

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 26 JUNE 2019



Ashleigh Sherry
Manager Business Systems and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 26 June 2019
in the Walamai Room, Civic Centre, Dee Why**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 12 June 2019	
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS	5
3.1	DA2018/1982 - 313 Hudson Parade, Clareville - alterations and additions to a dwelling house including a new inclinor.....	5
3.2	DA2019/0080 - 34 Beatty Street, Balgowlah Heights - alterations and additions to a dwelling house including swimming pool.....	49
3.3	DA2018/1835 - 24 Carawa Road, Cromer - demolition of existing dwellings and construction of a Seniors Living development comprising 8 units and strata subdivision	106
3.4	DA2019/0210 - 9 Adelaide Street, Balgowlah Heights - alterations and additions to a dwelling house	169
3.5	DA2018/2004 - 92 Cutler Road, Clontarf - alterations and additions to a dwelling house	206
3.6	DA2018/1761 - 24 Aitken Avenue, Queenscliff - demolition works and construction of a residential flat building, and strata subdivision	242

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 12 JUNE 2019

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 12 June 2019 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2018/1982 - 313 HUDSON PARADE, CLAREVILLE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A NEW INCLINATOR
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2019/329710
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2018/1982 for alterations and additions to a dwelling house including a new inclinor on land at Lot 25 DP 233469, 313 Hudson Parade, Clareville, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1982
Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 25 DP 233469, 313 Hudson Parade CLAREVILLE NSW 2107
Proposed Development:	Alterations and additions to a dwelling house including a new inclinor
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Stephen Paul Zaczekiewicz Tanya Margaret Zaczekiewicz
Applicant:	Stephen Paul Zaczekiewicz Tanya Margaret Zaczekiewicz
Application lodged:	14/12/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	27/12/2018 to 29/01/2019
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 120,000.00

ASSESSMENT INTRODUCTION

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

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



to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
 Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways
 Pittwater 21 Development Control Plan - D3.6 Front building line
 Pittwater 21 Development Control Plan - D3.7 Side and rear building line
 Pittwater 21 Development Control Plan - D3.9 Building envelope
 Pittwater 21 Development Control Plan - D3.14 Construction, Retaining walls, terracing and undercroft areas

SITE DESCRIPTION

Property Description:	Lot 25 DP 233469 , 313 Hudson Parade CLAREVILLE NSW 2107
Detailed Site Description:	<p>The subject site consists of a single allotment located on the eastern side of Hudson Parade.</p> <p>The site is irregular in shape with a frontage of 20.59m along Hudson Parade and a depth of 50.09m. The site has a surveyed area of 1014m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two-storey 'pole home' and detached garage.</p> <p>The site is relatively steep and has an average slope of some 25 degrees.</p> <p>The site is within a wildlife corridor area. The site has a front and rear garden with landscaping and natural rock outcrops. The existing species are both native and exotic species, neither of which constitute threatened or endangered species.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by 2 and 3 storey residential dwellings.</p>

Map:



SITE HISTORY

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

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing dwelling-house.

Specifically, the proposed works comprise of:

Outdoor Area

- The construction of an inclinator and associated landings, which will be situated along the northern boundary
- Additionally, an access footpath will be constructed at the front of the property, linking the proposed inclinator to the main existing access stairs
- Affiliated landscaping works

Ground Floor Level

- The construction of a northern side deck, which will provide access to the inclinator and laundry
- Various internal modifications to existing rooms
- The construction of a new master bedroom with an ensuite

First Floor Level

- Raising the main floor level to RL 49,700. This will involve altering the floor level of the proposed living area and front deck

DA2018/1982

Page 3 of 35



- Alterations to the existing roof line are required, so that there is an appropriate floor to ceiling height
- The construction of an alfresco room

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. Additional information was requested.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</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>



Section 4.15 Matters for Consideration'	Comments
	(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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposal, in terms of landscape outcome, is acceptable subject to the protection of existing trees and vegetation, and the completion of landscaping.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Controls: B4.22 Preservation of Trees or Bushland Vegetation C1.1 Landscaping D2.12 Construction, retaining walls, terracing and undercroft areas</p> <p>An Arboriculture Impact & Management Statement is provided indicating that all trees within 5 metres of the development will be protected and retained.</p> <p>No Landscape Plan is provided. Landscape conditions shall be imposed to soften the visual impact of the undercroft area.</p>
NECC (Bushland and DA2018/1982	Final assessment:



Internal Referral Body	Comments
Biodiversity)	<p>An Arborist report was provided on 20/03/2019 and a revised Ground Floor plan on 02/04/2019. The Arborist report assesses 4 trees within 5m of the proposed inclinator and concludes these can be retained. The revised Ground Floor plan shows a footpath from the inclinator landing to the timber deck adjacent the existing stairs. This area has an existing disturbed understorey and is less than 25m², thus a 5-part test is not required. A condition will be imposed to ensure landscaping contains at least 80% species from the Pittwater Spotted Gum EEC.</p> <p>Initial assessment: The proposal has been assessed against Pittwater LEP 7.6, DCP B4.4, and B4.7.</p> <p>The proposal includes a new inclinator, removal of a native tree on Councils road reserve, and various alterations to the dwelling. The inclinator is located on the north side of the site, whilst the garage is located on the southern side. There is no walkway on the plans from the inclinator to the garage or path up to the house. It is unclear where pedestrians would walk to alight from and to the inclinator. The plans should be revised to show the location of this pedestrian link and any understorey vegetation that needs to be removed.</p> <p>The site is mapped on the Pittwater DCP and SