed development meets the underlying objectives of the standard, pursuant to Clause 4.3 (Height of Buildings) of the Manly LEP 2013.

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,

The majority of the dwelling maintains compliance with the Height of Buildings development standard of 8.5 metres. The non-compliance relates specifically to the extension of the existing ridge line at the rear of the property. The overall development provides building heights and roof forms that are consistent with the topographic landscape, prevailing building heights along the northern side of Herbert Street and desired future streetscape character of the locality.

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

The majority of the building maintains compliance with the Height of Buildings development standard and fits comfortably within its neighbouring buildings. The minor non-compliance relates to the extension of the existing roofline and the existing topography of the site. The building height is consistent with that of surrounding and nearby development. The northern portion of the ridge line is not visible from the street nor any areas or buildings of significance in the locale, and the overall roof form is not visually dominant by way of bulk or scale. For these reasons the development satisfies this objective.

(c) to minimise disruption to the following:

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

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

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

The subject site is not located within proximity to public spaces and as such would not disrupt views between residential and public spaces, or 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,

The north-south orientation of the existing dwelling and proposed alterations and additions, prioritisation of north facing private open space and landscaping as well as the gable roof form achieved as a result of the elongation of the original roof profile work to ensure that the sunlight and daylight access currently enjoyed by the property and its neighbours is not compromised. Please refer to the shadow diagrams submitted as part of this application for further illustration of the minimal overshadowing impact of the proposed development.

(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.

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

3.0 PROPOSAL DESCRIPTION AND VARIATION TO HEIGHT STANDARD

Part 4 Clause 4.6 Subclause 3(a) of the Manly Local Environmental Plan 2013 states:

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

In this particular case, the compliance with the maximum Height of Buildings development standard is unreasonable and unnecessary due to the reasons outlined below.

The subject property is 14 Herbert Street, Manly, within the Northern Beaches (formally Manly) Council Area. The LEP's Height of Buildings Map, Sheet HOB_003, identifies the maximum height for the property as zone 'I' or 8.5 meters. The proposed design seeks to continue the existing ridge line and roof profile of the original dwelling to the north. While the majority of the proposed roof does not exceed the 8.5 metre LEP maximum height, a small portion of the ridge line to the rear does- by 250mm as measured from the FFL of the proposed Rumpus (RL20.75).

Table 1 - Height of buildings

	LEP HOB Map maximum	Proposed	Amount exceeding max.
Height in meters	8.5	8.75	0.25

The aim of the Height of Buildings control is to ensure that building heights and roof forms are consistent with the topographic landscape, minimise the impact of new developments on the existing streetscape, and the property's neighbours, with the key areas of impact mitigation being privacy and view loss, overshadowing and visual intrusion. The control also seeks to harmonize new developments into the local streetscape in terms of bulk, scale and character. The control also seeks to ensure that a high visual quality is set and maintained throughout the locality. In this instance the non-compliance with the control can be justified by the following:

3.1 Streetscape

As mentioned above, one of the prime aims of the limitations to development height is to ensure continuity and harmony are maintained along the streetscape. In order to create a greater sense of space and improve the amenity of the spaces within the envelope of the existing brick dwelling, the proposed development seeks approval for the modification of the

rear of the existing roof through the continuation of the roof's profile. This strategy ensures that as viewed from Herbert Street, the bulk, scale and massing of the dwelling is not inconsistent with those of its neighbours while also leaving the majority of the roof's structure intact. As the portion of the roof exceeding the maximum height limit is confined to the rear of the dwelling, is of a minor nature and the proposed roof's form is in keeping with the existing pattern of development, the contravention of this control would have a negligible impact on Herbert Street. Therefore whilst the dwelling is exceeding the height limit at the northern end of the existing dwelling, the proposed design satisfies the intention of the control.

3.2 Amenity

This proposal seeks to create a greater sense of space and lightness within the existing portion of the dwelling through the continuation of the existing roof profile to create a pitched gable roof. This strategy has been proposed due to both its capacity to improve the amenity of the home and its aesthetic appeal, as well as its inherent ability to minimise external wall heights and reduce bulk and visual impact. As a result of the combination of the steep and north-sloping site with the continuance of the existing roof ridge line to the extent of the existing envelope, a small portion of the ridge line does exceed the 8.5 metre LEP height limit however its potential impacts are minimised through the nature of the roof's profile. The gable profile also capitalises on the orientation of the site, ensuring that overshadowing of neighbouring properties is minimised across the day.

3.3 Impacts on neighbours

This dwelling fronts Herbert Street to the south but has its predominant elevation facing north into the back garden of the site to maximise solar and daylight access, and utilise the amenity of the yard. The proposed development's massing has been articulated to align with the controls and objectives of the Manly LEP and DCP, stepping down with the natural topography of the site and taking care to ensure that the amenity of neighbouring properties is maintained. The proposed design has limited windows to the east and west in a bid to minimise undue overlooking between properties while all roof forms of the proposed works sit under the existing ridge line RL. As mentioned above, the gable roof form to the rear of the existing portion of the dwelling ensures that wall heights and the bulk of the proposed development are minimised while also ensuring adequate solar access and access to views from both the subject site and its neighbouring properties are maintained. Both 12 and 16 Herbert Street have undergone contemporary alterations and additions; the proposed design and the roof profile height of the proposed design both step with the built topography of its neighbours- at 2060mm under the height of 12 Herbert Street and 1374mm above the ridge line of 16 Herbert Street, the proposed height and continuation of the existing ridge line would not look out of place in its context.

4.0 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

In this instance, the following environmental planning grounds particular to the subject site support the building height variation:

- The proposed design seeks to continue the original ridge line of the existing dwelling to the north, at the rear of the dwelling. Despite the minor additional height (0.25m) the scale of the development will not change views along or from Herbert Street and will be comparable to and aligned with the development trends of surrounding dwellings, thus retaining a unified scale along the street.
- In this instance, it is considered that removal of the continued ridge line to achieve strict compliance would not result in an improved planning outcome – the existing ridge line does not cause any material impact in terms of privacy or view loss to neighbouring buildings or residential areas, nor overshadowing to adjacent residential properties.
- The site's topography and other constraints presented have very strongly informed the building's design response, its massing and formal articulation. In this instance, the majority of the proposed roof area is contained within the maximum building height as denoted by LEP Map HOB_003 through the stepping of the new portions of the dwelling with the topography. The extension of the original roofline above the existing Kitchen and Living areas allows for a consistency in the roof's profile in elevation while also providing the additional amenity sorely needed within the dwelling's principal living areas; this is proposed to be achieved with only a minor portion of the proposed roof exceeding the 8.5 metre Height of Buildings development standard.
- The only portion of the building that exceeds the height limit is located at the rear of the dwelling and as mentioned above, will not be visible from the street. The overall architectural response of the proposed alterations and additions has been designed in such a way that no material impact will result to neighbouring properties over and above that which would result from a complying scheme. Notably, the building roofline provides a comparable height response to a compliant scheme as viewed from Herbert Street.
- Extending the existing ridgeline above the maximum height limit is a considered site specific design response which aims to optimise the site's development potential and the amenity of its internal spaces in a manner that is consistent with the building height objectives to encourage a high quality built form, and respond to the street frontage and existing streetscape character along Herbert Street. This results in no material impact from the street and the improved residence will enhance the overall level of amenity.

It is considered that these environmental planning grounds are particular to the circumstances of the site and support the proposed variation to the Height of Buildings development standard.

5.0 CONCLUSION

For the reasons stated above we believe the development meets the objectives of the Height of Buildings control in the LEP. The proposed design has been thoughtfully and sensitively designed. It is consistent with the vision of the LEP for the Northern Beaches (Manly) Council Area, ie; to conserve and enhance the local environment and protect the amenity of local residents. It is also consistent with the aims and intentions of the Council's Development Control Plan.

The variation to the Height of Buildings control for this proposed development is reasonable and justifiable. We ask that a variation to the building height provisions of the LEP be supported by Northern Beaches Council for this development.

Regards

ANDERSON ARCHITECTURE



Simon Anderson

ITEM 3.2	DA2017/0947 - 1114-1118 PITTWATER ROAD, COLLAROY - CONSTRUCTION OF COASTAL PROTECTION WORKS
REPORTING OFFICER	Steve Findlay
TRIM FILE REF	2019/323465
ATTACHMENTS	1 Assessment Report 2 Plans

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2017/0947 for construction of coastal protection works at SP 1977 & Lot 7351 DP 1166942, 1114-1118 Pittwater Road, Collaroy subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2017/0947
Responsible Officer:	Daniel Milliken
Land to be developed (Address):	Lot 7351 DP 1166942, Pittwater Road COLLAROY NSW 2097 Lot CP SP 1977, 1114 - 1118 Pittwater Road COLLAROY NSW 2097
Proposed Development:	Construction of coastal protection works
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned RE1 Public Recreation
Development Permissible:	Yes, under State Environmental Planning Policy (Coastal Management) 2018
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	The Owners of Strata Plan 1977
Applicant:	Horton Coastal Engineering Pty Ltd
Application lodged:	22/09/2017
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	28/09/2017 to 16/10/2017
Advertised:	Not Advertised
Submissions Received:	2
Recommendation:	Approval
Estimated Cost of Works:	\$ 483,577.00

EXECUTIVE SUMMARY

In June 2016, a large storm caused severe coastal erosion to Collaroy/Narrabeen Beach, as well as damage to properties fronting the beach, including the subject site.

This Development Application seeks consent for coastal protection works, in the form of a rock revetment structure or "seawall", to primarily provide protection for the residential flat building on the site which is known as "Flight Deck". The works will have the added benefit of providing protection for private land to the north and south (once it links up with existing works to the south and the existing

rock on the property occupied by another residential flat building known as "Ship Mates" to the north). The works will also provide indirect protection for critical infrastructure to the west (i.e. Pittwater Road).

The application is being reported to the NBLPP because the works extend over the rear boundary of the subject site and onto Crown land.

Four sets of coastal protection works on properties to the north and south have been approved by Council and the Land and Environment Court.

Land owners consent from the NSW Department of Lands as the owner of the Crown land beach front was not available at the time of the lodgement of the application. After lengthy and extensive discussions with the Department, land owners consent has been obtained.

The proposal is prohibited in the R2 Low Density Residential and RE1 Public Recreation zones under the Warringah LEP 2011. However, the *State Environmental Planning Policy (Coastal Management) 2018* permits coastal protection works with consent on this land. The *Coastal Management Act 2016* is also relevant to this application, specifically Section 27, which sets out the matters for any consent authority to be satisfied prior to consent being granted. The application has also been assessed under the relevant Warringah LEP 2011 and Warringah DCP 2011 clauses.

The works will link with other protection works on private properties and Council land to the north and south that, overall, will run for approximately 1.3km along Collaroy-Narrabeen Beach. The design of the wall (a rock revetment structure) is the most appropriate for this site to both align with the adjoining coastal protection works to the north and south, minimise the impact on coastal processes and minimise the visual impact to the public beach (i.e. the works are designed to be covered in sand and vegetation during inter-storm periods).

The conditions of consent for coastal protection works have continued to be developed over the previous four consents for other properties to the north and south. Each consent presented a more refined 'standard set' of conditions as Council continues to improve the outcomes for the applicants.

The conditions in the recommendation of this report have been reviewed by the applicant. This is part of the process that Council has undertaken for each coastal protection works application.

Overall, the approval of the application will be in the public interest as the works will fit with the overall alignment of protection works along the coast, ensuring a contiguous wall, best suited to cause the least impact on coastal processes.

ASSESSMENT INTRODUCTION

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

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

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

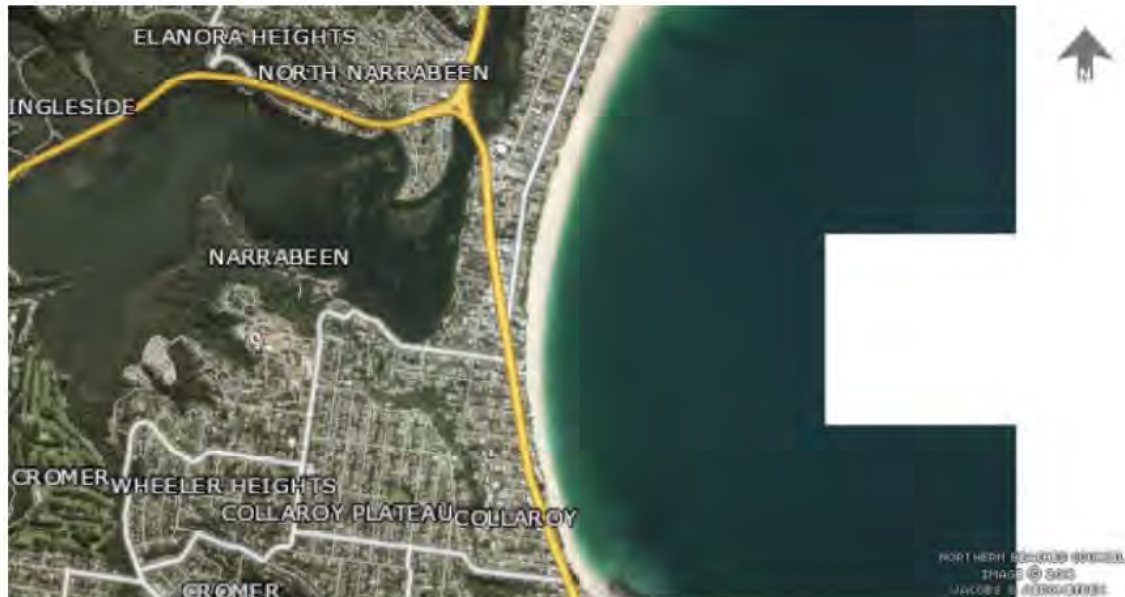
SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 5.5 Development within the coastal zone
 Warringah Local Environmental Plan 2011 - 6.5 Coastline hazards
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - C9 Waste Management
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - E7 Development on land adjoining public open space
 Warringah Development Control Plan - E9 Coastline Hazard

SITE DESCRIPTION

Property Description:	<p>Lot 7351 DP 1166942 , Pittwater Road COLLAROY NSW 2097</p> <p>Lot CP SP 1977 , 1114 - 1118 Pittwater Road COLLAROY NSW 2097</p>
Detailed Site Description:	<p>The subject site is located on the eastern side of Pittwater Road and contains the residential flat building known as 'Flight Deck'.</p> <p>Collaroy Beach is located directly to the east, the residential flat building known as 'Shipmates' is to the north and a private property (No. 1112 Pittwater Road) is located to the south.</p> <p>The site has an area of approximately 2,890sqm and is generally flat, with a slope down towards the beach at the rear (eastern edge) of the site.</p> <p>The site contains a 13 storey residential flat building with garaged and open parking spaces, associated paved areas and minimal landscaping. Driveway access is obtained from Pittwater Road.</p> <p>The site also contains a loose rock barrier near the eastern boundary that previously provided some protection from coastal erosion during storms. This rock barrier was damaged during the large storms in June 2016.</p> <p>The surrounding development consists of detached dwellings, residential flat buildings, an arterial road and public open space.</p>

Map:



SITE HISTORY

Storm Event and Severe Erosion

In June 2016, a large storm caused severe coastal erosion to the eastern side (i.e. the beach side) of the subject site.

Prelodgement Meeting (PLM2017/0030)

A prelodgement meeting was held on 3 April 2017 to discuss the construction of coastal protection works on and over the eastern boundary of the site.

Relevant comments provided in the minutes included:

"Council is supportive of the proposal in concept. Fully detailed plans and reports, as listed above, will need to be submitted for assessment."

Please ensure that all plans and supporting documentation include sufficient detail so that any member of the public can clearly understand the design and characteristics of the proposal (particularly as it relates to it being designed as a predominantly sand covered structure).

As mentioned above, it is strongly recommended that discussions with the Crown occur soon to obtain owners consent to avoid delays in any determination."

Current Application

The application was lodged on 22 September 2017. The delay in reporting this application has occurred for a number of reasons, being:

- Other coastal protection works were the subject of a Land and Environment Court appeal that related to the conditions being imposed on coastal protection work consents. It was appropriate to wait until the appeal was finalised so that a more refined set of conditions could be

- recommended for this application. The appeal was finalised on 5 June 2018.
- Landowners consent from the Crown was not obtained until 26 June 2018.
- The applicant submitted amended plans on 2 February 2019.
- The set of conditions was further refined with the most recent approved development application for another section of sea wall having a determination date of 10 May 2019.

On-going communication between Council and the applicant has occurred throughout this process.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves the construction of coastal protection works on the seaward (eastern) side of the site. The works will be located mostly on private land with a smaller part of the structure on the adjoining beach which is Crown land. This is necessary as these protection works must be consistent with the overall alignment of other coastal protection works along Collaroy and Narrabeen Beach.

In detail the proposal includes:

- Site preparation works
- The construction of engineered coastal protection works ("seawall") on the eastern side of the site and on the adjoining crown land
- The back-filling of the coastal protection works to restore the subject land to its natural ground level
- The covering of the coastal protection works with sand and vegetation
- Associated landscaping treatment around the works (on the subject site)

Note: The development is prohibited under the *Warringah Local Environment Plan 2011*, but is permitted with consent under the *State Environmental Planning Policy (Coastal Management) 2018*, hence the application is lodged under the SEPP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000	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

Section 4.15 Matters for Consideration'	Comments
(EP&A Regulation 2000)	<p>consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	The proposed coastal protection works are permitted with consent under the <i>State Environmental Planning Policy (Coastal Management) 2018</i> . Public access to the beach will not be unreasonably impeded by the works and natural coastal processes will not be significantly adversely affected.

Section 4.15 Matters for Consideration'	Comments
	<p>The works will assist in the protection of public infrastructure and private property. This will be achieved by the construction of the proposal and it linking to other similar coastal protection works (seawalls) which are currently approved or planned for this vulnerable section of Collaroy and Narrabeen Beach. The works will have an overall public benefit.</p> <p>In this regard, no matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

COASTAL MANAGEMENT ACT 2016

Section 27 of the *Coastal Management Act 2016* states:

27 Granting of development consent relating to coastal protection works

(1) Development consent must not be granted under the *Environmental Planning and Assessment Act 1979* to development for the purpose of coastal protection works, unless the consent authority is satisfied that:

(a) the works will not, over the life of the works:

(i) unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland, or

(ii) pose or be likely to pose a threat to public safety, and

(b) satisfactory arrangements have been made (by conditions imposed on the consent) for the following for the life of the works:

(i) the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works,

(ii) the maintenance of the works.

(2) The arrangements referred to in subsection (1) (b) are to secure adequate funding for the carrying out of any such restoration and maintenance, including by either or both of the following:

(a) by legally binding obligations (including by way of financial assurance or bond) of all or any of the following:

(i) the owner or owners from time to time of the land protected by the works,

(ii) if the coastal protection works are constructed by or on behalf of landowners or by landowners jointly with a council or public authority—the council or public authority,

(b) by payment to the relevant council of an annual charge for coastal protection services (within the meaning of the *Local Government Act 1993*).

(3) The funding obligations referred to in subsection (2) (a) are to include the percentage share of the total funding of each landowner, council or public authority concerned.

Comment:

Background

In order for Section 27 to be satisfied, the consent authority must form the opinion that the above matters are achieved over the life of the works.

Information provided by the applicant

To assist Council, the applicant has submitted coastal engineering advice (prepared by a suitably

qualified coastal engineer) that states that the structure has a design life of 60 years. This advice has been reviewed and agreed with by Council's internal and external coastal experts.

What is the "Design Life"?

A "Design Life" of 60 years does not mean that the structure will fail in year 61. Instead, it means that, given the amount of information currently available, coastal hazards and processes (including the effects of sea level rise and climate change), beyond 60 years from now are too unknown to make accurate predictions at the time of granting consent (i.e. June-July 2019). It is possible that the works, as approved, will exist indefinitely. However, the unknown state of the coast beyond 2079, raises the question of how a consent authority can be satisfied that the works will meet the requirements of section 27 over the life of the works.

Satisfying Clause 1(a)(i) - *"unreasonably limit or be likely to unreasonably limit public access to or the use of a beach or headland"*

The works are located on both private land and Crown land. The site does not adjoin road reserves to the north or south. This means that no public access is currently obtained over the private component of the subject site.

A portion of the works does sit on public land. However, the design and location of the works have been determined by Council's internal and external coastal experts, to be the most appropriate for the site. This is in order to best link up with other similar coastal protection works (seawalls) along this section of Collaroy and Narrabeen Beach, and to minimise the impacts to coastal processes.

The portion of the works on the public beach will be covered in sand and vegetation for the majority of the time, only being revealed during large storms that will likely prohibit public access to the beach anyway.

In this regard, the consent authority can be satisfied that the works will not, over the life of the works, unreasonably limit or be likely to unreasonably limit public access to or the use of the beach.

Satisfying Clause 1(a)(ii) - *"pose or be likely to pose a threat to public safety"*

As discussed above, beyond 60 years, the state of coastal hazards (incorporating sea level rise and other impacts of climate change) is too uncertain to be able to make accurate predictions as to whether the works will afford the appropriate level of protection to the property behind and not adversely impact public safety in the event that they are damaged beyond repair.

If the works are damaged beyond repair at some stage in the future, new coastal protection works that are designed and constructed in accordance with the prevailing coastal hazard forecasts of the time would be required. Such works could vary so significantly from those approved as part of this consent that a new Development Application would be required.

The key point is that; at the time of granting any consent, the coastal experts (and therefore Council) cannot be certain of the future coastal hazards. This uncertainty means that Council cannot be satisfied that the works will not, over the life of the works, pose a risk to public safety. This is the test that needs to be met. If this test is not met, Section 27 states that development consent must not be granted.

Given it is effectively impossible to forecast the state of the coast for the life of the works, a method needs to be found of being able to grant consent for the time period that Council (or another consent authority) can be satisfied that the works will not pose a risk to public safety.

The solution is to grant a time limited consent, via a condition that specifies the consent only operates for 60 years, in accordance with the design life as explained in the Coastal Engineering Report accompanying the Development Application. The condition includes a mechanism whereby the owners of the works can obtain a report by a suitably qualified coastal engineer that can recommend an extension to the design life. If the findings of this report are acceptable to Council, Council can extend the operation of the consent for a reasonable time period. This process can be repeated in perpetuity.

In this way, each review will be conducted based on the best and most current knowledge of coastal processes available at that time, and, as such, any extension granted will be based on updated information.

Consent can therefore be granted by Council, as the consent authority, being satisfied that, for 60 years, the proposed works will not pose a risk to public safety. As such, a 60 year time limited consent condition will allow Clause 1(a)(ii) to be satisfied and allow development consent to be granted.

Satisfying Clauses 1(b)(i) & (ii) and 2(a)(i) - *"the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works, the maintenance of the works and the owner or owners from time to time of the land protected by the works"*

A single condition has been recommended to provide satisfactory arrangements to secure adequate funding in a legally binding manner for the restoration of the beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works, and for the maintenance of the works.

This condition requires an irrevocable bank guarantee (or other suitable legally binding obligation) in the amount of \$1000 per lineal metre of work to Council prior to the issue of any Construction Certificate. This money is intended to be used as a last resort for the owners to undertake maintenance of the coastal protection works in the event that they are damaged as a result of coastal storm, including to undertake any works required to remove any threat to public safety arising from the coastal protection works including the removal of rocks or debris, that have become dislodged from the works, from the public beach and adjacent public land and implement the Maintenance Management Plan (MMP).

In this condition "maintenance" means the restoration of the works to a standard in accordance with the approved plans and specifications following any damage caused by a coastal storm and implementation of the MMP.

The bank guarantee (or other suitable legally binding obligation) is to be replenished if drawn upon and increased to allow for Consumer Price Index (CPI) every 10 years from the date of establishment.

The bank guarantee (or other suitable legally binding obligation) is to be in the favour of Council. The funds may be accessed by one or more owners, for the undertaking of works referred to in this condition and in the approved MMP, with the written consent of Council.

This condition will satisfy Clauses 1(b)(i) & (ii) and 2(a)(i).

Conclusion

It is considered that the two conditions outlined above will be sufficient to satisfy Section 27 of the *Coastal Management Act 2016* and can be viewed in full at the end of this report.

Having satisfied the clauses within Section 27 of the *Coastal Management Act 2016*, a time-limited

development consent can be granted.

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 process council is in receipt of 2 submission/s from:

Name:	Address:
Kimale May Raicevich	1110 Pittwater Road COLLAROY NSW 2097
Mr Michael George Hopkins	C/- Tomasy Planning Level 1, 1073 Pittwater Road COLLAROY NSW 2097

The following issues were raised in the submissions:

- **Visual impact**
- **Location on Crown land**
- **Conditions of consent**
- **Adjoining landowners consent**

The matters raised within the submissions are addressed as follows:

- **Visual Impact**

The submissions raised concerns that if the proposal is not covered in sand, it will "*deter from the look of the beach*".

Comment:

The proposal is a rock revetment wall and is designed to be covered in sand and vegetation post construction.

After large storms, portions of the works may be uncovered, however, coastal processes and human activities will rebuild the sand covering.

- **Location on Crown Land**

The submissions raised concerns that the protection works are located partly on Crown land.

Comment:

The proposed coastal protection works are located across private and public land, extending onto the Crown owned beach. The works will link with other protection works to the north and south that, overall, will run for approximately 1.3km along Collaroy/Narrabeen Beach. Coastal

experts have determined that the proposed works will fit with this overall alignment, ensuring a contiguous wall, best suited to cause the least impact on coastal processes.

- Conditions of Consent**

The submissions raised the following question:

"What conditions will be placed on the applicant? Are they consistent 100% with all other applications for coastal protection?"

Comment:

The conditions of consent are outlined in the recommendation of this report.

The conditions are not 100% consistent with all other applications for coastal protection because each application/site/design is assessed on its individual circumstances and merits. Some applications for coastal protection works require different or additional conditions due to their unique circumstances.

The bulk of the conditions will be consistent with the current 'standard' set of coastal protection consent conditions which have been developed through extensive discussion and legal review.

- Adjoining Landowners Consent**

The submissions raised the following question:

"Have the adjoining landowners agreed to this design or the works in total?"

Comment:

Landowners consent has been received from the Crown and from the owners of the subject site. No other landowners consent is required for this application.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p>The wall is basically overtopping with basalt of the older existing sandstone boulders. Expert engineering and water impact advice is supplied.</p> <p>It is recommended that a system be put in place to ensure any future washout of smaller pieces of stone on to the beach will be managed in ongoing manner by the applicant or by agreement with Council.</p> <p>Condition for consideration:</p> <p>That the applicant put in place an ongoing management plan to ensure on going maintenance as well as removal ,from the beach ,of any pieces of stone that may be dislodged.</p> <p>Reason: To ensure on going maintenance</p>

Internal Referral Body	Comments	
Landscape Officer	No objections subject to conditions	
NECC (Bushland and Biodiversity)	Councils Natural Environment and Climate Change (NECC) - Biodiversity section, raises no objection to approval, subject to conditions as recommended.	
NECC (Coast and Catchments)	Matters for consideration	
	Are the proposed works located in an area considered to be generally suitable for coastal protection as identified in:	
	The Coastal Zone Management Plan for Collaroy-Narrabeen Beach and Fishermen's Beach.	YES
	Landowners Consent	
	Is Landowner's consent from the Department of Primary Industries required for any private protection works that extend onto or under Crown Land.	YES
	Has Landowner's consent from the Department of Primary Industries been granted for any private protection works that extend onto or under Crown Land.	YES
	Northern Beaches Coastal Erosion Policy	
	Pursuant to Section 4.15(a)(i) of the Environmental Planning and Assessment Act 1979, the requirements of the Northern Beaches Coastal Erosion Policy are to be satisfied as follows:	
	Supporting information: Is the application accompanied by sufficient information to address the requirements of this policy, the CZMP, the Collaroy-Narrabeen Beach Coastal Protection Works Design Specifications and the Collaroy-Narrabeen Protection Works Assessment Checklist.	
	Survey identifying the location of all relevant property boundaries with respect to the proposed works including the location of the eastern boundary having regard to any erosion and accretion processes.	Yes subject to condition Has been addressed in the application. A survey to ensure works are located where approved will be required post completion.
	Certification that the works set out in the application are supported by appropriately experienced and qualified specialists in the field of coastal engineering.	Yes No additional comment
	In the case of an	No additional comment

Internal Referral Body	Comments		
	application dealing with multiple properties, that an enforceable agreement from all owners has been obtained to fund and construct the works as a single contiguous project.	Not Applicable	
	A mechanism to ensure appropriate protections for Council and the public in the event that the applicant cannot complete the works in a timely professional; manner (e.g. bank guarantee in favour of Council in the event of non-compliance or failure to complete the works).	No	Has not been addressed. Will be conditioned
	Appropriate mechanisms that allow for the efficient maintenance, funding of offsets for any adverse impacts on adjacent properties and/or the public beach and any renewal of the works as required by or on behalf of the benefiting property owner/s.	Yes subject to condition	Will be conditioned to ensure compliance with Northern Beaches Coastal Erosion Policy and Coastal Protection Act.
	An assessment demonstrating that the development does not have a long-term impact on coastal processes in the Collaroy-Narrabeen embayment.	Yes	Findings consistent with Collaroy-Narrabeen Beach Coastal Protection Assessment (Manly Hydraulics Laboratory and UNSW Water Research Laboratory, 2016)
	An assessment demonstrating that the development does not have a long-term impact on public access to or along the beach.	Yes	Findings consistent with Collaroy-Narrabeen Beach Coastal Protection Assessment (Manly Hydraulics Laboratory and UNSW Water Research Laboratory, 2016)
	An assessment of the impact of climate change and sea level rise on the development and the adjoining beach environment.	Yes	No additional comment
	Demonstration that the	Yes	No additional comment

Internal Referral Body	Comments		
	works are consistent with the CZMP and the Northern Beaches Coastal Erosion Policy		
	Design and construction: Are the works designed and constructed:		
	To ensure the long-term coastal processes of the Collaroy-Narrabeen Beach embayment are maintained.	Yes	Findings consistent with Collaroy-Narrabeen Beach Coastal Protection Assessment (Manly Hydraulics Laboratory and UNSW Water Research Laboratory, 2016)
	To ensure that the presence of the works will not adversely impact on adjoining private and public properties, or adversely affect the long-term amenity of the adjoining beach and surf zone.	Yes Yes subject to condition No Not Applicable	
	Such that the works are only visible temporarily during and after significant erosion events.	Yes	Works consistent with Collaroy-Narrabeen Beach Coastal Protection Works Specifications.
	To be contiguous, similar and integrated with adjoining protection works constructed in the embayment.	Yes subject to condition	Works will contained within one property boundary. Condition to be applied in relation to interaction with adjoining works to ensure to ensure no impact on adjacent properties.
	To a consistent design standard that provides an appropriate level of protection from coastal erosion for affected properties.	Yes	Works consistent with Collaroy-Narrabeen Beach Coastal Protection Works Specifications
	To ensure public access is not adversely impacted by any new protection works.	Yes	Findings consistent with Collaroy-Narrabeen Beach Coastal Protection Assessment (Manly Hydraulics Laboratory and UNSW Water Research Laboratory, 2016)
	To ensure access for ongoing maintenance of	No	Suitable access landward of the works is not

Internal Referral Body	Comments		
	the works.		possible due to the location of the existing structure. However suitable measure are in place to ensure that maintenance works can be delayed until access from the seaward side of the works is possible.
	In accordance with the minimum criteria outlined in the Collaroy-Narrabeen Beach Coastal Protection Works Design Specifications.	Yes, but for access	Matters related to access dealt with above.
	Maintenance Coastal protection works are to be maintained in a manner that ensures the ongoing level of design performance. Have the following maintenance considerations been addressed in the application?		
	Undertaking a routine series of inspections.	Yes	Inspection following storms to be conditioned
	Ensuring works are renewed in a timely manner such that the design level of protection is not threatened.	Yes	Inspection following storms to be conditioned
	Ensuring works are upgraded as required in response to changes in impacts associated with frequency or intensity of storm events or sea level rise associated with climate change.	Yes subject to condition	To be conditioned to ensure works are maintained in accordance with approved plans.
	Ensuring suitable access is retained to the works so that ongoing maintenance can be implemented by private and/or public owners.	Yes subject to condition	Suitable access landward of the works is not possible due to the location of the existing structure. However suitable measure are in place to ensure that maintenance works can be delayed until access from the seaward side of the works is possible.
	Existing protection works (e.g. loose rock or geobags) that are not incorporated into	Not Applicable	No additional comment

Internal Referral Body	Comments		
	permanent protection works shall be removed by the Principal Asset Owner for the permanent works.		
	WLEP 2011 requirements Clauses 5.5 and 6.5 Pursuant to Section 4.15(a)(i) of the Environmental Planning and Assessment Act 1979, the objectives of the Warringah Local Environmental Plan 2011 (WLEP 2011) are considered as follows:		
	Assessment Consideration	Assessment Acceptability	Further Assessment Comment
	Does the development maintain existing public access to and along the coastal foreshore?	Yes	Findings consistent with Collaroy-Narrabeen Beach Coastal Protection Assessment (Manly Hydraulics Laboratory and UNSW Water Research Laboratory, 2016)
	Is the development suitable in relation to the surrounding area and its impact on the natural scenic qualities?	Yes	Works consistent with Collaroy-Narrabeen Beach Coastal Protection Works Specifications
	Is the development suitable in relation to the surrounding area and its impact on the amenity of the coastal foreshore?	Yes	Findings consistent with Collaroy-Narrabeen Beach Coastal Protection Assessment (Manly Hydraulics Laboratory and UNSW Water Research Laboratory, 2016)
	Is the development suitable in relation to its cumulative impacts and other development in the coastal catchment?	Yes	Findings consistent with Collaroy-Narrabeen Beach Coastal Protection Assessment (Manly Hydraulics Laboratory and UNSW Water Research Laboratory, 2016)
	Will the development adversely affect coastal process significantly?	No	Findings consistent with Collaroy-Narrabeen Beach Coastal Protection Assessment (Manly Hydraulics Laboratory and UNSW Water Research Laboratory, 2016)
	Will the development increase the impacts of coastal hazards to other development or properties	No	Works will contained within one property boundary. Condition to be applied in relation to

Internal Referral Body	Comments		
	significantly?		interaction with adjoining works to ensure to ensure no impact on adjacent properties.
	Will the development increase the impacts of coastal hazards to the detriment of the environment?	No	Findings consistent with Collaroy-Narrabeen Beach Coastal Protection Assessment (Manly Hydraulics Laboratory and UNSW Water Research Laboratory, 2016)
	Does the development incorporate appropriate measures to minimise exposure to coastal hazards?	Yes	Works consistent with Collaroy-Narrabeen Beach Coastal Protection Works Specifications
	Does the development incorporate appropriate for modification in response to sea level rise?	Yes	Works consistent with Collaroy-Narrabeen Beach Coastal Protection Works Specifications
WDCP 2011 requirements Clause E9 – Coastline Hazard Pursuant to Section 4.15(a)(i) of the Environmental Planning and Assessment Act 1979, the Objectives of the Warringah Development Control Plan 2011 (WDCP 2011) are considered the following:			
	Assessment Consideration	Assessment Acceptability	Further Assessment Comment
	Does the proposal provide protection from coastal processes and coastline hazards for proposed buildings and works along Collaroy Beach, Narrabeen Beach and Fisherman's Beach?	Yes	No additional comment
	Does the development mitigate any adverse impact on the scenic quality of Collaroy, Narrabeen and Fisherman's Beaches?	Yes	No additional comment
	Does the development mitigate any adverse impact on the coastal processes affecting adjacent land?	Yes subject to condition	Works will contained within one property boundary. Condition to be applied in relation to interaction with adjoining works to ensure to ensure

Internal Referral Body	Comments		
			no impact on adjacent properties.
	Does the development retain the area's regional role for public recreation and amenity?	Yes	No additional comment
	<p>Requirements under SEPP Coastal Management 2018; and Clause 55 - Development within the coastal zone [compulsory if land to which Plan applies includes land in the coastal zone]</p> <p>The proposal has been identified as being located within a Sensitive Coastal Location as identified on the Coastline Hazard Map. Accordingly, pursuant to Section 79C(a)(i) of the Environmental Planning and Assessment Act 1979, the provisions of State Environmental Planning Policy No.71 – Coastal Protection are to be considered.</p>		
	<p>Assessment Consideration</p> <p>Is the development acceptable with regard to the SEPP Coastal Management 2018:</p> <p><i>(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and...</i></p> <p><i>(f) to protect and preserve beach environments and beach amenity, and</i></p> <p><i>(g) to protect and preserve native coastal vegetation, and</i></p> <p><i>(h) to protect and preserve the marine environment of New South Wales, and</i></p> <p><i>(i) to protect and preserve rock platforms, and</i></p> <p><i>(j) to manage the coastal zone in accordance with the principles of ecologically</i></p>	<p>Assessment Acceptability</p> <p>Yes</p>	<p>Further Assessment Comment</p> <p>No additional comment</p>

Internal Referral Body	Comments		
	<p><i>sustainable development (within the meaning of section 6 (2) of the Protection of the Environment Administration Act 1991), and...</i></p> <p><i>(I) to encourage a strategic approach to coastal management.</i></p>		
	Does the development implement measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats?	Not Applicable	No additional comment
	Does the development implement measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats?	Not Applicable	No additional comment
	Does the development take into consideration existing wildlife corridors and the impact of development on these corridors?	Not Applicable	No additional comment
	Are the likely impact of coastal processes and coastal hazards on the development and any likely impacts of the development on coastal processes and coastal hazards acceptable?	Yes	Findings consistent with Collaroy-Narrabeen Beach Coastal Protection Assessment (Manly Hydraulics Laboratory and UNSW Water Research Laboratory, 2016)
	Are the likely impacts of development on the water quality of coastal waterbodies acceptable?	Yes	No additional comment
	Is the development acceptable with regard to:	Yes	No additional comment

Internal Referral Body	Comments		
	<p>(i) the cumulative impacts of the proposed development on the environment, and</p> <p>(ii) measures to ensure that water and energy usage by the proposed development is efficient</p> <p>Conclusion / General Comments</p> <p>The proposed coastal protection works are consistent with the CZMP for Collaroy-Narrabeen Beach and Fisherman Beach as well as the Northern Beaches Coastal Erosion Policy. The proposal can be approved subject to condition.</p> <p>It is noted that this proposal integrates with existing informal coastal protection works that extend both north and south of this proposal for a distance of approximately 1.3 kilometres. The proposed works cover a distance of approximately 60 meters.</p> <p>This has been taken into account in assessing the potential impact of these works and actions required to coordinate protection with adjoining properties.</p> <p>Recommendation</p> <table border="1"> <tr> <td>NO OBJECTION</td><td>Unlikely Significant Impact - Subject to conditions</td></tr> </table>	NO OBJECTION	Unlikely Significant Impact - Subject to conditions
NO OBJECTION	Unlikely Significant Impact - Subject to conditions		
NECC (Development Engineering)	<p>The proposal is for construction of seawall which is to span across the rear of the entire site to protect the site from tidal wave action. All works are to be done in accordance with the submitted Geotechnical Report and Coastal Engineering Report. It must be done in the approval of the Coast and Catchment department.</p> <p>No development engineering conditions are 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.
NSW Department of Lands - Lands and Property Management Authority	<p>The Department of Industry - Lands, granted unconditional owners consent on 26 June 2018, stating:</p> <p><i>"It has been identified that the Land Owners Consent provided to applications DA2017/0591 and DA2017/0947 were provided without prejudice. I can confirm that Land Owners Consent for DA2017/0591</i></p>

External Referral Body	Comments
	<p>and DA2017/0947 have been issued and can be relied upon by Council, without qualification to determine the applications."</p> <p>Additional comments from the department included:</p> <p>"Coastal Zone Management Plan The requirements of the CZMP, more specifically the issues raise in Kylie Hargreaves letter of the 13 October 2016 will be addressed as part of the tenure approval process.</p> <p>Reserve Purpose I note Council's submission and support for the additional purpose of Coastal protection to be added to Reserve 79606. The department supports the premise for Council seeking a qualification of the additional reserve purpose, however, this isn't something that is available to be implemented through the gazettal process. Council as Reserve Trust manager and also the planning consent authority have legislative functions that can ensure this is the case with any future proposed developments."</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

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 have been assessed by Council's internal and external coastal experts.

The coastal protection works will link with other protection works to the north and south that, overall, run for approximately 1.3km along Collaroy/Narrabeen Beach. The proposed works will fit with this overall alignment, ensuring a contiguous wall, best suited to cause the least impact on coastal processes.

The design of the wall (a rock revetment structure) is the most appropriate for this site to align with the adjoining coastal protection works, minimise the impact on coastal processes, maximise the usable space for the private property owners, and minimise the visual impact on the beach.

Conditions have been imposed to protect public safety, access to the beach, and Aboriginal cultural heritage.

In this regard, the works, as assessed by Council's internal and external coastal experts will not have unreasonable impacts on:

- the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment
- the coastal environmental values and natural coastal processes
- 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
- marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms
- 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
- Aboriginal cultural heritage, practices and places
- the use of the surf zone

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

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

Comment:

As above, the proposed works are the best fit for the circumstances of the site and the overall alignment of works along Collaroy/Narrabeen Beach, ensuring a contiguous wall, best suited to cause the least impact on coastal processes.

The impacts from the works will be managed by the conditions of consent, ensuring on-going maintenance and action in the event of a storm that causes any damage to the works.

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:

(a) The proposed works are located on both private land and Crown land, and will not have an unreasonable impact on the public access to the beach. The works are generally at the height of the fore-dune and will not cause unreasonable impacts to the visual amenity and scenic qualities of the coast, or any unreasonable overshadowing, wind funnelling or the loss of views from public places to the foreshore. Conditions of consent have been included to protect public safety, access to the beach, and Aboriginal cultural heritage.

(b) The proposed works are the best fit for the circumstances of the site and the overall alignment of works along Collaroy/Narrabeen Beach, ensuring a contiguous wall, best suited to cause the least impact on coastal processes.

The impacts from the works will be managed by the conditions of consent, ensuring on-going maintenance and action in the event of a storm that causes any damage to the works.

(c) The coastal protection works will link with other protection works to the north and south that, overall, run for approximately 1.5km along Collaroy/Narrabeen Beach. The proposed works will fit with this overall alignment, ensuring a contiguous wall, best suited to cause the least impact on coastal processes.

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 have been assessed by Council's internal and external coastal experts who have confirmed that, subject to conditions, the proposed development is not likely to cause increased risk of coastal hazards.

Overall, the proposed coastal protection works will link with other protection works to the north and south that run for approximately 1.5km along Collaroy/Narrabeen Beach. The proposed works will fit with this overall alignment, ensuring a contiguous wall, best suited to cause the least impact on coastal processes and hazards.

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	The coastal protection wall will sit at or below natural ground level and will form part of the foredune of the beach.	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.5 Development within the coastal zone	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
6.5 Coastline hazards	Yes

Detailed Assessment

5.5 Development within the coastal zone

Clause 5.5 of the Warringah Local Environmental Plan 2011 states;

(2) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:

(a) existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:

- (i) maintaining existing public access and, where possible, improving that access, and*
- (ii) identifying opportunities for new public access, and*

Comment:

The proposal will not unreasonably impede existing public access to the beach. By reinforcing the protection of private land, the public beach may be more easily accessible for longer periods of time during the storm season.

(b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:

- (i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
- (ii) the location, and*
- (iii) the bulk, scale, size and overall built form design of any building or work involved, and*

Comment:

The proposed coastal protection works are suitable for the site and will be consistent with the network of coastal protection works along Collaroy and Narrabeen beaches.

The coastal protection works on the subject site are designed to be at or below ground level and will be covered in sand and vegetation post construction and for the majority of the time. In this regard, the bulk of the works will be hidden and the development will not unreasonably impact the scenic quality of the beach front and will not impact on land uses and activities associated with the coast.

(c) the impact of the proposed development on the amenity of the coastal foreshore including:

- (i) any significant overshadowing of the coastal foreshore, and*
- (ii) any loss of views from a public place to the coastal foreshore, and*

Comment:

The coastal protection works on the subject site are designed to be at or below the foredune level and will not result in any unreasonable overshadowing or loss of views to or from the coastal foreshore.

(d) how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and

Comment:

The visual amenity and the scenic quality of the coast will be reasonably protected due to the coastal protection works being at or below the foredune level and covered in sand.

(e) how biodiversity and ecosystems, including:

- (i) native coastal vegetation and existing wildlife corridors, and*
- (ii) rock platforms, and*
- (iii) water quality of coastal waterbodies, and*
- (iv) native fauna and native flora, and their habitats, can be conserved, and*

Comment:

The portion of the site that the proposed coastal protection works will be located was heavily damaged and eroded during the storms in June 2016. There are no rock platforms in the area and limited coastal vegetation or habitats for native fauna and flora remained after these storms.

(f) the cumulative impacts of the proposed development and other development on the coastal catchment.

Comment:

The proposed development individually and combined with the eventual line of future coastal protection walls along Collaroy and Narrabeen beaches are necessary to protect private land, public land and critical infrastructure. The nature and location of the proposal and other future similar proposals will not have unacceptable impacts on the coastal catchment.

(3) Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:

(a) the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and

Comment:

The proposed development is located entirely on private land. The works will strengthen coastal protection, particularly during large storms. By reinforcing the protection of private and public land, the public beach will more easily accessible for longer periods of time during the storm season. In this regard, the works will not unreasonably impede or diminish, the physical, land-based right of access of the public to or along the coastal foreshore.

(b) if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and

Comment:

The development does not involve the disposal of effluent.

(c) the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and

Comment:

The development does not involve the discharge of stormwater.

(d) the proposed development will not:

- (i) be significantly affected by coastal hazards, or*
- (ii) have a significant impact on coastal hazards, or*
- (iii) increase the risk of coastal hazards in relation to any other land.*

Comment:

The proposed coastal protection works will be affected by coastal hazards, however, the purpose of the development (in conjunction with other coastal protection works to the north and south) is to protect private land, public land and critical infrastructure.

Overall, the development will not have a significant impact on coastal hazards and, once constructed in conjunction with other neighbouring coastal protection works, will not increase the risk of coastal hazards on any other land.

6.5 Coastline hazards

The objectives of Clause 6.5 - 'Coastline Hazards' require development to:

- (a) avoid significant adverse impacts from coastal hazards, and*
- (b) enable evacuation of coastal risk areas in an emergency, and*
- (c) ensure uses are compatible with coastal risks, and*
- (d) preserve and protect Collaroy Beach, Narrabeen Beach and Fishermans Beach as national assets for public recreation and amenity.*

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

Clause 6.5 - 'Matters for Consideration'	Comments
Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:	
(a) will not significantly adversely affect coastal hazards	As confirmed by Council's internal and external coastal engineers, the proposal will not significantly adversely affect coastal hazards.
(b) will not result in significant detrimental increases in coastal risks to other development or properties.	Conditions to ensure appropriate integration with adjoining private land have been included in the recommendation. As such, the proposal will not result in significant detrimental increases in coastal risks to other development or properties.
(c) will not significantly alter coastal hazards to the detriment of the environment.	As confirmed by Council's internal and external coastal engineers, the proposal will not significantly alter coastal hazards to the detriment of the environment.
(d) incorporates appropriate measures to manage risk to life from coastal risks.	The works are consistent with the Collaroy-Narrabeen Beach Coastal Protection Works Specifications and will therefore incorporate appropriate measures to manage risk to life from coastal risks.
(e) avoids or minimises exposure to coastal hazards.	The coastal protection works will minimise exposure to coastal hazards through the appropriate location and integration of the works with adjoining protection works. The wall is designed to only come into effect during large coastal storms.
(f) makes provision for relocation, modification or removal of the development to adapt to coastal hazards and NSW sea level rise planning benchmarks.	Actions required to retrofit works have been identified. These actions are recommended to be conditioned as part of a maintenance plan.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	The coastal protection wall will sit at or below natural ground level	N/A	Yes
B3 Side Boundary Envelope	North - 4m	No encroachments	N/A	Yes
	South - 4m	No encroachments	N/A	Yes
B5 Side Boundary Setbacks	North - 0.9m	Nil	100%	No
	South - 0.9m	Nil	100%	No
B7 Front Boundary Setbacks	West - 6.5m	Pittwater Road - Minimum of 43.38m	N/A	Yes
B9 Rear Boundary Setbacks	East - 6m	The coastal protection wall is proposed across the rear boundary	100%	No

		and onto adjacent crown land.		
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	Approximately 3.1% (88.81sqm)	92.25%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E9 Coastline Hazard	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The coastal protection works have a nil setback to both side boundaries.

The control requires a minimum of 0.9m.

Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

Comment:

The site currently contains minimal landscaped open space, however, it is a unique development. The proposed works will not eliminate any usable areas of landscaped open space as they will sit mainly in the location of the current rock wall.

The existing areas of deep soil planting on the site, suitable for medium to high vegetation, will remain.

As such, the site will continue to provide adequate opportunities for deep soil landscape areas.

- *To ensure that development does not become visually dominant.*

Comment:

The coastal protection works will sit at or below the fore dune level and will be covered by sand and vegetation post construction and for the majority of the time. The works will link up with an adjacent works to the south and with the existing rock on the property to the north. In this regard, the proposal will not become visually dominant.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The coastal protection works will sit at or below the fore dune level and will be covered by sand and vegetation post construction and for the majority of the time. The works are at the minimum height required for suitable protection. In this regard, the scale and bulk of the proposal has been minimised.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The proposed works will not result in any privacy, amenity or solar access impacts to adjoining properties. In addition, the works must link up with the adjoining rocks, otherwise outflanking would occur defeating the purpose of the coastal protection works. In this regard, a nil setback is

necessary and appropriate.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The coastal protection works will sit at or below the fore dune level and will not result in the unreasonable loss of any views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B9 Rear Boundary Setbacks

Description of non-compliance

The proposed coastal protection works are located across the rear boundary of the site and onto the adjacent beach, which is Crown land.

The control requires a minimum rear setback of 6.0m.

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

The site currently contains minimal landscaped open space, however, it is a unique development. The proposed works will not eliminate any usable areas of landscaped open space as they will sit mainly in the location of the current rock wall.

The existing areas of deep soil planting on the site, suitable for medium to high vegetation, will remain.

As such, the site will continue to provide adequate opportunities for deep soil landscape areas.

- *To create a sense of openness in rear yards.*

Comment:

The coastal protection wall will sit at or below the foredune level and will be covered by sand and vegetation post construction. In this regard, a reasonable sense of openness will be created and maintained. In addition, public access to the beach will not be unreasonably affected by the proposal.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

It is appropriate to locate the works over the rear boundary due to the need to protect the subject site and the requirement for the works to link up with other works along Collaroy and Narrabeen Beach. As the wall is at or below the foredune level and the land to the east consists of the beach and ocean, there will be no unreasonable privacy or amenity impacts caused by the development. Public access to the beach will not be unreasonably affected by the proposal.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

The works will link up with other coastal protection works along Collaroy and Narrabeen Beach.

In this regard, the future visual continuity and pattern of buildings, rear gardens and landscape elements will be consistent with this proposal.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

As the wall is at or below the foredune level and the land to the east consists of the beach and ocean, there will be no unreasonable privacy or amenity impacts as a result of the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C9 Waste Management

A detailed waste management plan has not been submitted with the application. To ensure proper disposal of demolition and builders' wastes, a condition has been included in the consent requiring details prior to the issue of a construction certificate.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The site will provide approximately approximately 3.1% (88.81sqm) landscaped open space.

The control requires a minimum of 40%

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The works are located at the rear of the site and will require no changes to the streetscape.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment:

There is currently very minimal indigenous vegetation, topographical features or habitat for wildlife in the location of the works. This is a result of the June 2016 storms and the constantly changing nature of the foredune.

The works are designed to be covered in sand and vegetation post construction. This will enhance indigenous vegetation, the shape of the foredune and habitat for wildlife.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The foredune location of the coastal protection works is not suitable for medium to high shrubs or canopy trees.

The works are designed to be covered in sand and vegetation post construction. This will be sufficient to enable the establishment of low lying shrubs and to hide the structure.

- *To enhance privacy between buildings.*

Comment:

The works will have no impact on privacy and will not prevent vegetation being planted on other parts of the site to assist with privacy between buildings.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment:

The area of the site proposed as the location of the works is not currently used for outdoor recreation by the residents. Access to the beach (by the residents only) is obtained through this area.

The works include stairs providing beach access and will help enhance the longevity of the beach, providing better outdoor recreational opportunities for the residents and the public.

- *To provide space for service functions, including clothes drying.*

Comment:

Sufficient space for service functions will remain.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment:

All water that falls on the works will drain to the beach. As such, stormwater management will continue to be suitable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

E7 Development on land adjoining public open space

Merit consideration:

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

- *To protect and preserve bushland adjoining parks, bushland reserves and other public open spaces.*

Comment:

The coastal protection works will assist in preserving the public beach and will link with other neighbouring coastal protection works to form a network of coastal protection.

- *To ensure that development responds to its adjacent surroundings to preserve and enhance the natural qualities of the environment.*

Comment:

The coastal protection works will link with other neighbouring coastal protection works.

From a coastal engineering and processes perspective, this is the ideal outcome in these circumstances, given the demolition of all development on the foredune is not a reasonable proposition.

In this regard, the proposed works will be the best option to rebuild and enhance the natural qualities of this environment.

- *Development on land adjoining open space is to complement the landscape character and public use and enjoyment of the adjoining parks, bushland reserves and other public open spaces.*

Comment:

As previously discussed, the works will complement neighbouring protection works, help preserve private and public land and ensure the beach is usable for longer periods of time (due to less damage during large coastal storms).

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

E9 Coastline Hazard

Merit consideration:

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

- *To minimise the risk of damage from coastal processes and coastline hazards for proposed buildings and works along Collaroy Beach, Narrabeen Beach and Fisherman's Beach.*

Comment:

The coastal protection works will serve to minimise the risk of damage for the existing building on the subject site. The works will form part of a longer contiguous protection wall along Collaroy and Narrabeen Beach.

Without these works, the subject site will have minimal protection against erosion and storm damage and will be at increased risk as time goes on. This may destabilise the neighbouring private land, resulting in exponentially more damage.

- *To ensure that development does not have any adverse impact on the scenic quality of Collaroy, Narrabeen and Fisherman's Beaches.*

Comment:

The structure is designed to be covered in sand and vegetation post construction and post any storm that exposes the works. In this regard, the scenic quality of Collaroy and Narrabeen Beaches will be reasonably maintained.

- *To ensure that development does not adversely impact on the coastal processes affecting adjacent land.*

Comment:

When combined with the works that exist and are likely to be constructed to the north and south of the site, the development will not adversely impact on coastal processes.

- *To retain the area's regional role for public recreation and amenity.*

Comment:

The works will not unreasonably limit public access to the beach and will help maintain the beach after any storm so that it is usable for longer periods for public recreation and amenity.

- *To maximise the use of existing infrastructure.*

Comment:

The works will assist in the long term protection of Pittwater Road and will, in conjunction with neighbouring coastal protection works, protect public land, public infrastructure and private properties.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the

proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Council Contributions Plan 2018

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

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 483,577		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 4,594
Section 7.12 Planning and Administration	0.05%	\$ 242
Total	1%	\$ 4,836

CONCLUSION

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

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

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

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

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

- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

In June 2016, a large storm caused severe coastal erosion to Collaroy/Narrabeen Beach, as well as damage to properties fronting the beach, including the subject site.

This Development Application seeks consent for coastal protection works, in the form of a rock revetment structure or "seawall", to primarily provide protection for the residential flat building on the site which is known as "*Flight Deck*". The works will have the added benefit of providing protection for private land to the north and south (once it links up with existing works to the south and the existing rock on the property occupied by another residential flat building known as "*Ship Mates*" to the north). The works will also provide indirect protection for critical infrastructure to the west (i.e. Pittwater Road).

Four sets of coastal protection works on properties to the north and south have been approved by Council and the Land and Environment Court.

The suite of proposed coastal protection works are located across private and public land, extending onto the Crown owned beach. The works will link with other protection works to the north and south that, overall, will run for approximately 1.3km along Collaroy-Narrabeen Beach. The proposed works will fit with this overall alignment, ensuring a contiguous wall, best suited to cause the least impact on coastal processes.

The design of the wall (a rock revetment structure) is the most appropriate for this site to both align with the adjoining coastal protection works to the north and south, minimise the impact on coastal processes and minimise the visual impact to the public beach (i.e. the works are designed to be covered in sand and vegetation during inter-storm periods).

Conditions have been recommended to protect public safety, protect public access to the beach, and ensure the restoration of the beach and/or land adjacent to the beach if any increased erosion of the beach or adjacent land is caused by the presence of the works. Conditions have also been recommended to ensure the on-going maintenance of the works.

Overall, the proposal is acceptable from a coastal engineering perspective and the conditions imposed will satisfy the relevant legislative requirements and public interest matters.

The application is therefore recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2017/0947 for Construction of coastal protection works on land at Lot 7351 DP 1166942, Pittwater Road, COLLAROY, Lot CP SP 1977, 1114 - 1118 Pittwater Road, COLLAROY, subject to the conditions printed below:

DEFERRED COMMENCEMENT CONDITIONS

1. Lawful occupation of the works on Crown Land

The applicant is to produce evidence to the consent authority to the satisfaction of the consent authority of the registration on title of the Crown Land of any instrument required by the Crown and on terms satisfactory to the Crown for the lawful entitlement for the works to be constructed and maintained by the owners of the properties 1114 -1118 (SP 1977), Pittwater Road, Collaroy ('the owners') on the Crown Land and to remain on the Crown Land.

Reason: To ensure the lawful occupation of the works on public land.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within five (5) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. 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
S.01 Revision C	17 January 2019	Horton Coastal Engineering Pty Ltd
S.02 Revision C	17 January 2019	Horton Coastal Engineering Pty Ltd
S.03 Revision C	17 January 2019	Horton Coastal Engineering Pty Ltd
S.05 Revision C	17 January 2019	Horton Coastal Engineering Pty Ltd
S.06 Revision C	17 January 2019	Horton Coastal Engineering Pty Ltd
S.07 Revision C	17 January 2019	Horton Coastal Engineering Pty Ltd

S.08 Revision C	17 January 2019	Horton Coastal Engineering Pty Ltd
-----------------	-----------------	------------------------------------

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment	25 August 2017	JK Geotechnics
Coastal Engineering Report	20 September 2017	Horton Coastal Engineering Pty Ltd
Revegetation Report	6 June 2017	Diane Wiesner

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) No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

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.

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) 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.
- (c) 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.

- (d) 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.

Sand excavation is permitted from:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday

Other demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the

Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**
Northern Beaches Council Contributions Plan 2018

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

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 483,577.00		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 4,593.98
Section 7.12 Planning and Administration	0.05%	\$ 241.79
Total	1%	\$ 4,835.77

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

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

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

6. **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

7. **Interaction with adjoining works**

A detailed plan and cross section(s) at the common boundaries are to be prepared confirming the method and location for integration of the proposed works and the existing protection on the adjoining properties.

Details demonstrating the actions required to ensure compliance with this requirement are to be prepared by a suitably qualified coastal engineer and submitted to Northern Beaches Council for approval prior to issue of the construction certificate

Reason: To provide adequate detail to enable works to be constructed to without impacting the adjoining works or properties.

8. **Maintenance Management Plan for Coastal Protection Works**

A Maintenance Management Plan (MMP) is to be prepared for the maintenance of the coastal protection works for their intended design life. The MMP is to be prepared by a suitably qualified coastal engineer and is to be approved by Council in writing prior to issue of the construction certificate. The MMP must be complied with at all times.

The MMP may be modified from time to time by the agreement of all landowners at the time and with the approval of Council. These modifications to the MMP must also be made (if necessary) each time the design life is extended in accordance with condition 42. This is to ensure the MMP continues to be suitable in perpetuity.

Reason: To ensure a plan is in place for the on-going maintenance and adaptation of the works prior to the start of construction.

9. **Performance of coastal protection works**

A statement is to be prepared by a suitably qualified coastal engineer that the proposed works:

- Will maintain their structural integrity during the design storm event in the absence of formal coastal protection works being constructed on the adjoining land.
- Will not adversely impact coastal processes to the detriment of the adjoining land.

Details demonstrating the actions required to ensure compliance with this requirement are to be prepared by a suitably qualified coastal engineer and submitted to Northern Beaches Council for approval prior to issue of the construction certificate.

Reason: To ensure ongoing structural integrity and performance of the proposed works.

10. **Maintenance Obligations and Public Safety**

The owners of 1114 -1118 (SP 1977), Pittwater Road, Collaroy must provide an irrevocable bank guarantee (or other suitable legally binding obligation) to Council prior to the issue of any construction certificate in the amount of \$1000 per lineal metre of work (based on the length of the seaward property boundary) to undertake maintenance of the coastal protection works in the event that they are damaged as a result of coastal storm, including to undertake any works required to remove any threat to public safety arising from the coastal protection works including the removal of rocks or debris, that have become dislodged from the works, from the public beach and adjacent public land.

In this condition "maintenance" means the restoration of the works to a standard in accordance with the approved plans and specifications following any damage caused by a coastal storm and implementation of the MMP.

The bank guarantee (or other suitable legally binding obligation) is to be replenished if drawn

upon and increased to allow for Consumer Price Index (CPI) every 10 years from the date of establishment.

The bank guarantee (or other suitable legally binding obligation) is to be in the favour of Council. The funds may be accessed by the owners, for the undertaking of works referred to in this condition and in the approved MMP, with the written consent of Council.

The bank guarantee is to be released to the landowners at the time, if the coastal protection works are removed.

Reason: To satisfy the requirements of Section 27 of the Coastal Management Act 2016 and to ensure the coastal protection works will not pose any threat to public safety.

11. **Compliance with Standards**

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

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

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

12. **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.

13. **Construction Management Program**

A Construction Management Program is to be prepared. The CMP should include the following:

(a) The proposed method of access to and egress from the site for demolition, excavation and construction vehicles, including access routes through any Council owned or managed land and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed without Council's Consent being granted;

(b) The proposed method of loading and unloading demolition, excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site;

(c) The location and operation of any heavy plant (eg: excavators);

(d) Provision for all construction materials to be stored on site, at all times, showing the location of excavated materials, construction materials and waste containers during the construction

period;

(e) A Traffic Control Plan for any activities involving the management of vehicle and pedestrian traffic, if required;

(f) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve. To minimise the trafficking of sand onto the road;

(g) The way that the roadway (including any footpath) will be kept in a serviceable condition for the duration of construction.

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

Council must be notified of start date of works as soon as possible and within a reasonable time prior to the start of works.

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.

14. **Pre-commencement Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining or nearby public infrastructure (including roads, gutter, footpaths, etc) potentially impacted by the construction of the coastal protection works. A copy of the report must be provided to Council and any other owners of public infrastructure.

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

15. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

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

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **Tree protection**

(a) Existing trees which must be retained

- i) All trees outside of the area of approved works
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed

- otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

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

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

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

18. **Working on and Access to Reserves Permit**

A Working on and Access to Reserves Permit is required for vehicular access over land under Council care, control and management for the delivery and/or removal of materials, waste or equipment where there is no other reasonable route of access and activities are carried out without direct Council supervision. Applications can be obtained from Council's website or Parks and Recreation business unit.

Reason: Public Safety and the protection of Council infrastructure.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

19. **Waste Management During Development**

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

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

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

20. **Historic Artefacts and Aboriginal relics**

If any World War Two era tank traps or any Aboriginal relics (or other historic artefacts) are uncovered during the works, Council is to be notified immediately so all excavation or construction work must immediately stop and not recommence until written approval is provided by the Office of Environment and Heritage.

Reason: To protect historic heritage and ensure any artefacts and relics are safely removed/dealt with.

21. **Sand**

No sand excavated from the beach to construct the works is to be placed landward of or buried under the protection works before, during or after construction. All such sand shall be placed seaward of or over the works. The sand shall be screened to remove unsuitable material as required.

Reason: To avoid damage to the beach.

22. **Safety requirements under storm conditions**

Works are not to be placed during storm conditions unless the owner/s obtains a written opinion from a suitably qualified coastal engineer that the placement of the works under these conditions does not present a significant safety risk to any person or will result in damage to the beach. This opinion is to be kept by the landowner until the works are completed. If adverse weather conditions are forecast, the works site is to be made safe (where practical) to avoid the dispersal of equipment and debris onto the beach and into the surf zone.

Reason: To ensure the safety of workers and the public during construction.

23. **Removal of unsuitable material**

Any existing rock or material encountered in the works area during construction of the works not incorporated into permanent protection works shall be removed by the owner/s, or used as backfill consistent with Council's Coastal Erosion Policy Section 9(d). This shall include the area excavated within a line extending from either longitudinal property boundary to the mean low water mark. Confirmation of this requirement is to be provided to Council by the engineer supervising the works.

Reason: To ensure that all unsuitable material is removed from the beach.

24. **Completion of Construction Works**

All construction works must be completed within 24 months of the on-site commencement of the construction works.

Reason: To ensure the works are completed in a timely manner.

25. **Site Supervision**

A suitably qualified coastal engineer is to be employed to supervise construction for the duration of the approved works.

Reason: To ensure appropriate construction of coastal protection works.

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

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

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

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

27. **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.

28. **Requirement to notify about new contamination evidence**

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination (acid sulphates) or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment.

29. **Damage**

Any damage or injury caused to a public road, beach, council reserve or associated structures including footpaths, drains, kerb and gutter utility services as a consequence of the development works is to be made good at the cost of the landowners.

Reason: To make good any damage to public roads and other public assets.

30. **Site fencing requirements**

Construction site safety fencing and/or hoarding is to be provided in accordance with Workcover requirements. Such fencing and/or hoarding is to be erected wholly within the works area unless prior approval from Council is obtained.

Reason: For safety purposes.

31. **Implementation of Construction Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Management Plan (CMP). All controls in the CMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CMP be impacted by surrounding major development not encompassed in the approved CMP, the CMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: to ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent rather than any secondary approval.

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

32. **Certification of works**

The constructed coastal protection works are to be certified by a suitable qualified coastal engineer as being constructed in accordance with the approved design and performance criteria. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to approval of an occupation certificate. This certification is to be provided to Council on issue of the Occupation Certificate.

Reason: To ensure appropriate design and construction of coastal protection works.

33. **Restoration of sand and vegetation**

The coastal protection works are to be covered in sand and vegetation (local native species as per Inspection Report (Wiesner 2017) or other native species known to occur locally in the area

and should be planted at recommended density of 4 plants per square metre) upon completion of the rock works.

Details are to be provided to the Principal Certifying Authority prior to the issue of the Occupation Certificate. These details are to be provided to Council on issue of the Occupation Certificate.

Reason: To limit the impact of the works on the visual quality of the beach.

34. **Surveys During Works and Post completion survey**

A declaration by a registered surveyor is required as evidence that all construction has been effected in accordance with the Development Consent, approved plans and specifications in the Consent. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to approval of an occupation certificate. Survey plans and a declaration are to be provided to Council on issue of the Occupation Certificate.

Reason: To ensure accurate location of coastal protection works.

35. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

36. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

37. **Post-Construction Dilapidation Report**

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of Councils road and footpath infrastructure that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure.

Reason: To ensure security against possible damage to Council infrastructure.

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

38. **Ongoing maintenance of the Coastal Protection Works and public safety**

The coastal protection works must be maintained in accordance with the Development Consent, conditions, approved plans and specifications as outlined in this consent. The maintenance must be to a standard that does not compromise the protection or integrity of the adjoining land.

Appropriate arrangements to allow sufficient access to the works in the event that maintenance is required are to be maintained in accordance with Maintenance Management Plan of the Coastal Protection Works.

Any impact to the beach resulting from damage or failure of coastal protection works must be rectified by the owner of the works as part of maintaining the works as per condition 39 of this consent. If required the financial arrangements established in condition 10 of this consent may be utilised in accordance with any written consent that may be issued by Council.

Reason: To satisfy the requirements of Section 27 of the Coastal Management Act 2016 and to ensure that the coastal protection works will not pose any significant threat to public safety.

39. **Removal of debris**

The owners must obtain all necessary approvals and then remove debris from any adjoining public land if part of the coastal protection works is dispersed onto that land, with such removal to be done as soon as reasonably practicable to the satisfaction of Council and, if necessary, the Crown, at no cost to Council. If required the financial arrangements established in condition 10 of this consent may be utilised in accordance with any written consent that may be issued by Council.

Note: Debris will be taken to have been deposited from 1114 -1118 (SP 1977), Pittwater Road, Collaroy if it is found on public land within a line extending from either longitudinal boundary to the mean low water mark, and it is evident to have originated from the works or from within the SP 1977 property.

Reason: To ensure the safety of the public beach.

40. **Post storm inspection**

After any storm event that exposes any part of the coastal protection works to damage, that impacts the support or performance on the works (including if directed by Council in writing that such an event has occurred), the owners are to procure, at their cost, inspections by a suitably qualified coastal engineer of the coastal protection works. A detailed report is to be provided by this coastal engineer and any recommendations within the report are to be undertaken as soon as reasonably practicable in accordance with the Maintenance Management Plan or after necessary approvals are obtained, if required.

Reason: To ensure the coastal protection works are maintained after a storm event.

41. **Compliance with the requirements of the Department of Industry – Crown Land for occupation of public land**

The applicant shall at all times comply with any requirements of the Department of Industry – Crown Land for the lawful occupation for the works on public land.

Reason: To enforce any terms of occupation of the adjoining public land subject of this development consent as required by the owner of that land.

42. **Time limited consent**

The consent operates for 60 calendar years from the date of the issue of the occupation certificate and such other period as may be extended with the written approval of Council in accordance with the following.

A minimum of three (3) years prior to the date of 60 years after the issue of the occupation certificate for the works, the owners shall jointly and severally procure, at no cost to Council, a review report, by a suitably qualified independent coastal engineer to ensure the works provide the necessary protection (Review Report).

The review report must consider, consistent with the evidence and coastal hazard predictions at the time, whether:

- (a) The works are satisfactory in their current state and recommend an extension to the design life for a further period of time, or
- (b) Upgrades to the works are recommended to extend the design life for a further period of time, or
- (c) Removal and replacement of the structure with an alternative design is recommended, or
- (d) Demolition and removal of the coastal protection works in the interest of public safety is recommended.

The Review Report shall be submitted to Council for approval not later than twelve (12) months prior to the date of 60 years after the issue of the occupation certificate in the first instance, or 12 months prior to the end of such other period identified in any written approval from Council, in accordance with this condition.

If the Review Report concludes that the structure is satisfactory in accordance with (a) above, Council may, in writing, approve an extension of the term of the development consent for the period recommended in the Review Report, or such lesser time as the Council considers appropriate.

If the Review Report recommends any upgrades or alterations to the works in accordance with (b) above, those upgrades must be dealt with under the planning laws at that time.

If the Review Report recommends removal and replacement of the structure with an alternative design in accordance with (c) above, the replacement structure will be the subject of a further development application for consent to Council, if required by the planning laws at that time.

If the Review Report recommends demolition and removal of the coastal protection works in the interest of public safety, such removal will be undertaken by the owners at their expense and within such time period required by Council.

Any written approval from the Council extending the period of operation of this consent is to be recorded on the s10.7 Planning Certificate for the land and Council's register of development consents.

A further Review Report will be provided to Council a minimum of twelve (12) months prior to the end of any extended period notified identified in writing by the Council in accordance with this condition, with the above process repeated for such extension.

In the event that,

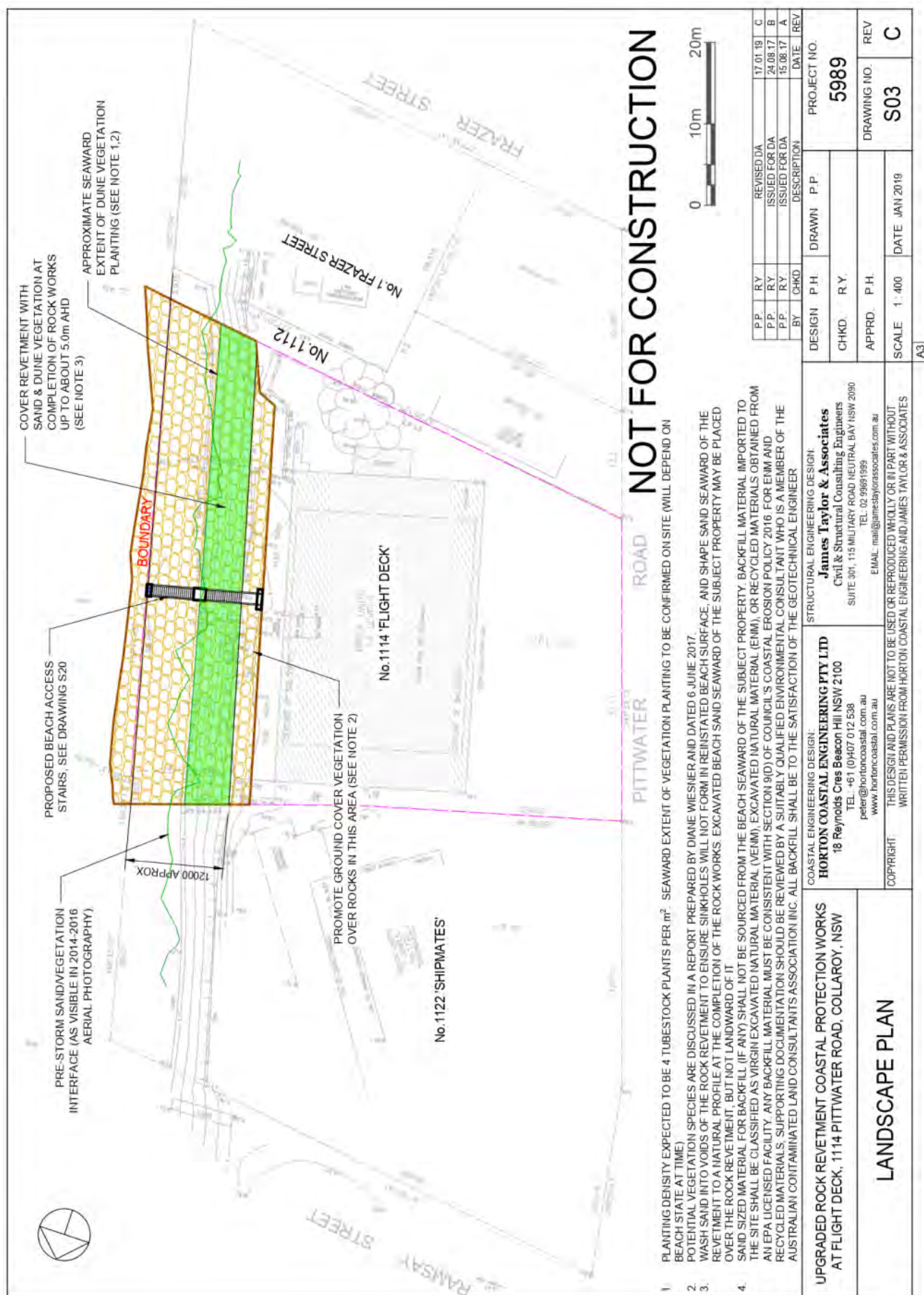
- The Council does not accept the recommendations of the Review Report (including an amended or replacement Report) in writing, or
- Fails to provide written notification of its acceptance of the recommendations within the Review Report within 12 months of lodgement of the Review Report, or
- An application for the continued use, upgrade or replacement of the works is made,

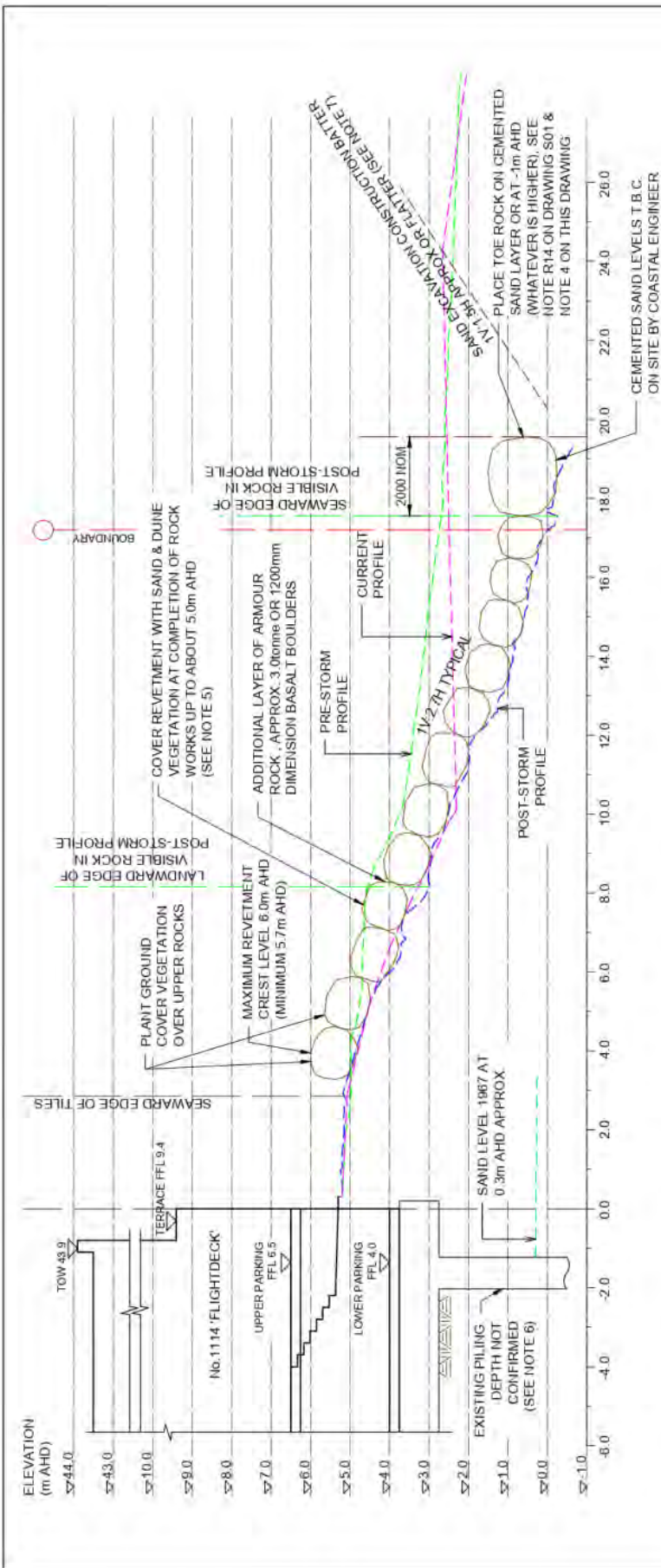
this consent will continue to operate until any application to modify this condition, or for the continued use or upgrade or replacement of the works, or any proceedings seeking review of the refusal of Council to accept the recommendations, has been finally determined by Council or the Court. Any application, proceedings or appeal, must be lodged within 6 months of Council's decision to not accept the findings of the Review Report or Council's failure to notify of its

acceptance of the Review Report, whichever is the later.

Note: This continued operation or extension may need to be facilitated by a formal application to modify the consent having regard to the planning laws at the time.

Reason: The development application indicated the Coastal Protection works have a design life of 60 years; to satisfy the requirements of Section 27 of the Coastal Management Act 2016, and to provide a mechanism to review the works and extend the operation of the consent.





1. PRE-STORM PROFILE DATED 5 APRIL 2016, SOURCED FROM OEH
2. POST-STORM PROFILE DATED 10 JUNE 2016, SOURCED FROM UNSW WATER RESEARCH LABORATORY
3. CURRENT PROFILE FROM DETAILED SURVEYS SURVEY DATED 1 MARCH 2017
4. PLACE LONGEST TOE ROCK HORIZONTAL DIMENSION ALONGSHORE TO MINIMISE SEAWARD EXTENT OF WORKS.
5. WASH SAND INTO Voids OF THE ROCK REVELMENT TO ENSURE SINKHOLES WILL NOT FORM IN REINSTATED BEACH SURFACE, AND SHAPE SAND SEAWARD OF THE REVELMENT TO A NATURAL PROFILE AT THE COMPLETION OF THE ROCK WORKS. EXCAVATED BEACH SAND SEAWARD OF THE SUBJECT PROPERTY MAY BE PLACED OVER THE ROCK REVELMENT, BUT NOT LANDWARD OF IT
6. THE FLIGHT DECK TOWER IS UNDERSTOOD TO STAND ON APPROXIMATELY 180 CONCRETE PILES DRIVEN TO SOLID ROCK AT DEPTHS OF ABOUT 17.1m (SEE 'COASTAL ENGINEERING REPORT FOR CONSTRUCTION OF UPGRADED COASTAL PROTECTION WORKS AT FLIGHT DECK, 1114 PITTWATER ROAD COLLAROY', DATED 20 SEPTEMBER 2017)
7. IT WOULD BE DIFFICULT TO MAINTAIN A TEMPORARY EXCAVATION BATTER AT 1V:1.5H IN SAND BELOW THE GROUNDWATER LEVEL. THEREFORE, TEMPORARY SUPPORT OF THE EXCAVATION (SUCH AS WITH SAND BAGS) AND/OR USE OF SUITABLE ROCK TO FORM A BATTER OF APPROXIMATELY 1V:2.5H MAY BE REQUIRED BELOW THE GROUNDWATER LEVEL

NOT FOR CONSTRUCTION

P.P.	R.Y.	REVIS	DA	17 01 19	C
P.P.	R.Y.	ISSUED	FOR DA	24 08 17	B
P.P.	R.Y.	ISSUED	FOR DA	15 08 17	A
BY	CHKD	DESCRIPTION	DATE	REV	
DESIGN	P.H	DRAWN	P.P.	PROJECT NO.	
CHKD	R.Y.			5989	
APPRD	P.H			DRAWING NO.	
SCALE	1 : 100	DATE	JAN 2019	S10	C

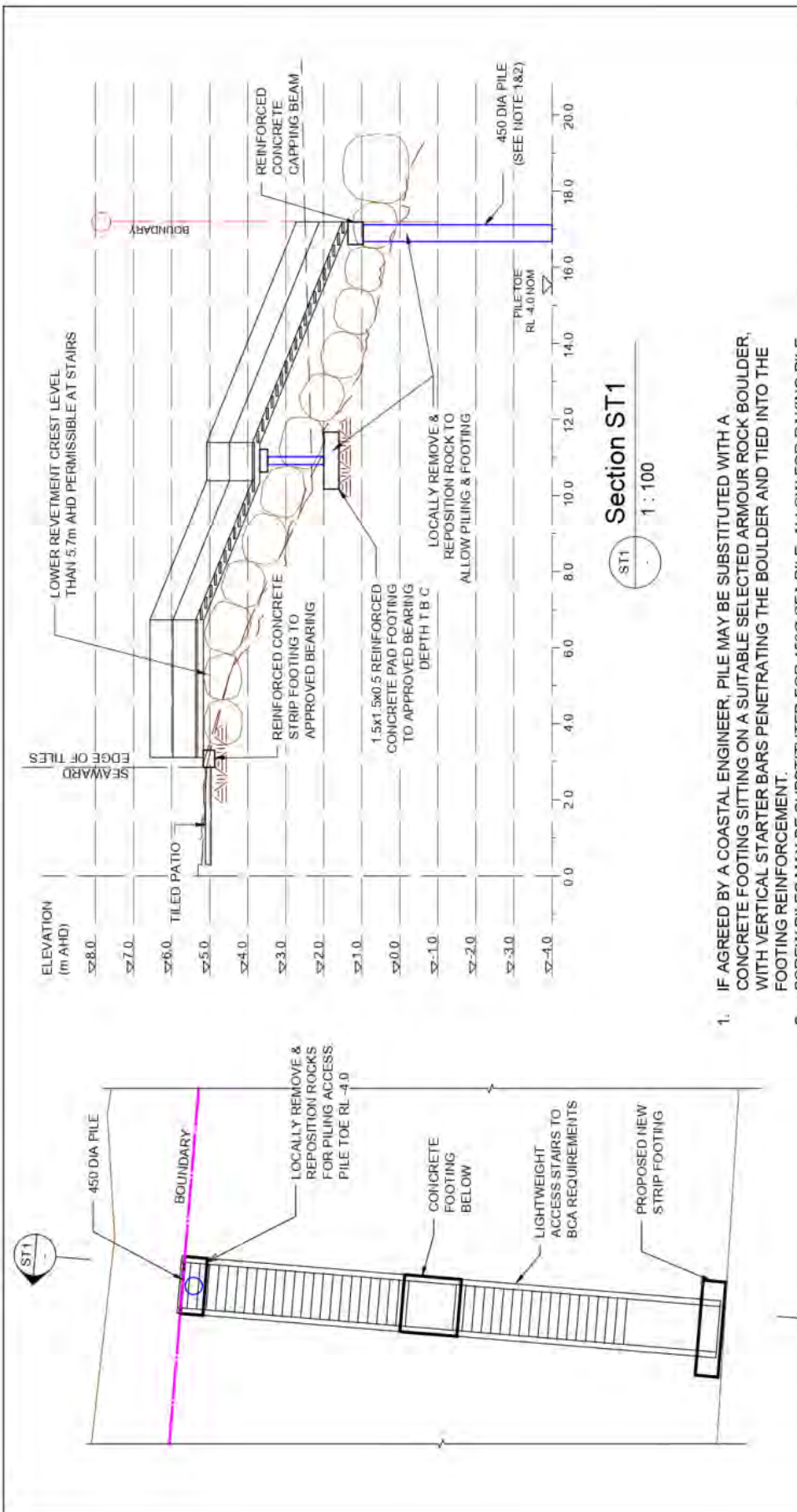
COASTAL ENGINEERING DESIGN
HORTON COASTAL ENGINEERING PTY LTD
18 Reynolds Cres Beacon Hill NSW 2100
TEL: +61 (0)407 012 538
peter@hortoncoastal.com.au
www.hortoncoastal.com.au

STRUCTURAL ENGINEERING DESIGN
James Taylor & Associates
Civil & Structural Consulting Engineers
SUITE 301, 115 MILITARY ROAD NEUTRAL BAY NSW 2090
TEL: 02 9981 9999
EMAIL: mail@james-taylor-associates.com.au

COPYRIGHT THIS DESIGN AND PLANS ARE NOT TO BE USED OR REPRODUCED WHOLLY OR IN PART WITHOUT WRITTEN PERMISSION FROM HORTON COASTAL ENGINEERING AND JAMES TAYLOR & ASSOCIATES

SECTION 1

UPGRADED ROCK REVELMENT COASTAL PROTECTION WORKS
AT FLIGHT DECK, 1114 PITTWATER ROAD, COLLAROY, NSW



ACCESS STAIRS
SCALE 1:100

NOT FOR CONSTRUCTION

1. IF AGREED BY A COASTAL ENGINEER, PILE MAY BE SUBSTITUTED WITH A CONCRETE FOOTING SITTING ON A SUITABLE SELECTED ARMOUR ROCK BOULDER, WITH VERTICAL STARTER BARS PENETRATING THE BOULDER AND TIED INTO THE FOOTING REINFORCEMENT.
2. SCREW PILES MAY BE SUBSTITUTED FOR 450Ø CFA PILE. ALLOW FOR RAKING PILE.

SCALE 1:100									
UPGRADED ROCK REVETMENT COASTAL PROTECTION WORKS AT FLIGHT DECK, 1114 PITTPATER ROAD, COLLAROY, NSW									
ACCESS STAIRS									
COASTAL ENGINEERING DESIGN HORTON COASTAL ENGINEERING PTY LTD 18 Reynolds Cres Beacon Hill NSW 2100 TEL: +61 (0)407 012 538 peter@hortoncoastal.com.au www.hortoncoastal.com.au				STRUCTURAL ENGINEERING DESIGN James Taylor & Associates Civil & Structural Consulting Engineers SUITE 301, 115 MILITARY ROAD NEUTRAL BAY NSW 2090 TEL: 02 9981 9999 EMAIL: mail@jamestaylorassociates.com.au				PROJECT NO. 5989	
COPYRIGHT: THIS DESIGN AND PLANS ARE NOT TO BE USED OR REPRODUCED WHOLLY OR IN PART WITHOUT WRITTEN PERMISSION FROM HORTON COASTAL ENGINEERING AND JAMES TAYLOR & ASSOCIATES				DESIGN		DRAWN		REV	
				CHKD		R Y		DRAWING NO.	
				APPRD		P H		S20	
A3				SCALE		1:100		DATE	
						JAN 2019		C	
P P		R Y		REVISED DA		17.01.19		C	
P P		R Y		ISSUED FOR DA		24.08.17		B	
P P		R Y		ISSUED FOR DA		15.08.17		A	
BY		CHKD		DESCRIPTION		DATE		REV	

ITEM 3.3**DA2019/0478 - 8 PACIFIC PARADE, MANLY - DEMOLITION WORKS, CONSTRUCTION OF A SEMI-DETACHED DWELLING AND LAND SUBDIVISION****REPORTING OFFICER****Steve Findlay****TRIM FILE REF****2019/325372****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. DA2019/0478 for demolition works, construction of a semi-detached dwelling and land subdivision at Lot 38 Sec 1 DP 4603, 8 Pacific Parade, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0478
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 38 DP 4603, 8 Pacific Parade MANLY NSW 2095
Proposed Development:	Demolition works, construction of semi-detached dwellings and land subdivision
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:	Annetta Cora Verduyn
Applicant:	BBF Town Planners
Application lodged:	14/05/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	23/05/2019 to 06/06/2019
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,089,941.00

EXECUTIVE SUMMARY

This report is submitted to the Local Planning Panel for the consideration of Development Application No. DA2019/0438 for semi-detached dwellings at 8 Pacific Parade, Manly.

The site is known as 8 Pacific Parade, Manly and has a total area of 445.7m². The site is located toward the eastern end of Pacific Parade. The site is relatively flat.

The proposed dwellings are "semi-detached dwellings" as defined under the Manly Local Environmental Plan (MLEP) 2013 and are 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 and DCP 2013.

The application does not comply with the minimum lot size standard of 250sqm and the Floor Space

Ratio standard of 0.6:1. The variation to the FSR is very minor at 0.9%. The applicant has lodged requests under Clause 4.6 for variation to these development standards.

The design includes an internal courtyard within each of the proposed dwellings. This resulted in a design that includes a wall to the boundary at the side boundary. The extent of this wall is less than 10m in length, does not result in any unreasonable amenity outcome and the courtyard is considered to provide for better open space amenity than a side corridor for the development. It is also noted that conditions have been imposed to require dilapidation reports to ensure protection for neighbouring residents in regards to works on the boundary.

In the circumstances, the development provides an appropriate modulation in which the additions can be made to provide adequate amenity and functionality of the semi-detached dwellings and result in a positive outcome for the streetscape and area. Therefore, the variation to the development standards under Clause 4.6 of the MLEP 2013 is not considered unreasonable and essentially the variations do 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 three (3) submissions were received. Issues raised in these submissions have been addressed in the *Notification and Submissions* section of this report and do not warrant any further design changes or refusal of the application.

The assessment report concludes that the proposed design is a modern and contemporary redevelopment of the site 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 the Clause 4.6 variations be supported and consent 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 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size
 Manly Development Control Plan - 4.1.1.2 Residential Land Subdivision
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 38 DP 4603 , 8 Pacific Parade MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of an allotment located on the northern side of Pacific Parade.</p> <p>The site is regular in shape with a frontage of 12.19m along Pacific Parade and a depth of 36.575m. The site has an area of 445.7m².</p> <p>The site is located within the R1 General Residential zone and accommodates a dwelling house on site.</p> <p>The site is relatively flat and contains vegetation to the rear of the property and street trees to the front of the property.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of detached dwellings and semi-detached dwellings.</p>

Map:



SITE HISTORY

Pre-Lodgement Meeting (PLM2018/0161)

A Pre-lodgement meeting was held in relation to the following proposal:

"Demolition and Construction of 2 new semi-detached dwellings, carports and external works"

The Notes provided from this meeting stated that the proposal was not supported and required a redesign, including a reduction in the Floor Space Ratio and increased setbacks, including the setbacks to the proposed car parking.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development involves the demolition of the existing dwelling-house, construction of two new semi-detached dwellings and subdivision of the existing lot into two new lots.

In detail, the proposal involves the following:

Subdivision

- Existing Lot 38 - 445.7sqm
- Proposed Lot A - 222.9sqm
- Proposed Lot B - 222.9sqm

Ground Floor Level

- Internal courtyard
- Open plan kitchen/dining/living area
- Rear deck
- Rear garden and landscaping
- Internal staircase
- 2 x attached carports
- Front fence

First Floor Level

- Three bedrooms and bathroom
- Rear Juliet balcony
- Void between ground and first floors





Figure 1 - Street Elevation
Figure 2 - Rear Elevation

The works also include a new single driveway crossover, new low height picket front fence, new dividing boundary fencing and new landscaping.

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><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council</p>

Section 4.15 Matters for Consideration'	Comments
	<p>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 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 3 submission/s from:

Name:	Address:
Mrs Christine Anne Gain	6 Pacific Parade MANLY NSW 2095
Mr Graham Joseph Ashby	10 Pacific Parade MANLY NSW 2095
Mrs Melissa Sue Tudhope	2 Pacific Parade MANLY NSW 2095

The following issues were raised in the submissions:

- No boundary survey has been provided and request for this to be addressed prior to changing the building line
- Building design is not in keeping with the streetscape
- Size of the development is not suitable for the size of the land and the building is not in proportion given the non-compliances with Council controls
- Impacts on privacy caused by two large rear western windows and upper floor windows
- Fire and safety issues associated with no side access
- Solar shading
- Inappropriateness of existing rear 'Norfolk Pine'
- No details for sewerage and concern for the impact of an additional residence on the system

The matters raised within the submissions are addressed as follows:

- No boundary survey has been provided and request for this to be addressed prior to changing the building line

Comment:

The submitted survey along with a search of Council records provided sufficient information to assess the application.

- Building design is not in keeping with the streetscape

Comment:

The proposed semi-detached dwelling development is in keeping with the streetscape due to its compatibility with a number of other examples of semi-detached dwellings in the street and the locality. Additionally, the built form that is well modulated and consistent with the streetscape.

- **Size of the development is not suitable for the size of the land and the building is not in proportion given the non-compliances with Council controls**

Comment:

The assessment of the proposal, as detailed in this report against each of the controls where there is a non-compliance, has found that the proposal provides a built form which is reasonable in terms of size, bulk and scale.

- **Impacts on privacy caused by two large rear western windows and upper floor windows**

Comment:

A condition has been imposed to ensure the proposed windows (W7 and W12) are fitted with obscure glazing and fixed to ensure appropriate privacy. Given the upper level windows are sufficiently minimised in size and appropriate in design, they do not directly face the boundary and are well separated from neighbouring living areas, the proposed design for these windows provides for reasonable privacy to adjoining properties.

- **Fire and safety issues associated with no side access**

Comment:

The application was referred to Council's Building Assessment Team (Fire and Disability Upgrades) and the officer indicated that the proposal was acceptable. Therefore, there is no safety issue arising from not having side access.

- **Solar shading**

Comment:

The proposal complies with the controls for Sunlight Access and Overshadowing under the Manly DCP 2013.

- **Inappropriateness of existing rear 'Norfolk Pine'**

Comment:

Council's Landscape Officer has assessed the proposal with respect to the Norfolk Island Pine and states that it can and should be retained and has provided conditions for its protection.

- **No details for sewerage and concern for the impact of an additional residence on the system**

Comment:

A condition has been provided to require plans to be submitted to the Sydney Water "Tap in Service" and further plans are then to be submitted to ensure compliance with Sydney Water requirements (including requirements for sewerage).

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>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.</p> <p>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.</p>
Environmental Health (Acid Sulphate)	<p>General Comments</p> <p>development does not disturb, expose or drain acid sulfate soils and cause environmental damage.</p> <p>The site is located in a class 4 area. The proposal requires some excavation works for the proposed footings however such works do not extend more than 2 metres below ground level and will not lower the water table by more than 2 metres.</p> <p>Recommendation</p> <p>APPROVAL - no conditions</p>
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation, 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 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 generally satisfies the requirements of Manly DCP2013, excluding the proposal to remove the Norfolk Island Pine in the rear of the property, which is not accepted.</p> <p>No Arboricultural Impact Assessment is provided with the application, and retention and protection of existing significant trees shall be conditioned.</p> <p>Pacific Parade street trees planted within the carriageway of the road reserve are listed items of Local Significance, and shall be protected from damage during construction works, as conditioned.</p>

Internal Referral Body	Comments
	<p>The existing Norfolk Island Pine in the rear yard is of significant size, appears in good condition, and as such requires arboricultural assessment for any intention to remove this from the site. The proposed development does not indicate a need to remove this tree for development works. The Norfolk Island Pine shall be retained and protected during the works.</p> <p>A large Gum tree exists within neighbouring property No. 6 Pacific Parade, and shall be conditioned to be protected during the works.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed DA is not affected by the 1% AEP flood extent and generally meets the flood requirements in the LEP and DCP.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum Subdivision Lot Size:	250sqm	Lot 1: 222.9sqm Lot 2: 222.9sqm	10.8%	No (see comments)
Height of Buildings:	8.5m	7.6m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (133.74sqm)	FSR: 0.605:1 (135sqm for each dwelling)	0.9%	No (see comments)

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
2.7 Demolition requires development consent	Yes
4.1 Minimum subdivision lot size	No
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

Clause	Compliance with Requirements
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

(i) Minimum Subdivision Lot Size

Description of Non-Compliance

Development standard:	Minimum Subdivision Lot Size
Requirement:	250sqm
Proposed:	222.9sqm for each lot
Percentage variation to requirement:	10.8%

Assessment of request to vary a Development Standard

The following assessment of the variation to Clause 4.1 - Minimum Subdivision Lot Size development standard has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

Clause 4.6 Exceptions to Development Standards

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

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

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

Comment:

Clause 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix 1) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*

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

Applicants Written Request

The applicants written request argues, in part:

The proposed lot sizes would be consistent with the the prevailing sizes on adjoining properties and properties within the surrounding street block. In addition, it is provided that the design of the dwellings within the subdivision pattern would provide for outcome which is compatible with the streetscape.

It is agreed that the streetscape consists of a number of similar undersized lots that contain semi-detached dwellings. It is also agreed that the proposed semi-detached dwellings would be compatible with other development in the street due to its well modulated built form. As such, it is concluded that the size of the lots would be suitable and appropriate in the street and the locality.

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 Minimum Subdivision Lot Size development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of the Development Standard

The underlying objectives of the standard pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the MLEP 2013 are:

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

(a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping.

Comment:

The proposed lots provide a sufficient size to accommodate the proposed three bedroom semi-detached dwellings along with private open space, carparking and landscaping. Additionally, the proposal provides a lot shape that is consistent with other lots in the vicinity so as to ensure the existing subdivision pattern will be appropriately retained.

The subdivision would result in an increased density of one dwelling for the subject site and this is reasonable given that the use of semi-detached dwelling is permissible in the zone and that there are a number of other semi-detached dwellings within close proximity. Furthermore, it is considered that a dwelling can be provided on each site that responds appropriately to the built form controls.

(b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns.

Comment:

The proposal provides for lots which similar in shape to a number of other lots within close vicinity. As a result of this the proposal provides for a size of lot that will be complement that existing pattern and ensure that the character of the area can be maintained. It is further noted that this character includes a number of examples of semi-detached dwellings, of which is proposed in this application.



Figure 3: Subdivision pattern shown with Subject Site (as existing) highlighted in blue

(c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential.

Comment:

In this circumstance, there are no significant constraints in terms of topography, vegetation or natural features as the land is relatively flat and contains vegetation outside of the area in which a building envelope can be established. In addition, the site is in a location that is not close to the foreshore and the subdivision would not result in any unreasonable outcome in terms of the protection of public views.

(d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.

Comment

The proposal is within close proximity to a range of public transport options and would make use of existing infrastructure.

Objectives of the Zone

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposal provides for two semi-detached dwellings on site and this contributes 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 proposal provides for two semi-detached dwellings which contribute 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 the day to day needs of residents.*

Comment:

Not applicable.

Conclusions on Consistency with the Zone Objectives

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 Minimum Subdivision Lot Size Development Standard is assumed by the Local Planning Panel.

(ii) Floor Space Ratio (FSR)

Description of Non-Compliance

Development Standard:	Floor Space Ratio
Requirement:	FSR: 0.6:1 (133.74sqm)
Proposed:	FSR: 0.605:1 (135sqm for each dwelling)
Percentage variation to requirement:	10.8%

Assessment of request to vary a Development Standard

The following assessment of the variation to Clause 4.1 - Minimum Subdivision Lot Size development

standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Clause 4.6 Exceptions to Development Standards

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

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

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

Comment:

The 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

Comment:

The Applicant's written request (attached to this report as an Appendix 1) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

Applicants Written Request

The applicants written request argues, in part:

The additional floor space associated with the minor non-compliance can be attributed to additional circulation space around the internalised courtyard which provides for greater internal amenity.

It is agreed that the non-compliance is minor and that the internal courtyard will provide for greater residential amenity. It is also agreed that this design is appropriate for semi-detached dwellings of this style in the area.

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

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

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

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

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

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

Comment:

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

Objectives of Development Standard

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

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

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

Comment:

The existing streetscape contains a mix of development including several semi-detached dwellings in close vicinity to the subject site. The proposed semi-detached dwelling development involves a design that is well modulated so as to present an appropriate bulk and scale in 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 dwellings are well setback from the street and rear of the site (complying with the numerical controls for these setbacks) 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 provides a presentation that involves a setback of the dwellings from the street and top floors that are stepped back from the lower floors. The proposal also provides landscaped area which complies with the numerical control under the DCP. Overall, this provides a development that responds appropriately to 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,

Comment:

The compliant building height and appropriate setbacks provide 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.

Objectives of the Zone

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposal provides for two semi-detached dwellings on site and this contributes 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 proposal provides for two semi-detached dwellings which contribute 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 the day to day needs of residents.*

Comment:

Not applicable.

Conclusions on Consistency with the Zone Objectives

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: 222.9sqm - each lot)	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling/250sqm	1 dwelling/222.9sqm	N/A	No (see comments)
4.1.2.1 Wall Height	East: 6.5m	6.2m	N/A	Yes
	West: 6.6m (based on gradient 1:60)	6.6m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.2m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line/6.0m	0m (carport consistent with prevailing setback of other carports) 6.17m (dwelling)	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.07m (based on wall height)	0m-1.6m	22.7%	No (see comments)
	West: 2.2m (based on wall height)	0m-1.5m	31.8%	No (see comments)
	Windows: 3.0m	0.885m	N/A	No (see comments)
4.1.4.4 Rear Setbacks	8.0m	11.738m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	46.2% (103sqm)	N/A	No (see comments)
	Open space above ground 25% of total open space (maximum)	1.9% (2sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	83.5% (86sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm	30sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages,	Maximum 50% of frontage up to maximum 6.2m	48%	N/A	Yes

Carports or Hardstand Areas				
Schedule 3 Parking and Access	Dwelling 2 spaces or 1 space where 2 spaces would adversely impact on the streetscape	1 spaces (2 spaces likely to adversely impact on the streetscape)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.1.2 Residential Land Subdivision	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
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of Issue

The proposal involves a single carport for each semi-detached dwelling. These carports are attached and are situated within the front of the site and do not meet the numerical front setback control of 6.0m.

The proposed carports follow the prevailing pattern of carports in the street.

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 subject site sits within a streetscape in which there are a number of examples car parking at the front of the site on both sides of the street including an existing carport at the front of the subject site. As a result of this, part of the character of the street is formed by this car parking. Given the proposed carports are open structures and are subservient to the dwellings, the presentation would be reasonable given the existing character of the street.

The proposal also complies with the control under *Clause 4.1.6.1 of the Manly DCP*, that requires the parking to be no more than 50% of the frontage. Compliance with this control further contributes to an outcome that appropriately minimises visual impact of car parking in the streetscape.

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

Comment:

The streetscape contains a number of examples of both semi-detached dwellings on narrow lots as well as car parking at the street frontage. As a result of this and the well modulated design, the proposed semi-detached dwellings would adequately complement the identified streetscape.

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

Comment:

The proposal provides landscaping which is adjacent to the proposed carports. This provides an appropriate integration of landscaping with built form at the front of the site to minimise the presentation of bulk.

The proposal does not involve a front fence or front wall.

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.

4.1.1.1 Residential Density and Dwelling Size

Description of Non-compliance

The proposal would result in 2 allotments which would be non-compliant with the numerical control of 250sqm site area. In this regard, the proposal provides 222.9sqm for each lot.

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 promote a variety of dwelling types, allotment sizes and residential environments in Manly.

Comment:

The proposal would result in two lots with two semi-detached dwellings. Given the appropriate subdivision pattern and lack of amenity associated with this proposal, the semi-detached dwelling type and allotment sizes will be a positive contribution to the residential environment.

Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.

Comment:

The proposal provides a compliant landscaped area in accordance with the Manly DCP as well as adequate front and rear setbacks to limit impact on existing vegetation, waterways, riparian land and the topography. Subject to conditions, Council's Stormwater Engineer and Landscape Officer have provided that the proposal is acceptable.

Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.

Comment:

The proposal complies with the control for minimum internal areas under Clause 4.1.1.1(d). This ensures there would be an acceptable level of amenity.

Objective 4) To maintain the character of the locality and streetscape.

Comment:

The proposed subdivision pattern and setback to development is complementary to the streetscape. This includes a similar pattern of lot sizes, dwelling types and subdivision pattern either side of the property as well as across the road to the south-west.

Objective 5) To maximise the use of existing infrastructure.

Comment:

The proposal will maintain the use of existing infrastructure where appropriate, subject to conditions.

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.

4.1.1.2 Residential Land Subdivision

See comments under Manly LEP.

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

Description of Non-compliance

The proposal does not comply with the side setback control (up to 2.07m at the east and 2.2m at the west). In this regard, the proposal involves side setbacks of 0m-1.6m to the east and 0m-1.5m at the west.

The proposal does not comply with the requirement for windows facing side boundaries to be setback 3.0m. In this regard, the proposal provides ground floor windows that are 0.89m from the boundary.

Merit Consideration

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

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

Comment:

In close vicinity, this section of the streetscape is partly characterised by semi-detached dwellings on narrow allotments with varied side setbacks. The proposed side setbacks include modulation at the top level of the dwelling, being stepped back from lower levels, to provide an outcome which achieves the desired spatial proportions of the street. In addition to this, the area is characterised by landscaping to the front and rear of sites rather than at side boundaries. The proposal matches this character and provides a landscaped area which complies with the control under the Manly DCP.

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:

A condition has been imposed to ensure the ground floor living room windows facing the side boundary are obscure glazed and fixed. This ensures that there would be no unreasonable overlooking impact.

Along with this, the proposal involves a design that provides new spaces that are sufficiently separated from private open space and living areas at adjoining properties. Additionally, the design of the upper level floor to have openings that does not face directly toward the boundary, provides a design that adequately minimises privacy loss.

As a result of the north-south orientation of the lot, the proposal receives sunlight to the rear of the property from the north. The proposed rear setback complies with the control and this contributes to the proposal maintaining sunlight access that complies with the controls and requirements under the Manly DCP, 2013.

Along with the screening of windows, the modulation at the side elevation and the proposed landscaped buffer around the rear of the property, this ensures that the proposal would not result in any unreasonable amenity impact.

The proposal would also have no unreasonable impact on views, traffic or streetscape character.

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

Comment:

The proposal involves two new semi-detached dwellings, that comply with the controls for front and rear setback (to the dwelling). As a result of sufficient modulation at the side setbacks, including stepping in of the top level, there is a lack of unreasonable impact on amenity and the lack of visual impact to the street or from neighbouring properties.

*Objective 4) To enhance and maintain natural features by:
accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;
ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and
ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal provides landscaping to the front and rear of the dwelling. Given the character of the area with narrow allotments, the location of landscaping and natural features in this area is appropriate. In addition to this, the proposal provides a landscaped area that complies with the control under the Manly DCP 2013.

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.

4.1.5 Open Space and Landscaping

Description of Non-compliance

The proposal does not comply with the control for total open space (55%). In this regard, the proposal involves a total open space of 46.2% (103m²).

Merit Consideration

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

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

Comment:

The proposal involves gardens and planting to the front and rear of the semi-detached dwelling. Given the narrow nature of the allotment, this provides an appropriate provision of an area for landscape features and vegetation.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage

appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The subject site is surrounded by planting and vegetation to contribute adequately to the presentation of the site and to provide soft landscaped area that complies with the control under Manly DCP 2013.

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

Comment:

Along with the landscaped area provided, the proposal provides modulation to the built form to ensure that the spacing between the proposed dwelling and surrounding dwellings that is sufficient to ensure that reasonable amenity is maintained.

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

Comment:

Subject to conditions provided by Council's Stormwater Engineer, the proposal will sufficiently minimise stormwater run-off. This is contributed to by the compliant amount of landscaped area on the site.

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

Comment:

The proposal does not provide for any noxious weeds and provides vegetation to surround the site to limit opportunity for weeds to access the site.

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

Comment:

The landscaping at the each boundary ensures a potential corridor to every open side of the semi-detached dwelling. This maximises opportunity for potential wildlife corridors.

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 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. Accordingly, suitable conditions have been included within the recommendation requiring payment of a section 94 contribution of \$20,000.00 in line with Manly Section 94 Contributions Plan.

CONCLUSION

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

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

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

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

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

Public Consultation

The notification of the application resulted in three (3) submissions from neighbouring residents who raised a number of issues. These issues have been addressed in this report under *Notifications and Submissions* in this report and do not warrant further design changes or refusal of the application, except for some special conditions addressing privacy.

Referrals

The application was referred to seven (6) internal departments and external authorities. Council's Landscape and Development Engineering Officer's all indicated that the proposal is acceptable subject to specific conditions. Council's Building, Flooding and Environmental Health officers also advised that the proposal was acceptable without any further recommended conditions.

Assessment of the Development Application

The assessment of the proposed development against the provisions of MLEP 2013 found that the proposal does not comply with the 'Minimum Lot Size' Development Standard of 250sqm and the 'Floor Space Ratio' Development Standard of 0.6:1.

In this case, the two semi-detached dwellings provide a design that provides sufficient modulation and consistent style with existing form in the street. 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 2013 found that the proposal does not comply with a number of controls, including windows to boundary and side setbacks. Given the character of the area and amenity outcome, assisted by good levels of modulation at the upper level, some flexibility in applying these controls is required. It is considered that the 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 and locality by virtue of the supportable non-compliances that do not create any unreasonable amenity impacts. The proposed dwellings will integrate with the streetscape and landscape and be consistent with surrounding developments.

Based on the above detailed assessment, the Clause 4.6 variations are supported and the application is recommended for approval.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes 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 DA2019/0478 for Demolition works, construction of semi-detached dwellings and land subdivision on land at Lot 38 DP 4603, 8 Pacific Parade, 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
DA03 - Ground Floor Plan- Issue A	03/19	David Jagers Architect
DA04 - First Floor Plan- Issue A	03/19	David Jagers Architect
DA05- Roof Plan	03/19	David Jagers Architect
DA06- Sections	03/19	David Jagers Architect
DA07- East West Elevations	03/19	David Jagers Architect
DA08- North South Elevations	03/19	David Jagers Architect
DA09- Demolition Plan	03/19	David Jagers Architect

Engineering Plans		
Drawing No.	Dated	Prepared By
Plan of Proposed Subdivision	03/19	David Jagers Architect
Site Drainage Plan	Feb 19	NB Consulting Engineers
First Floor and Roof Drainage Plan	Feb 19	NB Consulting Engineers
Drainage Details	Feb 19	NB Consulting Engineers

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan Sheet 1 of 3	9/04/2019	Dapple Designs
Landscape Plan Sheet 2 of 3	9/04/2019	Dapple Designs
Landscape Plan Sheet 3 of 3	9/04/2019	Dapple Designs

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 (Demolition):**

- (a) 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 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
 - (ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement.

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 (Demolition):**

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- o 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 a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. 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) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(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.

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

5. 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

6. 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.

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 two semi-detached dwellings is \$20,000.00 being \$20,000.00 per additional dwelling. 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. **Required canopy tree planting**

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

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

Details are to be submitted with the Construction Certificate to the satisfaction of the Certifying Authority.

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

9. **Stormwater Disposal**

Plans indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments, shall be submitted prior to the issue of the Construction Certificate. The plans must indicate the provision of a rainwater tank in accordance with the BASIX certificate. Stormwater shall be conveyed from the site to Pacific Parade.

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.

10. **Fire Separation – Separating Walls**

The new building that is proposed to be constructed is required to comply with Part 3.7.1.8 of the Building Code of Australia – 'Fire Separation-Separating Walls'. 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

11. **Facilities**

The new building that is proposed to be constructed is required to comply with Part 3.8.3 of Volume 2 of the Building Code of Australia – 'Facilities'. 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 building occupant health and amenity

12. **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.

13. **Tree Protection Plan**

An Arborist with a minimum qualification in arboriculture/horticulture, equivalent to AQF Level 5, is to be appointed to prepare a Tree Protection Plan for the following existing trees to be retained and protected during construction works:

- the Pacific Parade street trees planted within the carriageway of the road reserve in close proximity to the development site, and fronting properties No.6 and No.10.
- the existing Norfolk Island Pine in the rear yard of No.8.
- the Gum tree within neighbouring property No.6.

The Tree Protection Plan shall be issued to the Certifying Authority, and to Council for approval, prior to the issue of a Construction Certificate.

Tree protection measures shall be generally undertaken in accordance with section 4.2 of AS4970- 2009 Protection of Trees on Development Sites, and as recommended in the Tree Protection Plan.

The tree protection measures specified 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.

Reason: to ensure protection of vegetation proposed for retention is provided and maintained.

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:

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

The windows to the rear of the building on the side boundaries, W7 and W12, are to be fixed and obscured.

Details are to be provided prior to the issue of a Construction Certificate.

Reason: To minimise loss of privacy to neighbouring properties. (DACPLCPCC2)

16. **Pre- Construction Dilapidation Reports**

Pre-construction dilapidation reports shall be prepared by a suitably qualified engineer for both adjoining properties. Details are to be provided of all structures and land close to the boundary. Copies of the report are to be made available to the owner of the adjoining properties.

The report is to be provided prior to the issue of a Construction Certificate.

Reason: To provide measures to protect neighbouring properties.

17. **Post- Construction Dilapidation Reports**

Post-construction dilapidation reports shall be prepared by a suitably qualified engineer for both adjoining properties. Details are to be provided of all structures and land close to the boundary. Copies of the report are to be made available to the owner of the adjoining properties.

The reports is to be provided prior to the issue of a Occupation Certificate.

Reason: To provide measures to protect neighbouring properties.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

19. **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.

20. **Vehicle Crossings**

The provision of one vehicle crossing 6 meters wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain

concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

21. Tree and vegetation protection

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

- i) all trees and vegetation within the site as identified on the Survey Plan, excluding exempt trees under the relevant planning instruments or legislation,
- ii) all trees and vegetation located on adjoining properties,
- iv) all road reserve trees and vegetation,

B) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites,
- 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 stormwater 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**

22. Landscape works

Landscaping is to be implemented in accordance with the Landscape Plan LP01 prepared by Dapple Designs, inclusive of the following requirement:

- i) the existing Norfolk Island Pine in the rear yard shall be retained and protected,
- ii) details of new tree planting to satisfy section 2.1.3 of the Manly Development Control Plan

2013, and schedule 4, Part B, Native Tree Selection, and Figure 37 of the Manly Development Control Plan 2013, are to be installed,

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 privacy.

23. **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, and in particular the Camphor Laurel street trees, the Norfolk Island Pine located in the rear of the property, and the neighbouring Gum in No.6, 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.

24. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. 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 appropriate provision for the disposal of stormwater arising from the development.

25. **Reinstatement of Kerb**

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

Reason: To facilitate the preservation of on street parking spaces

26. **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.

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

29. **Provision of Services for Subdivision**

The applicant is to ensure all services including, water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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

30. **Services**

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

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

31. **Survey Plan - Construction Identification**

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

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

32. **Sydney Water Compliance Certification**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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

33. **Easement for Services**

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

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

34. **Release of Subdivision Certificate**

To enable the lodgement of the final plan at the NSW Land and Property Information Department the Subdivision Certificate shall not be issued until the Final Occupation Certificate for the approved development has been issued.

Reason: To ensure that the plans relate to approved development

35. **Subdivision Certificate Application**

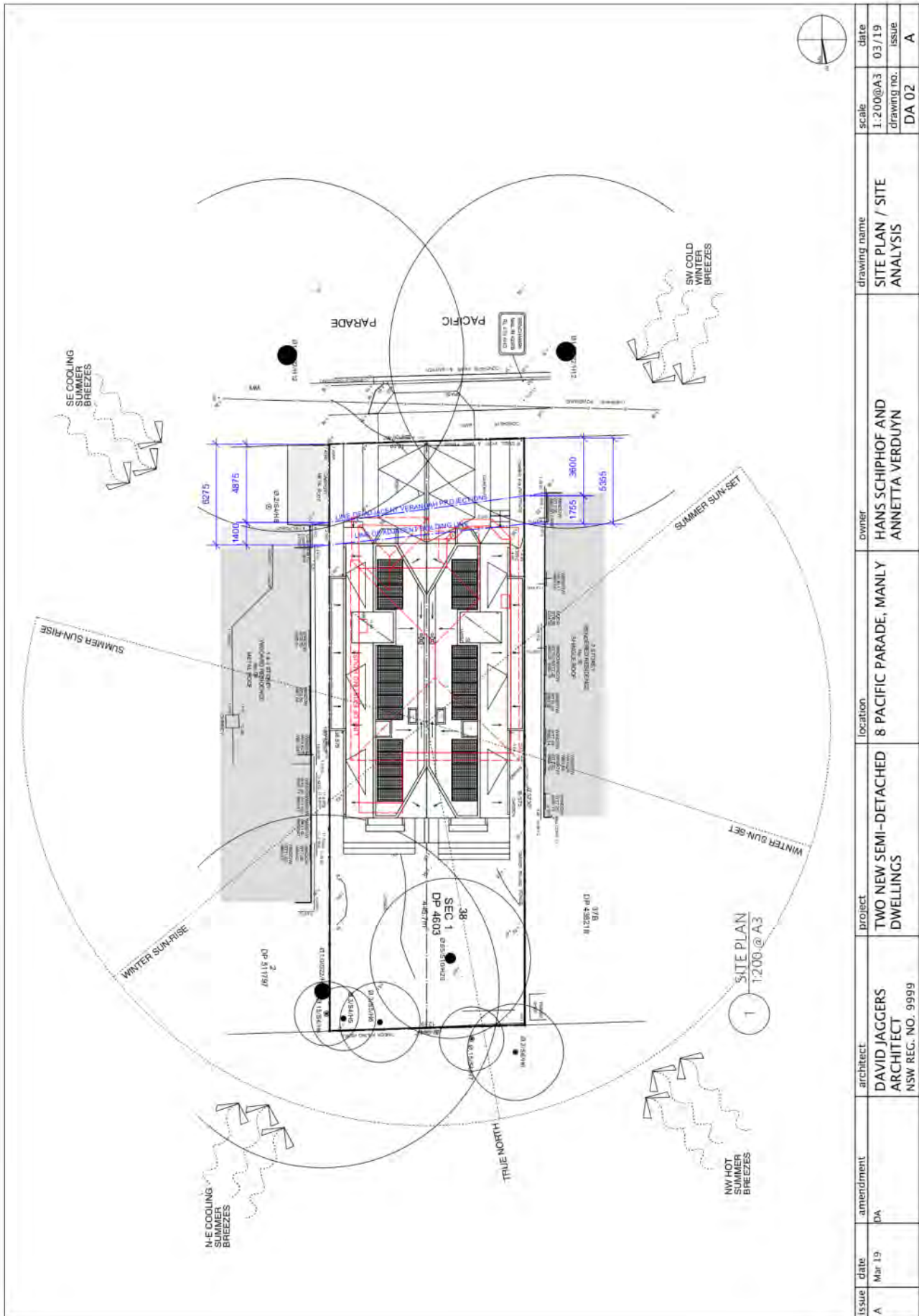
Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Nine copies of the final plan of subdivision are to be submitted. All plans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

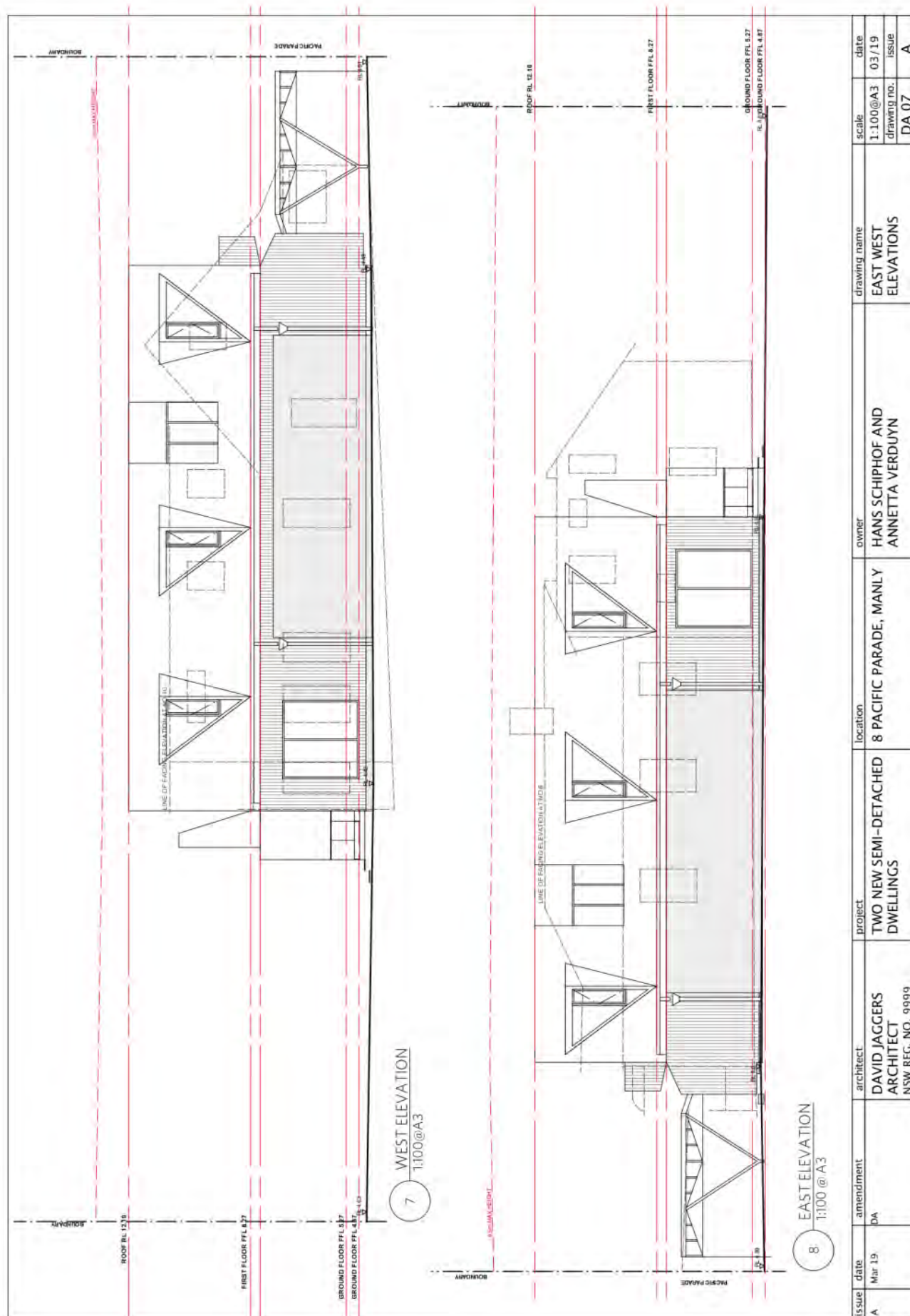
Reason: Statutory requirement of the Conveyancing Act 1919

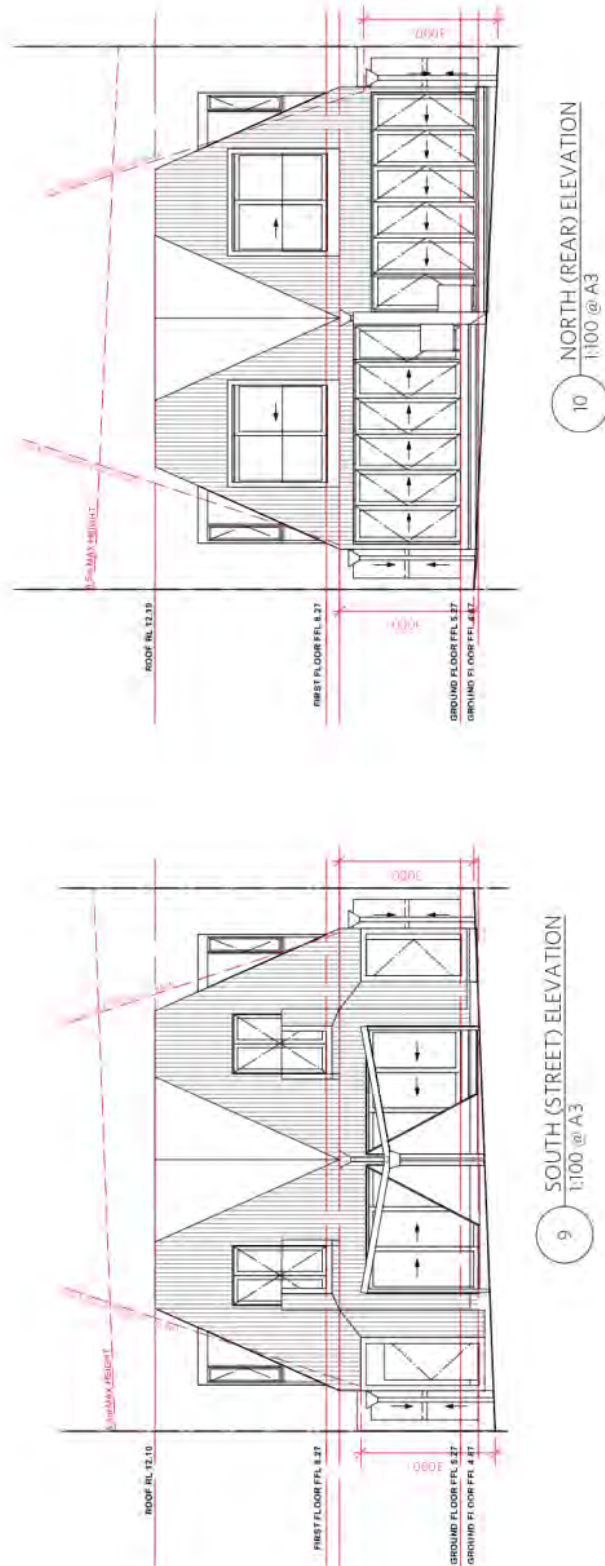
36. **Title Encumbrances**

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

Reason: To ensure proper management of land







FINISHES



Issue	date	amendment	architect	project	location	owner	drawing name	scale	date
A	Mar 19	DA	DAVID JAGGERS ARCHITECT NSW REG. NO. 99599	TWO NEW SEMI-DETACHED DWELLINGS	8 PACIFIC PARADE, MANLY	HANS SCHIPHOF AND ANNETTA VERDUYN	NORTH SOUTH ELEVATIONS	1:100@A3	03/19
								drawing no. DA 08	Issue A

4.0 STATUTORY PLANNING FRAMEWORK

4.1 General

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15(1) of the Act. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential adverse environmental impacts are discussed below.

4.2 Manly Local Environmental Plan 2013

4.2.1 Zone and Zone Objectives

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

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

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

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

4.2.2 Minimum Lot Size

Pursuant to clause 4.1 of the MLEP 2013 the minimum lot size development standard is 250m². The objectives of the clause are as follows:

- a) *to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*

- b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*
- c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*
- d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

The existing lot size is 445.7m² and is proposed to be subdivided into 2 lots of 222.9m². This represents a non-compliance of 27.1m² or 10.8%.

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. This clause applies to the clause 4.1 Minimum Lot Size Development Standard.

Claim for Variation

Zone and Zone Objectives

The subject site is zoned R1 General Residential. The proposal is permissible and consistent with the stated objectives in it provides for a variety of housing types and densities to meet the housing needs of the community.

Minimum Lot Size Standard and Objectives

Having regard for the stated objectives it is considered that strict compliance with development standard is unreasonable and unnecessary for the following reasons:

- a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*

Comment: As depicted on the accompanying streetscape study (plan DA 11(A)) the proposed allotment size and resultant subdivision pattern is entirely consistent with that established by both adjoining properties and properties generally within the surrounding street blocks.

The accompanying Architectural plans demonstrate that both proposed lots are of adequate size and geometry to accommodate dwelling houses of compliant height, FSR and total open space/ landscaped areas. The proposed Lots sizes provide for a subdivision pattern, built form and landscape outcomes consistent with this objective.

- b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*

Comment: The accompanying Architectural plans demonstrate that both proposed lots are of adequate size and geometry to accommodate dwelling houses displaying a complimentary and compatible built form and streetscape character outcome. The subdivision and built form outcomes compliment the prevailing subdivision pattern consistent with this objective.

- c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*

Comment: The subject site is generally flat with a slight cross fall in a westerly direction. The topography of the site and existing vegetation do not serve as impediments to the subdivision and development of the proposed lots. The proposal is consistent with this objective.

- d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

Comment: The proposed lots are located within proximity of a range of transport options including bus and ferry services. The proposal is consistent with this objective.

Sufficient environmental planning grounds exist to justify the variation sought including the consistency of the proposed lot sizes with those prevailing on both adjoining properties and within the surrounding street block and the design quality of the proposed dwellings which provide for a complimentary and compatible streetscape outcome. The proposed lot size variation will not be antipathetic to the objectives of the Act as they relate to orderly an economic use and development of the land and the encouragement of development of good design.

Conclusions

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

- a) that the site specific and contextually responsive development is consistent with the zone objectives, and
- b) that the site specific and contextually responsive development is consistent with the objectives of the Lot Size standard, and
- c) that there are sufficient environmental planning and site specific urban design 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 design quality of the development, the sites prominent location and context and the developments ability to comply with the zone and Lot Size 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 Lot Size variation in this instance.

4.2.3 Height of Buildings

Pursuant to Clause 4.3 of MLEP 2013 the height of a building on the subject land is not to exceed 8.5 metres in height.

The objectives of this control are as follows:

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

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

The proposal has a maximum building height of 7.9 m with the entire development sitting comfortably below the 8.5 m height control. Accordingly, the proposed works are “deemed to comply” with the associated objectives and accordingly there is no statutory impediment to the granting of consent.

4.2.4 Floor Space Ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.6:1 representing a gross floor area of 133.74m² per proposed allotment. The stated objectives of this clause are:

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

- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

The development proposes a total floor area of 135 square metres per dwelling which represents an FSR of 0.605:1. Such quantum is non-compliant with the standard by 1.26m² or less than 1%.

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

Claim for Variation

Zone and Zone Objectives

The subject site is zoned R1 General Residential. The proposal is permissible and consistent with the stated objectives in it provides for a variety of housing types and densities to meet the housing needs of the community.

Floor Space Ratio Standard and Objectives

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

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

Response: The extent of non-compliance is appropriately described as minor.

The proposed dwelling houses strictly comply with the balance of the built form controls that determine bulk and scale being building height, total open space and landscaped area with the upper level rooms visually presenting as rooms within a pitched roof form.

We have formed the considered opinion that the resultant building form displays a bulk and scale consistent with that reflected through strict compliance with the height and FSR development standards with such outcome reflecting the existing and desired future streetscape character. The proposal is consistent with this objective.

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

Response: The resultant building forms do not obscure important landscape or townscape features. The proposal is consistent with this objective.

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

Response: The proposal complies with the total open space and landscaped area controls. The accompanying landscape plan prepared by Dapple Designs proposes the replacement of a number of landscape features with perimeter landscape plantings of a density capable of softening and screening the development in the round. The existing landscape character of the area will be maintained. The proposal is consistent with this objective.

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

Response: The minor variation to the FSR standard will not give rise to any adverse residential amenity, environmental or public domain impacts with compliant levels of solar access and good levels of privacy maintained. The proposal will not give rise to public or private view affectation. The proposal is consistent with this objective.

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

Response: Not applicable.

Sufficient environmental planning grounds exist to justify the variation in circumstances where the minor non-compliance can be attributed to the additional circulation space required around the internalised courtyard area which intern significantly enhance the internal amenity of the dwellings. This design feature represents a skilful small lot development response and promotes/ facilitates the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

Compliance with the objectives of the standard and the absence of environmental impact also give weight to the acceptability of the variation sought.

Conclusions

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

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the FSR 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 FSR 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 FSR 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 minor FSR variation in this instance.

4.2.5 Heritage Considerations – Statement of Heritage Impact

The property is not heritage listed or located within a heritage conservation area however is located within proximity of the heritage listed sandstone kerb and street trees within the Pacific Parade road reserve.

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

Statement of Heritage Impact

Having given consideration to the impact of the proposed works on the significance of the adjacent sandstone kerb and street trees we have formed the considered opinion that:

- The proposed shared driveway will require the removal/relocation of a number of sandstone kerb blocks and these should either be used to replace existing concrete sections of kerb adjacent to the frontage of the property or delivered to Council's works depot for storage and reuse elsewhere in the area.
- The proposed driveway crossing will have no physical impact on the existing street tree located adjacent to the frontage of the property with the surrounding road pavement not disturbed as a consequence of the works proposed.
- Accordingly, the proposed works will have a neutral impact on the significance of the heritage items and their setting provided the displaced sandstone kerb blocks are either used to replace existing concrete sections of kerb adjacent to the frontage of the property or delivered to Council's works depot for storage and reuse elsewhere in the area.

ITEM 3.4	MOD2018/0654 - 41 MARINE PARADE, AVALON - MODIFICATION OF DEVELOPMENT CONSENT N0279/16/R GRANTED FOR DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A NEW DWELLING
REPORTING OFFICER	Matt Edmonds
TRIM FILE REF	2019/325440
ATTACHMENTS	1 Assessment Report 2 Plans

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. MOD2018/0654 for Modification of Development Consent N0279/16/R granted for Demolition of existing structures and construction of a new dwelling at Lot 6 DP 553660, 41 Marine Parade, Avalon subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0654
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 6 DP 553660, 41 Marine Parade AVALON BEACH NSW 2107 Lot 6 DP 553660, 41 Marine Parade AVALON BEACH NSW 2107
Proposed Development:	Modification of Development Consent N0279/16/R granted for Demolition of existing structures and construction of a new dwelling
Zoning:	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:	Jane Margaret Rowe
Applicant:	Jane Margaret Rowe
Application lodged:	30/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	02/04/2019 to 16/04/2019
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks consent for modifications to the dwelling house approved by the Northern Beaches Independent Assessment Panel on 6 June 2017. In addition to other amendments, the modification specifically seeks to amend a condition imposed by the Northern Beaches Independent Assessment Panel, which required the incorporation of a vertical blade adjacent to the northern end of the dining room window to provide additional privacy to adjoining properties. As such, the application is referred to the Northern Beaches Local Planning Panel for determination.

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings

Pittwater 21 Development Control Plan - C1.3 View Sharing

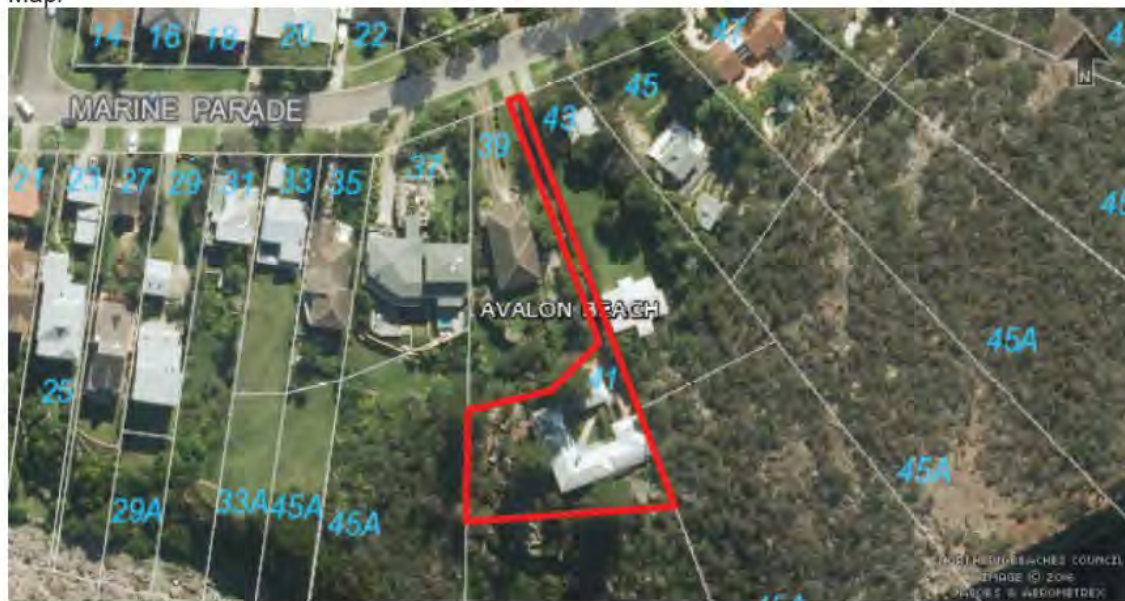
Pittwater 21 Development Control Plan - D1.11 Building envelope

Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 6 DP 553660 , 41 Marine Parade AVALON BEACH NSW 2107 Lot 6 DP 553660 , 41 Marine Parade AVALON BEACH NSW 2107
Detailed Site Description:	<p>The site is a battle-axe allotment, with a total area of 1515m². Vehicular and pedestrian access is gained via the 60.05m long battle-axe handle to the southern side of Marine Parade. The battle-axe handle has a steady incline from the street up towards the existing dwelling, where the site levels before falling towards the west, with a maximum cross fall in excess of 13.6m along the southern most boundary of the site. The site was previously occupied by a one and two storey dwelling, however construction has since commenced on the site pursuant to N0279/16/R and is nearing completion. The site features a number of natural rock outcrops and significant vegetation.</p> <p>The foreshore building line dissects the site, running parallel at a distance of approximately 7.5m from the southern property boundary. The site is also burdened by a Right of Carriageway, which runs the length of the existing battle-axe handle, and an easement relating to overhanging eaves associated with the existing dwelling at 43 Marine Parade. The site adjoins a public reserve which wraps around the</p>

Map:



Site History

On 12 January 2017, review of determination application N0279/16/R was lodged with Council.

On 6 June 2017, N0279/16/R was approved by the Northern Beaches Independent Assessment Panel, subject to three deferred commencement consent conditions.

On 28 June 2017, the applicant provided additional information to satisfy the deferred commencement conditions.

On 19 July 2017, Council confirmed satisfaction of all three deferred commencement consent conditions, and the consent became operative.

On 30 November 2018, the subject modification application was lodged with Council and subsequently notified and referred for comment and/or recommendations.

On 19 March 2019, additional information was requested by the assessing officer to clarify the extent of changes sought in the modification application.

On 22 March 2019, the assessing officer undertook an inspection of the site and met with the applicant to discuss the information requested.

On 27 March 2019, the applicant provided amended plans to address the requests of Council. The amended information was subsequently re-notified and re-referred.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for modifications to the dwelling house approved pursuant to N0279/16/R on 6 June 2017. The modifications sought are highlighted in red on the plans provided to support the application, and include (but are not limited to) the following:

- Changes to the layout and design of the driveway, including the removal of the turning area and the inclusion of a turntable within the driveway,
- The inclusion of skylights within the roof form,
- A slight shift in the placement of the development on the site,
- New parapet detail to garage entrance,
- Changes to windows/doors sizes and placement,
- Changes to the location and materiality of down-turned vertical blade, and
- Increase to floor/roof levels and minor reduction to roof pitch,

The proposed modifications are also highlighted in the overlays provided to support the application.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.55 (1A) Assessment

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	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact.</p> <p>The modifications proposed have been assessed in accordance with the provisions of PLEP 2014 and P21 DCP, and the modified proposal remains consistent with the objectives and outcomes of these documents. Subject to conditions to maintain the approved position of the down turned vertical blade, the proposed modifications will not result in any unreasonable impacts upon the amenity of adjoining properties or the surrounding natural environment. As such, the proposal is considered to be of minimal environmental impact.</p>
(b) it is satisfied that the	The development, as proposed, has been found to be such that

Section 4.55(1A) - Other Modifications	Comments
<p>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>	<p>Council is satisfied that the proposed works are substantially the same as those already approved under N0279/16/R.</p> <p>The proposed form, volume and finish of the dwelling remains generally consistent with that originally approved, with minor amendments associated with conditional changes imposed by Council in the determination of the development and further detail discovered during the construction certificate process. In response to the qualitative and quantitative considerations set out in <i>Moto Projects (No 2) Pty Ltd v North Sydney Council</i> (1999) 106 LGERA 298, it is noted that:</p> <ul style="list-style-type: none"> • The amount of rooms proposed within the dwelling and their location and relationship with other spaces remains generally the same, • Whilst there are some changes to the footprint and volume of the proposed built form, these changes are not so dramatic that they would be perceived from the public domain, • The landscape treatment as seen from the public domain will remain unchanged, • The materiality of the building remains generally unchanged, and • The impacts of the proposal upon adjoining dwellings and the surrounding natural environment is relatively the same. <p>Whilst there are a number of individual amendments proposed by the subject application, the resultant development will remain essentially and materially the same as that which was approved.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Regulation 2000 and Pittwater 21 Development Control Plan ('P21 DCP').</p>
<p>(d) it has considered any submissions made concerning the proposed modification within any</p>	<p>See discussion on "Notification & Submissions Received" in this report.</p>

Section 4.55(1A) - Other Modifications	Comments
period prescribed by the regulations or provided by the development control plan, as the case may be.	

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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	P21 DCP 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 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>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
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 P21 DCP 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</p>

Section 4.15 'Matters for Consideration'	Comments
	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 classified as bush fire prone land. The proposal has a Flame Zone BAL Rating and was referred to the NSW RFS for comments and/or recommendations. The NSW RFS provided a response confirming that the proposal is acceptable subject to those conditions issued in relation to the previous application (N0279/16/R).

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mr Leslie Allan Quayle Mrs Dain Patricia Quayle	39 Marine Parade AVALON BEACH NSW 2107
Mr William Thomas McCausland Mrs Yvonne Gaye McCausland	37 Marine Parade AVALON BEACH NSW 2107
Michael Hesse & Associates Pty Ltd Kerry Gordon Planning Services Pty Ltd Ms Susan Hesse	43 Marine Parade AVALON BEACH NSW 2107

Note: In accordance with the provisions of clause A5.1 of P21 DCP, all submissions received from the same person are considered as a single submission and all submissions received by or on behalf of the

same dwelling are considered as a single submission.

The concerns raised in the submissions received are considered as follows:

- **Changes to the setback of the vertical blade adjoining the dining room window**

Comment: Each of the submissions received raises concerns with regard to the proposed modification to the down-turned vertical blade imposed by the Northern Beaches Independent Assessment Panel in the following deferred commencement condition:

The architectural hood over the western window of that dining room is to be turned down as a vertical blade adjoining and to the full extent of the northern end of that window. That blade is to be no less than 250mm in depth. This is in order to provide additional privacy for neighbouring properties at 37 and 39 Marine Parade.

The modification application seeks to relocate the vertical blade 580mm to the north, away from the edge of the window. The proposed setback of the vertical blade away from the edge of the window removes the vertical blade from view from within the dwelling, such that it no longer serves any purpose with regards to visual privacy and the intent of the condition will not be met. The proposed 580mm setback of the vertical blade is not supported in this regard and a condition is recommended to ensure that the original location is retained.

- **Changes to the materiality of the vertical blade adjoining the dining room window**

Comment: A submission has been received in objection to the proposed change in the materiality of the down-turned vertical blade from concrete to brass. The submission states that any alternate material not matching the concrete hood could be subject to degradation, damage or potentially removed in the future. The proposed change in material is not considered to alter the intent of the condition or the ability to enforce the condition in the future, if required. As such, the proposed use of brass is supportable in this instance.

- **Changes to windows on the northern elevation associated with the WIR and ensuite**

Comment: Submissions have been received from and on behalf of the adjoining property owner of the dwelling at 43 Marine Parade, in objection to the changes to the windows on the northern elevation of the upper floor associated with the WIR and ensuite. The application proposes to replace the two approved windows with a combined length of 4.2m and a height of 950mm, with two distinctly separate windows in a slightly different location, with a 200mm reduction to the approved sill height. The windows are located at a distance in excess of 9m from the adjoining property, being the distance required to be protected from overlooking under the provisions of clause C1.5 (Visual Privacy) of P21 DCP, and the modifications to the size, height and location of the windows and use of the associated rooms is not considered to result in an unreasonable privacy impact between the neighbouring properties. Furthermore, it is likely that the future occupants of the dwelling will desire privacy within these spaces, with internal blinds/shutters installed and closed when the rooms are in use.

- **Approved bay window**

Comment: Submissions have been received from the adjoining property owner of 39 Marine Parade in objection to the approved bay window on the northern elevation of the proposed dwelling. The location and design of this window in relation to the property at 39 Marine Parade

was considered in the assessment of N0279/16/R and was ultimately supported. The modification application does not seek any changes to this window.

- **Removal of a pre-existing Norfolk Island Pine**

Comment: Submissions have been received raising concerns with regard to the removal of a Norfolk Island Pine tree, which was approved in a separate application to Council before the lodgement of any application for a new dwelling at the subject site. These concerns were raised in relation to N0279/16/R and were specifically addressed in the report presented to the Northern Beaches Independent Assessment Panel for determination of that application. Nothing in the subject application changes the commentary previously provided in this regard.

- **Estimated cost of works**

Comment: Submissions have been received raising concerns with the discrepancy between the cost of works nominated in relation to N0279/16/R and the subsequent construction certificate issued for the site, and the resultant impact upon fees charged by Council. N0279/16/R was lodged with an estimated cost of works of \$1,975,333.00. The cost of works was prepared and certified by the project architect, utilising Council's Cost of Works Estimates Form, which was an indicative cost calculator developed by Council for projects with an estimated cost less than \$3 million. The applicant subsequently lodged a construction certificate with a nominated value of \$2,922,720.00, an increase of almost \$1 million compared to the cost of works nominated at DA stage.

The Cost of Works Estimates Form has since been replaced and is no longer used for calculating the cost of works for development. However, at the time, it was the adopted method of calculating the estimated cost of works, and in this respect, the application was consistent with Council's lodgement requirements. Despite the additional cost of works nominated in the construction certificate, Council's adopted Fees and Charges stipulate that the fee charged for a s4.55 application is based upon an estimated cost of works for the original development application. As such, the fees charged in relation to the subject application were based upon \$1,975,333.00, as opposed to the higher cost nominated in the construction certificate.

- **Building envelope non-compliance**

Comment: Submissions have been received from the adjoining property owner of 39 Marine Parade, raising concern with regard to the new area of building envelope non-compliance resulting from the increased height of the dining room roof. As discussed in further details with respect to clause D1.11 (Building envelope) of P21 DCP, the 270mm (maximum) protrusion of the prescribed building envelope is not considered to result in any unreasonable impacts upon the amenity of adjoining properties and the proposal is consistent with the outcomes of the building envelope development control.

- **Bushfire Risk**

Comment: A submission was received which questions the suitability of the proposed skylights within a bushfire prone area and whether they have been certified by the NSW RFS. A separate submission questions whether it is appropriate to provide a new door to the garage fronting towards the fire hazard, and whether this modification is consistent with the provisions of Planning for Bushfire Protection 2006. The modification application was supported by a statement from a suitably accredited bushfire consultant who provided certification that the modified plans were consistent with the provisions of Planning for Bushfire Protection 2006. Further, the modified development was referred to the NSW RFS for comment, who endorsed

the modification subject to existing conditions of consent.

- **Stormwater management**

Comment: Submissions have been received which raise concern with regard to stormwater runoff occurring during construction and stormwater infrastructure constructed to the west of the site, in a manner that is allegedly inconsistent with the approved stormwater management plans. The modification application does not seek to alter the approved stormwater management solution for the site. The concerns regarding stormwater runoff during construction and the presence of stormwater infrastructure to the west of the dwelling has been raised separately with Council's Environmental Compliance Team for investigation.

- **Rock fall**

Comment: Submissions have been received raising concern with the risk of rock fall associated with the proposed development. The risk associated with the stability of the site was considered during the assessment of N0279/16/R, with Council engaging an independent geotechnical engineer to undertake a peer review of the proposal. The application was found to result in an acceptable level of risk, consistent with Council's policies, and nothing in the subject modification application alters these conclusions.

- **Lack of traffic control during construction**

Comment: A submission has been received in objection to proposal based on the nuisance experienced during construction. Concerns regarding consistency with the construction traffic management plan required by the development consent have been raised separately with Council's Environmental Compliance Team for investigation.

- **Degradation of headland**

Comment: A submission has been received in objection to the proposal's visual impact upon the headland, describing the development as an architectural eyesore and comparing the development to a three storey block of units. The visual impact of the development was considered in detail as part of the assessment of N0279/16/R, and the visual impact of the modified development remains substantially the same as that originally approved. Further, as the development is nearing completion, it is apparent that the development is visually recessive and blends well with the surrounding natural bushland, a stark improvement compared to the yellow rendered dwelling that previously existed on the site.

- **Quality/legibility of plans**

Comment: Concern has been raised in a submission received regarding the legibility of the plans provided to support the application, with comments that text was unable to be deciphered. The plans provided to support the application are of a high digital quality, and when viewed from Council's website, viewers are able to zoom to read all text on each page.

- **Reasons for modification application**

Comment: Submissions have been received in objection to the reasons behind the lodgement of the subject modification application, with concern that it was lodged in reaction to complaints from neighbouring property owners regarding alleged non-compliance with the development consent. The application seeks retrospective consent for changes that occurred during construction, as well as changes that have not been commenced, which is consistent with the

intent of s4.55 of the EP&A Act. Furthermore, it is noted that a number of changes shown on the modification plans were approved in the construction certificate issued in relation to the application, however these have been included in the subject modification to undertake the necessary comparisons required under the provisions of s4.55 of the EP&A Act.

- **Validity of BASIX Certificate**

Comment: Submissions have been received which raise concerns regarding the validity of the BASIX Certificate provided to support the subject application, citing a statement on the NatHERS Certificate that the software used cannot be applied for roof windows. The NatHERS Certificate was submitted voluntarily and is not a lodgement requirement for the subject application. The NatHERS Certificate does not alter the conclusions of the BASIX Certificate provided.

- **Visual impact**

Comment: A submission was received from the property owner at 43 Marine Parade in objection to the proposed changes to the floor heights and roof design, commenting that the modifications result in increased bulk. As evident by the overlays provided, the changes to the floor levels and roof pitch do little to alter the bulk of the development, and the form of the development remains substantially the same as that which was originally approved.

The same submission raises concerns regarding the loss of landscaping between their property and the proposed dwelling, with concerns that the dwelling will no longer be screened from view as seen from their dwelling. Whilst the proposal removes screen planting between the front fence of the proposed dwelling and the dwelling at 43 Marine Parade, landscaping is retained within the forecourt of the proposed development which will provide softening of the built form as seen from 43 Marine Parade.

- **View loss**

Comment: Concerns regarding the further loss of views associated with the proposed modifications have been raised in a submission received from the property owner of 43 Marine Parade. The submission states that the additional building non-compliance associated with the dining room roof will further erode views of Avalon Beach currently enjoyed from 43 Marine Parade. As discussed with regard to clause C1.3 (View Sharing) of P21 DCP, the proposed modifications do not result in any unreasonable impacts upon views.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	In terms of landscape outcome, the proposed modifications are acceptable, including location of the gated pedestrian entry clear of the dripline of the existing nearby Norfolk Island Pine, and relocation of the courtyard wall to minimise interference with the root zone of the Norfolk Island Pine.
NECC (Bushland and Biodiversity)	The proposed modifications do not trigger any additional biodiversity controls, and flora and fauna controls have been addressed under the original approved DA.
NECC (Coast and	12 Development on land within the coastal vulnerability area

Internal Referral Body	Comments
Catchments)	<p><i>Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:</i></p> <p>(a) <i>if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and</i></p> <p>(b) <i>the proposed development:</i></p> <p>(i) <i>is not likely to alter coastal processes to the detriment of the natural environment or other land, and</i></p> <p>(ii) <i>is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and</i></p> <p>(iii) <i>incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and</i></p> <p>(c) <i>measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.</i></p> <p><u>Comment:</u></p> <p>The proposed modification has been assessed to comply with SEPP Coastal Management and is supported without condition. It is not likely to alter coastal processes to the detriment of the environment or other land and is not likely to reduce public amenity or existing access to and use of the foreshore.</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)	No Development Engineering objection to the proposed turn table and minor modification requested with no conditions.
NECC (Riparian Lands and Creeks)	The proposed modifications do not trigger any additional water quality controls, and sediment and erosion controls have been addressed under the original approved DA.

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 the NSW RFS for review. On 19 December 2018, the NSW RFS advised that the modifications are acceptable subject to the conditions issued in relation to the existing

External Referral Body	Comments
	development consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated. 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 proposed.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 722740S_03 dated 16 December 2018).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	40	41

SEPP (Coastal Management) 2018

The site is located within both the Coastal Use Area and Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 ("CM SEPP"), and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the proposed modifications, the consent authority can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP,

- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP,
- the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP,
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of 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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	8.5m	-	Yes*

* See detailed discussion further in the report.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The height of elements of the proposal are to be marginally increased as a result of the proposed modifications, however the overall maximum height of the building (8.5m) remains unchanged and consistent with the maximum building height prescribed by clause 4.3 of PLEP 2014.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
--------------------	-------------	----------	----------	----------

Front building line	6.5m	>60m	unaltered	Yes
Rear building line	FBSL (7.5) (south)	8m	7.5m	Yes
	6.5m (west)	10m	10.7m	Yes
Side building line	2.5m (north)	2.5m	2.8m	Yes
	1m (east)	1m	unaltered	Yes
Building envelope	3.5m (north)	Outside envelope	Outside envelope	No*
	3.5m (east)	Within envelope	Within envelope	Yes
Landscaped area	60%	840m ² (55.4%) 916m ² (60.4%) with variations	811m ² (53.5%) 864.9m ² (57.1%)	No*

* See detailed discussion further in the report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
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
C1.12 Waste and Recycling Facilities	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

One of the key issues raised by adjoining property owners and considered as part of the assessment of N0279/16/R was the potential impact upon views currently enjoyed from 39 and 43 Marine Parade, Avalon Beach. The potential impacts upon views from these properties arising as a result of the proposed modifications are considered, as follows:

39 Marine Parade

The approved development had a minor impact upon views enjoyed by occupants of the adjoining site at 39 Marine Parade. Whilst the impact upon views was considered to be reasonable, a condition of consent was imposed to increase the spatial separation between dwellings, which resulted in a slight reduction to the impact upon views as seen from 39 Marine Parade. The proposed modifications do not alter the impact anticipated by the development consent.

43 Marine Parade

The potential impact upon an existing view corridor currently enjoyed from 43 Marine Parade was considered as part of the assessment of N0279/16/R, with the location of the proposed dining room impacting upon a filtered portion of views of Avalon Beach and the southern headland. The impact upon this view corridor was considered to be negligible and reasonable in the context of the application. The modification application seeks to increase the height of the roof over the dining room, which was setback from the northern boundary as a result of deferred commencement conditions imposed by the Northern Beaches Independent Assessment Panel when determining N0279/16/R. The additional height of the dining room roof will be generally screened by fronds of the Norfolk Island Pine and the level of impact upon this filtered view corridor is considered to remain generally the same.

Whilst the dining room roof extends marginally beyond the prescribed building envelope (by a maximum of 270mm), the area of non-compliance is generally indiscernible as seen from 43 Marine Parade, and as such, the proposal is considered to be reasonable with respect to the context of the site.

Overall, the impact upon views associated with the proposed modifications will remain generally consistent with that previously approved, and view sharing is considered to be achieved/maintained.

D1.11 Building envelope

The application seeks consent to increase the height of the roof over the dining room, resulting in a 270mm (maximum) protrusion of the building envelope prescribed by this development control. Despite this area of technical non-compliance, the proposed modifications are able to be supported as the resultant development will remain consistent with the outcomes of the building envelope control, as follows:

- *To achieve the desired future character of the Locality.*

Comment: The resultant modified development remains consistent with the desired future character of the Avalon Beach Locality, with a well modulated built form that steps down the

slope of the site, that is screened and softened by landscaping.

- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

Comment: Despite the proposed minor increase to the height of the north-western corner of the proposal and the associated building envelope non-compliance, the resultant development will remain of a scale and density that will be retained below the height of existing and proposed trees within the surrounding natural environment.

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

Comment: The portion of the development that extends beyond the prescribed building envelope is cantilevered beyond the level below, to minimise the footprint of the development and disturbance of natural rock outcrops on the site. The proposed development is considered to respond to, reinforce and sensitively relate to the spatial characteristics of the existing natural environment.

- *The bulk and scale of the built form is minimised.*

Comment: The 270mm non-compliance is not considered to attribute to excessive bulk and scale, and the apparent size of the resultant built form remains appropriately minimised.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment: The proposed modifications do not result in any unreasonable impacts upon views from adjoining properties.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment: The additional height of the dining room roof does not result in any unreasonable impacts upon the level of privacy, amenity or solar access of the development site or adjoining properties.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment: The landscaping shown on the approved landscape plan will ensure that the visual impact of the built form is appropriately softened as seen from the public domain.

D1.14 Landscaped Area - Environmentally Sensitive Land

The proposed modifications will result in a 29m² decrease in landscaped area on the site, which can largely be attributed to the changes to the proposed driveway, in addition to minor changes to the footprint of the dwelling. The proposed reduction in landscaped area does not impact upon existing vegetation on the site, does not result in an increase to the apparent size of the development and does not alter the landscaped character of the site as seen from the public domain. Furthermore, despite non-compliance with the 60% minimum landscaped area prescribed by this clause, the proposal is considered to remain consistent with the objectives of the landscaped area control, as follows:

- *Achieve the desired future character of the Locality.*

Comment: The proposed decrease in landscaped area does not detract from consistency with the desired future character of the Avalon Beach Locality.

- *The bulk and scale of the built form is minimised.*

Comment: The decreased landscaped area calculations are generally attributed to the change to the driveway, and do not result in any perceived changes to the bulk and scale of the approved development.

- *A reasonable level of amenity and solar access is provided and maintained.*

Comment: The proposed decrease in landscaped area does not result in any unreasonable impacts upon the level of amenity and solar access provided to the subject site or adjoining properties.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment: The proposed modifications will not result in any changes to the landscaped treatment of the site as seen from the public domain. The proposed modifications will result in the loss of proposed landscaping located between the proposed new dwelling and the adjoining dwelling at 43 Marine Parade. However, the area in question is located at an oblique angle from the adjoining dwelling at 43 Marine Parade and is generally not visible from within the dwelling. As such, the loss of landscaping is not considered to be unreasonable in this regard.

- *Conservation of natural vegetation and biodiversity.*

Comment: The proposal modifications do not result in any impacts upon existing vegetation and natural vegetation and biodiversity will be conserved.

- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

Comment: The proposed reduction in landscaped area is not considered to result in any unacceptable impacts upon the approved stormwater management solution for the site.

- *To preserve and enhance the rural and bushland character of the area.*

Comment: The proposed modifications maintain significant landscaping to the west and south of the site such that the bushland character of the headland is preserved and enhanced.

- *Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.*

Comment: As above, the proposed reduction in landscaped area is not considered to result in any unacceptable impacts upon the approved stormwater management solution for the site and Council's Development Engineers raise no concern in this regard.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0654 for Modification of Development Consent N0279/16/R granted for Demolition of existing structures and construction of a new dwelling on land at Lot 6 DP 553660,41 Marine Parade, AVALON BEACH, Lot 6 DP 553660,41 Marine Parade, AVALON BEACH, subject to the conditions printed below:

A. Add Condition A0 - 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) The plans and documents listed in the 'Notice to Applicant of Determination of a Development Application' issued on 6 June 2018 in relation to N0279/16/R, as modified by,
- b) The plans and documents listed in the confirmation of satisfaction of the deferred commencement conditions made under Section 95(5) of the Regulations dated 19 July 2017, as modified by,
- c) The Modification Approved Plans:

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Ground Level Plan, revision 02	25 March 2019	Casey Brown Architecture
Roof Level Plan, revision 01	22 November 2018	Casey Brown Architecture
Lower Level Plan, revision 02	25 March 2019	Casey Brown Architecture
Upper Level Plan, revision 01	22 November 2018	Casey Brown Architecture
South/East Elevation, revision 02	25 March 2019	Casey Brown Architecture
North/West Elevation, revision 02	25 March 2019	Casey Brown Architecture
Section A9	[undated]	Casey Brown Architecture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate 722740S_03	16 December 2018	Victor Lin & Associates Pty Ltd

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

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

B. Add new Condition B33 to read as follows:

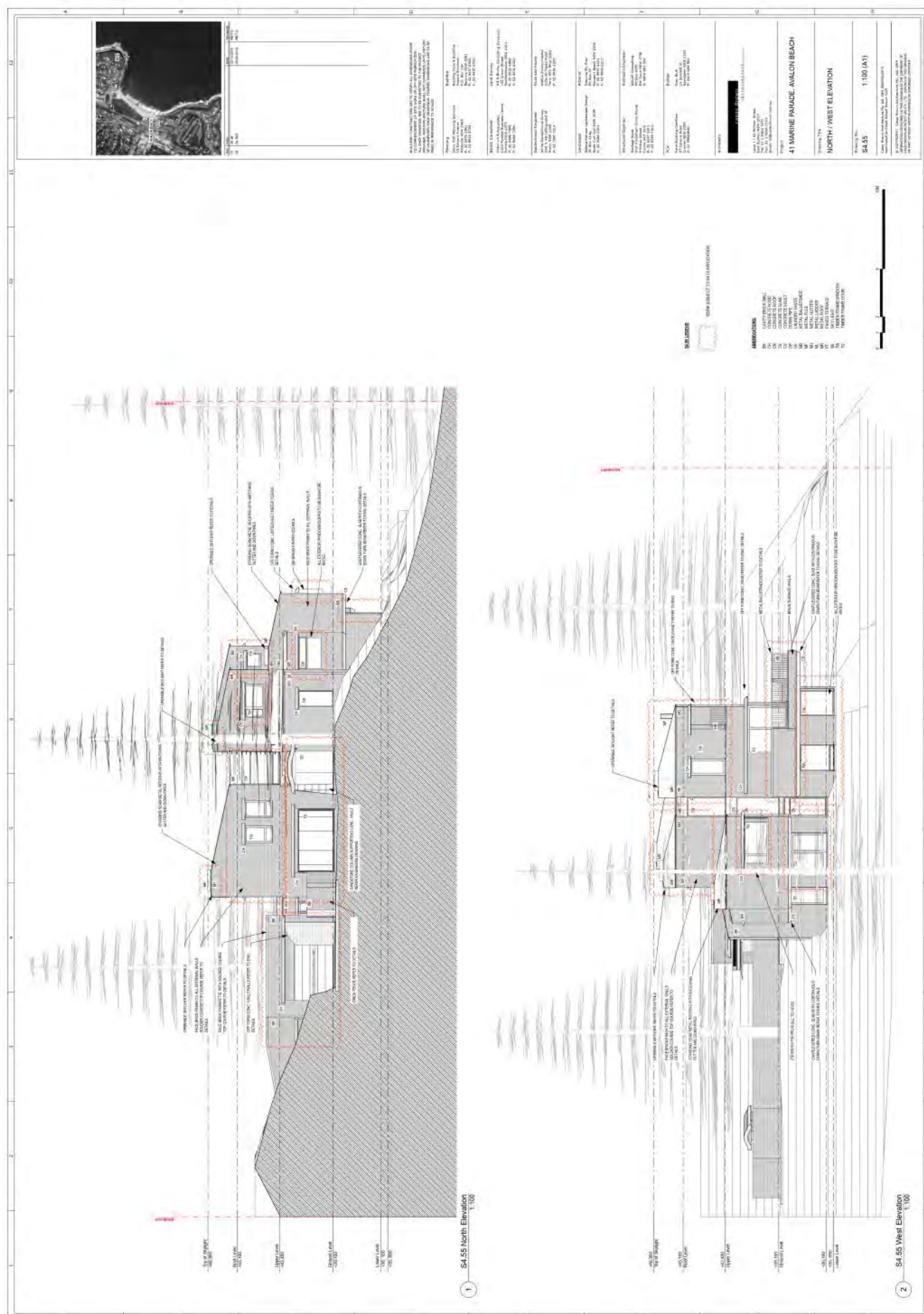
The relocation of the down turned vertical blade on the northern end of the dining room window shown in Modification Approved Plans referenced in Condition A0 is not authorised by this consent. The location of the down turned vertical blade is to remain in the position shown in the plans referenced in

the confirmation of satisfaction of the deferred commencement conditions made under Section 95(5) of the Regulations dated 19 July 2017 (being immediately adjacent to the northern edge of the window).

Reason: To maintain the intent of the imposition of the condition.







ITEM 3.5

DA2019/0123 - 80-84 MONA VALE ROAD AND 22 JUBILEE AVENUE, MONA VALE - USE OF PART OF THE CARPARKING AREA ASSOCIATED WITH THE PITTWATER RSL CLUB FOR THE PURPOSES OF AN ORGANIC FOOD MARKET

REPORTING OFFICER

Matt Edmonds

TRIM FILE REF

2019/322120

ATTACHMENTS

- 1 Assessment Report**
- 2 Plans**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves via deferred commencement** Application No. DA2019/0123 for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market at Lot 26 DP 654262, Lot 27 DP 5055 and Lot 120 DP 133512, 80-84 Mona Vale Road & 22 Jubilee Avenue, Mona Vale subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0123
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 27 DP 5055, 22 Jubilee Avenue WARRIEWOOD NSW 2102 Lot 120 DP 135512, 84 Mona Vale Road MONA VALE NSW 2103 Lot 26 DP 654262, 80 - 82 Mona Vale Road MONA VALE NSW 2103
Proposed Development:	Use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market
Zoning:	B7 Business Park B7 Business Park R2 Low Density Residential SP2 Infrastructure
Development Permissible:	Yes, under Clause 2.8 Temporary Use of Land of the PLEP 2014
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Pittwater RSL Club Ltd
Applicant:	Organic Food Markets
Application lodged:	14/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	03/06/2019 to 17/06/2019
Advertised:	Not Advertised
Submissions Received:	198
Recommendation:	Deferred Commencement Approval
Estimated Cost of Works:	\$ 0.00

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

Pittwater Local Environmental Plan 2014 - 2.8 Temporary use of land

SITE DESCRIPTION

Property Description:	<p>Lot 27 DP 5055 , 22 Jubilee Avenue WARRIEWOOD NSW 2102</p> <p>Lot 120 DP 135512 , 84 Mona Vale Road MONA VALE NSW 2103</p> <p>Lot 26 DP 654262 , 80 - 82 Mona Vale Road MONA VALE NSW 2103</p>
Detailed Site Description:	<p>The Assessing Officer carried out a site inspection on 24 May 2019.</p> <p>The subject site consists of three (3) allotments located to the south-west of Mona Vale Road, north-west of Foley Street, and north of Jubilee Avenue.</p> <p>The site is irregular in shape with frontages of 267m along Mona Vale Road, 200m along Foley Street, and 100m along Jubilee Avenue. The site has an area of approximately 39,319m².</p> <p>The site is zoned part R2 Low Density Residential and part B7 Business Park and accommodates the Pittwater RSL Club development, comprised of the club, sportsfields, bowling club and associated parking.</p> <p>The site slopes approximately 20m from east to south-west, and contains significant vegetation around the existing buildings, facilities and parking areas.</p> <p>Detailed Description of Adjoining/Surrounding</p>

Development

Adjoining and surrounding development is characterised by industrial, commercial and low-density residential development.

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 recent history:

- DA2019/0006 for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market was rejected on 1 February 2019 under staff delegation due to inadequate Statement of Environmental Effects, plans, operational management plan, signage details, and waste management plan.
- DA2019/0046 for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market was rejected on 22 February 2019 under staff delegation due to inadequate plans and owners consent.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for use of part of the existing Pittwater RSL Club car park for markets, as follows:

- Up to 100 stalls;
- Up to 42 days per year (Wednesdays or Sundays); and
- Hours of operation: 7:30am-12:30pm.

Note: The application included varying proposed hours of operation between the Application Form, the

Statement of Environmental Effects, the Plan of Management and the Traffic Report. The hours stipulated on the application form are taken to be the proposed hours of operation.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>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</p>

Section 4.15 Matters for Consideration'	Comments
	Building Code of Australia (BCA). This matter has been 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 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 /Pittwater 21 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 198 submission/s from:

Name:	Address:
Scott John Riley	20 Ocean Grove COLLAROY NSW 2097

Name:	Address:
Kris Deamer	2 The Avenue NEWPORT NSW 2106
Ric Simpson	
Ms Tracy May Cronan	PO Box 3606 PARRAMATTA NSW 2124
Susanne Jacobs	11 Hollywood Road NEWPORT NSW 2106
Mrs Suzanne Patricia Diamond	4 Mirrabooka Street BILGOLA PLATEAU NSW 2107
Janine Pares	
Claudio Mangifesta	
Paul Clarke	
Joanne Bell	
Teresa Rutherford	
Martin Vella	
Sally Joann Woerndl	6 Kay Close MONA VALE NSW 2103
Samantha Caller	179 Powderworks Road ELANORA HEIGHTS NSW 2101
Mrs Michelle Gae Burns	30 Griffin Road NORTH CURL CURL NSW 2099
Nicole Kayclough	
Mrs Bianca Leanne Ipschwitz	3 Arrabri Place WARRIEWOOD NSW 2102
Monique Gray	
Valerie Mona McLeod	3 / 81 Howard Avenue DEE WHY NSW 2099
Ms Joan Spinney	9 Tyrone Avenue FORESTVILLE NSW 2087
Tara Hoare	3 / 59 Lagoon Street NARRABEEN NSW 2101
Tess Cowley	
Natesh Pai	
Victoria Chambers	
Prue Eccleston	
Kate Newton	
Richard Wentworth-Ping	
Jason Gray	
John Walton	15 Booyong Avenue LUGARNO NSW 2210
Mrs Michelle Linda Stone	20 Waterview Street MONA VALE NSW 2103
Mrs Deborah Tracey	77 The Esplanade FRENCHS FOREST NSW 2086
Shannon Young	
Mrs Savannah Carys Baker	34 McDonald Street FRESHWATER NSW 2096
Jorja Vicary	
Mr Geoffrey Russell Walsh	188 Warriewood Road WARRIEWOOD NSW 2102
Mrs Ann Carolyn Hogan	111 Plateau Road BILGOLA PLATEAU NSW 2107
Sue Toso	119 Plateau Road BILGOLA PLATEAU NSW 2107
Paul Casper	76 Mona Vale Road MONA VALE NSW 2103
Mrs Ann-Marie Bayliss	57 Towradgi Street NARRAWEENA NSW 2099
Danielle Danswan	
Mr Josef Belevi	49 A Vineyard Street MONA VALE NSW 2103

Name:	Address:
Mrs Penelope Ruttyrn Mr Anthony Ruttyrn	11 / 6 Foley Street MONA VALE NSW 2103
Michelle Eisele	3 / 6 Foley Street MONA VALE NSW 2103
Mrs Jayne Smytheson	
Mr Deepak Damji Wadher	83 Mona Vale Road MONA VALE NSW 2103
Mr Ian Littleton	PO Box 418 STUBBO NSW 2852
Mr Robert Bergqvist	4 Brinawa Street MONA VALE NSW 2103
Julie Hutchings	2 Jeanette Avenue MONA VALE NSW 2103
Elizabeth Clare Halls	2 / 6 Foley Street MONA VALE NSW 2103
Ms Ronda Lea Schweinsberg	46 Palmgrove Road AVALON BEACH NSW 2107
Mrs Patricia Janet Johnston	64 Vineyard Street MONA VALE NSW 2103
Mr Neil Burleigh	
Ms Elizabeth Diedre Wall	25 / 237 Macpherson Street WARRIEWOOD NSW 2102
Ms Maraya Sunshine Bell	1 Fazzolari Avenue MONA VALE NSW 2103
Ms Julie Buckroyd	6/16 Waratah Street MONA VALE NSW 2103
Ms Lauren Alice Bailey	3 Wallaby Circuit MONA VALE NSW 2103
Ms Michelle Anne Louise Carter	4 Shearwater Drive WARRIEWOOD NSW 2102
Ms Sara Daisy Bell	1 Fazzolari Avenue MONA VALE NSW 2103
Janice Leach	36 Hillside Road NEWPORT NSW 2106
Ms Amber Robyn Fawn Jones	63 Emma Street MONA VALE NSW 2103
Mrs Tracie Francis	47 Vineyard Street MONA VALE NSW 2103
Rebecca Svenoy	330 / 79 - 91 Macpherson Street WARRIEWOOD NSW 2102
Ms Jane Marie Argue	24 / 237 Macpherson Street WARRIEWOOD NSW 2102
Maria Skarparis	Invalid Address NSW
Ms Jackie Black	5 Lakeview Parade WARRIEWOOD NSW 2102
Mr Dale Marc Cohen	75 Whale Beach Road WHALE BEACH NSW 2107
Ms Kylie Elizabeth Perrin	10 Hunter Street South WARRIEWOOD NSW 2102
Ms Janine Elizabeth Clark	16 Lake Park Road NORTH NARRABEEN NSW 2101
Mrs Ann Asker	5 Briony Place MONA VALE NSW 2103
Mrs Sarah Jane Mawson	18 Wallaby Circuit MONA VALE NSW 2103
Mrs Sally Louise-Walker Brandt	34 C Samuel Street MONA VALE NSW 2103
Rachel Rumery	
Earl Moran	
Mrs Kerry Elizabeth O'Dell	6 Brands Lane WARRIEWOOD NSW 2102
Ms Alison Brookbanks	36 Loquat Valley Road BAYVIEW NSW 2104
Shayna Price	
Amy Radel	7 Alexandra Crescent BAYVIEW NSW 2104
Mrs Catherine Elizabeth	25 Eastview Road CHURCH POINT NSW 2105

Name:	Address:
Nicholl	
Vicki Hoogland	
Craig O'Brien	
Jordan Bracher	9 / 11 Soldiers Avenue FRESHWATER NSW 2096
Norman Fuller	
Mrs Robyn Suzanne Murray	2 / 3 Vineyard Street MONA VALE NSW 2103
Ann Margaret Burleigh	5 Kay Close MONA VALE NSW 2103
Nick Burleigh	
Mr David James Remedios Mrs Vivienne Mary Remedios	14 / 6 Foley Street MONA VALE NSW 2103
Mrs Cassandra Diane Thomas	62 Mona Vale Road MONA VALE NSW 2103
Ms Elizabeth Ann Reilly	15 Orana Road MONA VALE NSW 2103
Mrs Moya Lorraine Lapish	13 Judith Street SEAFORTH NSW 2092
Jack Small	4 Harst Place BELROSE NSW 2085
Lucille Hassen	9 / 7 Osborne Road MANLY NSW 2095
Ms Fiona Mary Murphy	1 / 21 Angophora Circuit WARRIEWOOD NSW 2102
Helen Louise Conn	70 Lane Cove Road INGLESIDE NSW 2101
Mrs Jemma Browne	9 Buena Vista Avenue MONA VALE NSW 2103
Mrs Michele Deborah Wienstien	7 / 13 - 19 Angophora Circuit WARRIEWOOD NSW 2102
Mr Colin Rex Bilton Mrs Janice Lynette Bilton	8 / 6 Foley Street MONA VALE NSW 2103
Mrs Christina Anne Dominique Giannakakis	36 Marinna Road ELANORA HEIGHTS NSW 2101
Kim Ollerton	75 Suffolk Avenue COLLAROY NSW 2097
Amanda Hewitt-Park	
Mrs Mayu Shimoda	1 Redgum Place FRENCHS FOREST NSW 2086
Frank Kardos	
Mrs Jacqueline Noelle Morgan	13 Wimbledon Avenue NORTH NARRABEEN NSW 2101
Mr David Norman Edgley	30 / 5 Ponderosa Parade WARRIEWOOD NSW 2102
Ulla Kofoed Krause	5 / 319 Condamine Street MANLY VALE NSW 2093
Mr James Evangelidis	3 Jabiru Close MONA VALE NSW 2103
Robert Pfrogner	
Noah Weinberg	
Carrie Kirsten	
Amanda Nielsen	
Brinley Meyer	
Angela Jones	
Greg Newell	
Mrs Tracey Lee O'Brien	6 Bertana Crescent WARRIEWOOD NSW 2102

Name:	Address:
Cameron Russell	
Tina Gozin	
Malcolm Leyland	
Ms Susan Lee Mason	9 / 123 - 125 Lagoon Street NARRABEEN NSW 2101
Nick Orrock	
Mrs Tracey O'Sullivan	C/- Vaughan Milligan Development Consulting Pty Ltd PO Box 49 NEWPORT BEACH NSW 2106
Donald Smith	13 Foraker Drive EAGLE HEIGHTS NSW 4272
Becci Watson	
Ms Julie Maree Constable	11 Ilford Road FRENCHS FOREST NSW 2086
Christopher Tarr	
Ms Samantha Jane Sheppard	179 Barrenjoey Road NEWPORT NSW 2106
Ms Justine Helen Lobb	32 Grandview Parade MONA VALE NSW 2103
Mr John Broadbent	19 Timaru Road TERREY HILLS NSW 2084
Rosemary Johnston	1278 Lachlan Valley Way JEMALONG NSW 2871
Shirley Hoffman	
Vicky Pantelas	
Ms Valerie Jensen	185 Warriewood Road WARRIEWOOD NSW 2102
Susannah Malyon	
Ms Clare Trevena	68 Parr Parade NARRAWEENA NSW 2099
Francesca Gaspar	
Tanya Falecki	
Daniel Acheson	20 Douglas Street ST IVES NSW 2075
Xuanhong Dai	
Clare Mason	
Dejan Bubalo	18 Campbell Avenue CROMER NSW 2099
Mrs Judith Ann McPhee	9 Forbes Place ALLAMBIE HEIGHTS NSW 2100
Mrs Gail Lesley Goff	35 Mathews Street DAVIDSON NSW 2085
Mr Jacob Boutros Khouri	6 Sefton Road THORNLEIGH NSW 2120
Emily Jean Bianco	3 Queens Avenue AVALON BEACH NSW 2107
Katarina Sopko	26 Acacia Circuit WARRIEWOOD NSW 2102
Michael Shafran	
Mac Lasseter	
Mr David Anthony Murphy	3 Wallaby Circuit MONA VALE NSW 2103
Sarah Harvey	
Mr Owyn David Prandle	84 Whale Beach Road AVALON BEACH NSW 2107
Rita Ayoub	
Mrs Natalie Claudine Moffat	1 Myrtle Street NORTH BALGOWLAH NSW 2093
Mr Andrew Palummo	55 Emma Street MONA VALE NSW 2103
Ms Mary Phillips	185 Warriewood Road WARRIEWOOD NSW 2102
Barbara Anna Hermann T/AS	1/25 Avalon Parade AVALON BEACH NSW 2107

Name:	Address:
Avalons Organics	
Mrs Barbara Anna Hermann	116 Barrenjoey Road MONA VALE NSW 2103
Jack Mitri	
Ms Lauren Grace Walker	155 Pacific Road PALM BEACH NSW 2108
Kumar Bimalendra	23 The Crescent HOMEBUSH NSW 2140
Carl James Brandes De Roos	PO Box 579 NEWPORT BEACH NSW 2106
Ms Barbara Bryan	32 Baronbali Street DUNDAS NSW 2117
Lisa Steele	
David Turner	6 Sierra Place UPPER COOMERA NSW 4209
Michael Perroux	
Belinda Wilcox	66 Grace Avenue FRENCHS FOREST NSW 2086
Susannah Paterson	
Dominique Simone Fletcher	1 Mallawa Road DUFFYS FOREST NSW 2084
Mr Nigel Bennett Bramley	3 Narrabeen Park Parade NORTH NARRABEEN NSW 2101
Boston McArthur	7 Carefree Road NORTH NARRABEEN NSW 2101
Mr Alan McNamara	40 Milham Crescent FORESTVILLE NSW 2087
Mr Simon Christopher Reinhardt Mallender	100 Wyuna Avenue FRESHWATER NSW 2096
Mrs Alison Kokou	16 Macpherson Street WARRIEWOOD NSW 2102
Mrs Sally Anne Cannon	191 Powderworks Road ELANORA HEIGHTS NSW 2101
Ms Casey Kilgour	13/3 Arndill Avenue BAULKHAM HILLS NSW 2153
Mrs Rika Vytupil	3 / 3 Fantail Avenue WARRIEWOOD NSW 2102
Mr David O'Neill	4 Foley Street MONA VALE NSW 2103
Chantal Bristow	40 Burchmore Road MANLY VALE NSW 2093
Monte Dwyer	
Lee Murphy	4 / 15 - 17 Kalinya Street NEWPORT NSW 2106
Mr Steven Jon McInnes	35 Elanora Road ELANORA HEIGHTS NSW 2101
Ms Loretta Woodhead	24 Abernethy Street SEAFORTH NSW 2092
Ms Caroline Graham	94/81 Willandra Road CROMER NSW 2099
Benjamin Thomas Clinch	Po Box 296 MONA VALE NSW 1660
Ms Stefani Thornthwaite	31 Trevor Road NEWPORT NSW 2106
Mr Kai Hedley Cooper	6 / 6 Foley Street MONA VALE NSW 2103
Mr Simon Peter Gillespie Elaine Gillespie	91 Mona Vale Road MONA VALE NSW 2103
Mr Peter William McDonald	10 / 6 Foley Street MONA VALE NSW 2103
Kevin Eade	
Mrs Donna Louise Giles	80 Vineyard Street MONA VALE NSW 2103
Nina Aitken	
Mrs Lynette Marie Czinner	12 Orchard Street WARRIEWOOD NSW 2102
Rebecca Murray	2 / 3 Vineyard Street MONA VALE NSW 2103
Michele Thompson	2/9 Arthur Street CROYDON NSW 2132

Name:	Address:
Ron Bode	19 Jubilee Avenue WARRIEWOOD NSW 2102
Timothy Ryan	22 Jubilee Avenue WARRIEWOOD NSW 2102
Peter McDonald	6 Foley Street MONA VALE NSW 2103
Roy Alexander Duffell	Farm 1005 Four Corners Road COLEAMBALLY NSW 2707
Lindsay Frazer	C/- 51 Binburra Avenue AVALON BEACH NSW 2107
Mr Kevin John Lee	89 Mona Vale Road MONA VALE NSW 2103
Mr Philip Charles Walker	184 Warriewood Road WARRIEWOOD NSW 2102

The application received 198 submissions. Approximately 80% of the submissions are in support of the proposed development. The issues raised in the remaining 20% are addressed below:

Note: Council is receipt of one submission relating to this application that was made by a Council officer who is a local resident and who is not involved in the assessment of applications under the Environmental Planning and Assessment Act.

Traffic and Parking

Objections raised concern that the proposed development will result in insufficient onsite and on-street parking, traffic congestion, illegal parking, and vehicular/pedestrian conflicts. Objections called for Jubilee Avenue to be closed, roads to be upgraded and Council rangers to patrol the market events.

Comment:

The Applicant provided an amended Parking & Traffic Impact Assessment Report and traffic modelling to the satisfaction of Council's Traffic Engineer. Council's Traffic Engineer raised no concern in relation to parking, traffic congestion or traffic safety, subject to optimised signal phasing at the intersection of Foley Street and Mona Vale Road and the upgrading of footpaths (as required by conditions of consent). Further, the proposed markets are to trade between 8:30am and 12:30pm, with the peak of market goes attending in the morning, when demand for parking for RSL patrons is lower. Closure of Jubilee Avenue, upgrade of the roads and ranger patrols during the market events is not necessary.

Impact on Local Business

Some submissions raised concern that the proposed development would lead to competition with existing markets in the Northern Beaches area. Objections raised concern that the markets will not support local business or regional farmers.

Comment:

The Northern Beaches area is not to subject of an oversupply of markets, indicating that competition is not unreasonable. The markets currently held in Warriewood run on Fridays, while the proposed markets at the Pittwater RSL site are to run on Wednesdays or Sundays. As such, there would be no overlap in operation of these markets. The markets provide opportunity for local businesses (and small businesses from across the state) to access a greater customer market. Further, submissions (including from local business owners) also raised that the markets would support local business.

Noise Impacts

Objections raised concern that the markets would result in an invasion of acoustic privacy with unreasonable noise impacts during morning set up, with no noise impact statement supporting the application. Some objections mistook the set up time to be from 3am, 4am or 5am. Concern was also raised in relation to the use of amplified sound systems and noise from operation of the RSL. One objection called for installation of a noise barrier.

Comment:

An acoustic report is not required to be submitted with this application. The proposal is supported by a Plan of Management, which details noise and complaints management measures. Additionally, Council's Environmental Health Officer has reviewed the proposal, and raised no objections in relation to noise nuisance, subject to conditions of consent (which limit amplified noise). As per conditions of consent, the proposed markets are to commence set-up at 7:00am, trade from 8:30am-12:30pm, and conclude pack down by 2:00pm. Installation of a noise barrier is not necessary in this case. Noise impacts arising from use or operation of the RSL club are not relevant considerations for this application.

Organic Markets

Objections raised concern that the markets are not actually 'organic', and that trading should be limited to organic foods only.

Comment:

The intention of the markets is for organic produce only. The Plan of Management stipulates that any misuse of the term 'organic' by an operating trader is to be reported to a director for action.

Impacts from Use of the Site

Objections raised concern that running of the markets would lead to littering and property devaluation. Concern was also raised that market gazebos are a safety concern in poor weather.

Comment:

Littering will be limited through the use of bins around the market site. Property value is not a relevant consideration under the *Environmental Planning and Assessment Act 1979*. The Plan of Management details that gazebos are to be weighted to prevent movement, and require taking down in strong winds.

Errors in Documentation

Objections raised concerns regarding the submitted supporting information as follows:

- Parking & Traffic Impact Assessment Report relied on incorrect methodology, incorrect road widths, incorrect surrounding land uses and incorrect parking rates;
- Plans did not show correct driveway configuration on Foley Street, properties across the roads bounding the site, nor bus stops on Foley Street;
- Application included inconsistency in proposed trading hours; and
- Statement of Environmental Effects did not include details of its author.

Comment:

The Applicant provided an amended Parking & Traffic Impact Assessment Report to the satisfaction of Council's Traffic Engineer. This amended report is relied upon for assessment. Incorrect driveway configuration on the plans is noted. The omission of nearby properties and bus stops does not preclude full assessment of the proposal. The hours of operation stipulated on the Development Application Form are relied upon for assessment, being 7:30am to 12:30pm. A Statement of Environmental Effects can be prepared by any individual or group. As such, exclusion of the author's name is not problematic in assessment of the proposal.

Previous Markets

Objections raised concern that the markets at Frenchs Forest (run by the same operator, and to conclude shortly with the markets at Pittwater RSL taking their place) attracted complaints. Objections also raised concern about the ethics of the market operator. Objections raised that the current markets at Frenchs Forest are less intense than the proposed markets and the two should not be compared. Objections called for the same trading hours for the current markets at Frenchs Forest to be applied to the proposed markets.

Comment:

Complaints relating to existing markets and the ethics of the market operator are not relevant planning matters for consideration under the *Environmental Planning and Assessment Act 1979*. The Plan of Management submitted in support of the proposal includes the method for dealing with complaints arising in relation to the proposed markets. As required by conditions of consent, the Plan of Management is to be updated to include further detail in relation to complaints handling and registration, and contact details. The markets at Frenchs Forest do not present a less intense use than the proposal, as the Frenchs Forest site is slightly larger, but includes double the number of stalls as proposed in this application. The hours of operation of the Frenchs Forest markets do not have to be applied to this proposal.

Site Suitability

Objections raised concern that the site is not suitable given a lack of services (electricity and water) and that marketgoers would need RSL membership to access toilets. Objections noted that the Pittwater RSL site is located further away for some customers and that other locations would be more suitable. Objections also raised concern about the relocation of the 'Return and Earn' recycling facility currently in the subject RSL car park.

Comment:

The subject site includes access to services, as evidenced by power poles, lights and toilets. Toilets to be used by marketgoers are to the north of the car park and do not require RSL membership for access. The proposed development does not relate to land other than land occupied by the Pittwater RSL Club. Hypothetical consideration of other land for suitability is not a relevant planning matter for consideration under the *Environmental Planning and Assessment Act 1979*. The 'Return and Earn' recycling facility is a temporary structure that can be relocated elsewhere onsite.

Temporary Use

Some submissions raised concern that the proposal would exceed the limit for temporary use under the LEP.

Comment:

The proposed development seeks consent for markets to occur on up to 42 days within any period of 12 months on Wednesdays and/or Sundays, in accordance with Clause 2.8 Temporary Use of Land of the Pittwater LEP 2014. Upon conclusion of 42 days within a 12-month period (regardless of which day or days the occasions occur), the markets must cease until the following 12-month period commences. The Plan of Management shall record the detail of the temporary use of the land.

Notificationpublically

Objection was raised that the application was not notified widely enough.

Comment:

The application was notified in accordance with Clause A5.1 Exhibition, Advertisement and Notification of Applications of the P21 DCP.

Note: The proposed development was re-notified from 30 May 2019 to 17 June 2019, as the property description in the original notification documentation did not include a reference to the complete area of land the subject of the application. The prior notification only included 80 to 82 Mona Vale Rd, Mona Vale, whereas the notification description should have included additional land at 84 Mona Vale Rd, Mona Vale and 22 Jubilee Ave, Warriewood. The proposed development and location itself has not changed, despite the re-notification. The outcome of the further notification period will be reported to the Northern Beaches Local Planning Panel, and will be available to the public prior to the meeting.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>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.</p> <p><i>Note: The proposed development may not comply with some</i></p>

Internal Referral Body	Comments
	<p><i>requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p> <p><u>Assessing Officer's Comment:</u> The referral response recommended conditions of consent that have not been applied, as no permanent works are proposed, nor is the use proposed to be carried out within a building. The conditions were recommended as follows:</p> <p>Change of Use/Fire Safety Upgrade</p> <p><i>The existing levels of fire safety within the premises are to be upgraded to achieve an adequate level of fire safety in accordance with the provisions of clause 94 of the Environmental Planning and Assessment Regulation 2000.</i></p> <p><i>The fire safety upgrading works are to be included in the Construction Certificate and be implemented prior to occupation of the new building or part.</i></p> <p><i>Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety.</i></p> <p>Fire Safety Matters <i>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.</i> <i>Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.</i></p>
Environmental Health (Industrial)	<p>General Comments</p> <p>Proposed Food Market Issues: Noise, food safety, water pollution.</p> <p>The set up time will be from 7 am and it will be more distant from adjoining residential properties than the higher sloping car park closest to the Club main entrance. Provided sellers don't arrive earlier and heavy vehicles are not involved excessive noise should be avoided.</p>

Internal Referral Body	Comments
	<p>With regard to noise some aspects are unknown such as generators, amplified music etc; but this can be dealt with by way of conditions prohibiting such.</p> <p>It is noted that the toilets proposed to be used are those within a clubs' adjoining bowling club , however there is no information on toilet numbers here or that the club will open their facilities at 7 am if needed.</p> <p>Food retailing comments; all food stall holders will require a temporary food premises permit as a condition of operating to maintain a standard of food safety and hygiene, many of the former Frenches Forest stall holders probably already hold these approvals already although this is on private land this requirement will provide some standard of approval , monitoring the foods on sale and vendors.</p> <p>Any run-off of pollutants i.e. portable cool room condensation, food spillage, disposal of ice and the like must be cleaned up on site and prevented from entering the storm water system, this can be dealt with by way of a condition</p> <p>As a condition of approval all temporary food premises must have an approval to operate by the Northern Beaches Council to ensure that the preparation and storage and sale of food , food labeling requirements can be inspected/monitored to protect the public from potential serious risk.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p> <p><u>Assessing Officer's Comment:</u> The application included varying proposed hours of operation between the Application Form, the Statement of Environmental Effects, the Plan of Management and the Traffic Report. The hours stipulated on the application form are taken to be the proposed hours of operation for the purpose of this assessment. The application stipulates a 90-minute period for stall set up, which would require set up commencing at 6:00am. Conditions of consent have been applied to commence site access and set up from 7:00am in accordance with the NSW Environmental Protection Authority's Noise Policy for Industry 2017 daytime trading hours, and in consideration of no acoustic assessment being provided to indicate that operation outside daytime hours is acceptable.</p> <p>The recommendation of this report includes market trading hours of 8:30am-12:30pm, with market set up between 7:00am and 8:30am. This recommendation minimises noise disturbance to nearby properties, by limiting set up and trading to daytime hours.</p> <p>The toilets proposed to be used are located to the north of the market</p>

Internal Referral Body	Comments
	area and are not within the RSL building.
Environmental Health (Food Premises, Skin Pen.)	<p>General Comments</p> <p>Applicant proposes to hold a weekly market at Pittwater RSL Club carpark. Environmental Health has reviewed the application and recommends Approval without conditions. N.B. We did not place a condition for food licensing on the referral as we believe it is the responsibility of the individual food stall holders to have the appropriate licences to sell food at the market.</p> <p>Recommendation</p> <p>APPROVAL - no conditions</p>
NECC (Development Engineering)	No Development Engineering objections with no conditions subject to approval from Council's Traffic Engineer.
Traffic Engineer	<p>The proposal is for a Sunday Markets to operate within the car park of the local RSL.</p> <p><u>Original Comments:</u></p> <p>Parking: The Traffic Report indicates that the RSL can accommodate 397 parking spaces. 43 will be allocated to the Stall owners for parking their vehicles, whilst 118 will be submitted for erection of the market stalls. This leaves 236 parking spaces available for the use of customer and the RSL patrons. However the Applicant's Traffic consultant has identified that there will be 244 or 279 available. The numbers are not consistent and the validity of the report is therefore questionable. The applicant will be required to review and amend to provide a consistent submission.</p> <p>The Traffic consultant has assumed a 20% trip and parking reduction based on linked trips by the RSL patrons. 20% is deemed very optimistic. Evidence to support this assumption has not been identified. In this instance, it would be expected that, at most, 20% of the RSL patrons would be attending the markets. i.e. 30 patrons would relate to 6 attending the markets. $6/197 = 3\%$. Therefore a 5% trip and parking reduction is considered reasonable. Council cannot accept 20% without substantial supporting evidence.</p> <p>Traffic: SIDRA digital files have been requested by RMS. Council will require a copy of all the information being provided to assess impacts to the local streets.</p> <p><u>Comments following consideration of amended Traffic Report:</u></p> <p>Pedestrian: The applicant is proposing to upgrade all footpaths along all frontages of the site to the nearest Bus Stop.</p>

Internal Referral Body	Comments
	<p>Servicing: The applicant will be expected to engage with the RSL to ensure waste is managed onsite. This can be conditioned.</p> <p>Parking: The amended traffic report has adopted the 5% parking reduction suggested to account for RSL patrons also attending the markets. The applicant has demonstrated by comparison with parking operations at the Frenchs Forest markets and parking data from the RSL site that the parking available at the RSL will be sufficient to cater for anticipated parking demand generated by the RSL and market operations</p> <p>Traffic Generation: The SIDRA analysis has demonstrated that although there will be increased traffic demand generated at the intersection of Foley Street/Mona Vale Road with extensive queuing on Foley Street a possibility, these queues can be mitigated by the signals controlling system SCATS adjusting the phase length in response to the increased delays on the Foley Street leg. If this did not occur quickly enough many drivers using the RSL and seeking to access Mona Vale Road would also have the option of doing so via the Ponderosa street roundabout as such traffic generation concerns are not raised.</p> <p>No further concerns raised subject to conditions.</p> <p><u>Assessing Officer's Comment:</u> In relation to the above 'Pedestrian' response from the Traffic Engineer, conditions of consent include footpath construction/upgrade to the Foley Street frontage only. The Mona Vale Road and Jubilee Avenue street frontages are adequately serviced by footpaths. Additionally, the Foley Street frontage contains the nearest bus stops.</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 Police - Local Command (CPTED)	The proposal was referred to NSW Police, who raised no objections to the proposal and did not recommend the application of any conditions. A condition of consent has been included in the recommendation by the Assessing Officer, prohibiting the sale of alcohol on the premises.
Concurrence – NSW Roads and Maritime Services (s100 – Dev. on proposed classified road)	<p>The proposal was referred to NSW Roads and Maritime Services, who commented on the proposal as follows:</p> <p><i>Reference is made to Council's correspondence dated 22 February 2019 with regard to the abovementioned Development Application, which was referred to Roads and Maritime Services (Roads and</i></p>

External Referral Body	Comments
	<i>Maritime) for comment. Roads and Maritime has no comment for Council's consideration in the determination of the application.</i>

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 commercial 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 commercial land use.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

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:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Premises licensed under the <i>Liquor Act 1982</i> or the <i>Registered Clubs Act 1976</i>	200 or more motor vehicles	50 or more motor vehicles

Note: Under Clause 104(2) of the SEPP, 'relevant size of capacity' is defined as meaning:

"(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 who did not raise any objection to the proposal.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone R2 : No Zone B7 : No Zone SP2: No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone R2 : Yes Zone B7 : Yes Zone SP2: Yes

Principal Development Standards

There are no principal development standards under Part 4 of the PLEP 2014 to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements
2.8 Temporary use of land	Yes

Detailed Assessment

2.8 Temporary use of land

The subject site is zoned R2 Low Density Residential, B7 Business Park and SP2 Infrastructure

(Classified Road). The proposal is wholly contained within the R2 and B7 zoned land, and does not impact upon the SP2 zoned portion of land. The proposed development is not permissible in the R2 or B7 zones. The proposal relies on Clause 2.8 Temporary Use of Land of the PLEP 2014 for permissibility. Clause 2.8 requires that development consent must not be granted unless the consent authority is satisfied that:

(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and

Comment:

The proposed development will not prejudice the subsequent carrying out of development on the land, as the use of the site will not involve any permanent physical works. Upon cessation of the market events, the land will be returned to its former state without any unreasonable impact.

(b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and

Comment:

Subject to adherence to conditions of consent and the Plan of Management, the proposed development will not result in unreasonable impacts on the amenity of adjoining land or the neighbourhood. Objections to the proposal raised concern regarding traffic and noise impacts. These matters are responded to in the section of this report relating to Submissions. The proposal does not pose any unreasonable view loss, overshadowing or visual privacy impacts.

(c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and

Comment:

The proposed development will involve temporary structures only, to be set up and removed for use during operation of the markets only. In this way, the proposed development will not involve alteration to features of the land, nor increase the risk of natural hazards that may affect the land.

(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

Comment:

As above, the proposed development will involve temporary structures only, to be set up and removed for use during operation of the markets only. Given the temporary nature of the structures, at the cessation of operation of the markets, the land will be restored to the condition in which it was before the use commenced.

The proposed development satisfies the requirements of this Clause.

Pittwater 21 Development Control Plan

Built Form Controls

There are no built form controls under Part D14 Warriewood Locality of the P21 DCP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.21 Food Premises Design Standards	Yes	Yes
D14.1 Character as viewed from a public place	Yes	Yes
D14.2 Scenic protection - General	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

Pittwater Section 94 Development Contributions Plan

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP

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

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

RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. THAT Council as the consent authority grant a Deferred Commencement Development Consent being subject to a Five (5) year time frame for Deferred Commencement Consents detailed within Section 95 of the EPA Act 1979 to DA2019/0123 for Use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market on land at Lot 27 DP 5055,22 Jubilee Avenue, WARRIEWOOD, Lot 120 DP 135512,84 Mona Vale Road, MONA VALE, Lot 26 DP 654262,80 - 82 Mona Vale Road, MONA VALE, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

DEFERRED COMMENCEMENT CONDITIONS

1. Signal Phasing - Approval

The applicant is to obtain approval from RMS to optimise the signal phasing for the intersection of Foley Street and Mona Vale Road.

Reason: to ensure a efficient intersection operation.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within five (5) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. 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
DA1000 Site Plan	13 February 2019	Bureau SRH Architecture
DA1001 Indicative Market Layout	13 February 2019	Bureau SRH Architecture

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Parking & Traffic Impact Assessment Report	Greys Consulting Australia	7 April 2019
Operational Management Plan	January 2019	Applicant
Risk Management Plan	Undated	Organic Food Markets

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:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan and Addendum	Undated	Applicant

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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

3. Toilet / Sanitary facilities

- Details of exact toilet facilities numbers in the adjacent bowling facility building, to ensure adequacy of numbers of toilets for customers and stall holders must be provided to Council before commencement.
- The Applicant must provide signage to direct customers to toilet facilities from the market area.

Reason: To ensure ongoing toilet facilities and ready access for vendors and market customers.

4. Approval of Food Vendors

All food vendors are to have an approval to operate a temporary food stall or mobile food van as issued by the Northern Beaches Council before commencing operation on site.

Reason: To enhance risk management and comply with legislation and standards in relation to the sale of food.

5. Amendment to Plan of Management

The submitted Plan of Management is to be amended to include:

- Hours of Operation, being:
 - Access for stall traders: 7:00am-2:00pm; and
 - Trading hours: 8:30am-12:30pm.
- Methods for restricting access to the site prior to 7am and in relation to trading hours;
- Complaints Register: A complaints register is to be kept up to date at all times, logging complaints received, and action taken;

- Complaints Contact: A contact person is to be nominated in the Plan of Management, along with a phone number;
- Stall Numbers: Market events are not to exceed 100 stalls at any time; and
- Market events must not exceed 42 days in 12 months.

Reason: To ensure appropriate amenity, complaints resolution and consistency with the consent.

6. **Submission of Engineering Plans**

The submission is to include four (4) copies of Civil Engineering plans for the design of footpath construction/upgrades along the Foley Street frontage. These are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate. Section 138 and/or 139 applications are to be submitted to Council for Local Traffic Committee approval.

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

7. **Signal Phasing - Implementation**

The applicant is to undertake the signal phasing upgrades for the intersection of Foley Street and Mona Vale Road as per RMS processes, at no cost to Council. The phasing must be operational prior to the commencement of any market event.

Reason: To ensure the intersection will continue to run efficiently.

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

8. **Water Pollution**

All condensate, cleaning water, disposed ice and spillage, as well as litter and rubbish shall be prevented from discharge to the car park surface (which drains to a water body) at all times and provision is to be made to deal with any accidents/incidents.

Reason: To eliminate the risk of water pollution.

9. **Noise Minimisation**

1. External sound amplification equipment or loud speakers must not be used for the announcement, broadcast, playing of music (including live music) or similar purposes if audible from the boundary of any residential premises.
2. Set up of stalls is not to commence before 7:00am.
3. Refrigeration motors/generators and the like not being audible from the boundary of any residential premises.

Reason: To protect the acoustic amenity of neighbouring properties.

10. **Hours of Operation**

The hours of operation are to be restricted to:

- Wednesdays / Sundays:
 - Set Up: 7:00am-8:30am
 - Trading: 8:30am to 12:30pm
 - Pack Down: 12:30pm-2:00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises for the purpose of the markets shall be required to leave. Stallholders and site managers may commence set up from 7:00am and must vacate the site by 2:00pm. No access to the site for the purpose of market stall set up is permitted before 7:00am.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

11. **Log Book**

A log book detailing each market event is to be kept up to date for inspection by Council at any time. The markets are not to occur on more than 42 days within a 12-month period.

Reason: To ensure consistency with Clause 2.8 temporary Use of Land of the Pittwater LEP 2014.

12. **Stall Numbers**

The maximum number of stalls at any one market event is not to exceed 100 at any time.

Reason: To ensure consistency with the consent.

13. **Post-Implementation Review**

The applicant is to provide assessment of the signal phasing upgrade for the intersection of Foley Street and Mona Vale Road and the performance of the intersection for the first four weeks of operation of the markets. Should the data identify that the intersection is not performing as prescribed in the Traffic Impact Assessment, the applicant will be required to reduce the number of stalls being erected at the market event accordingly.

Reason: To ensure the network continues to operate efficiently.



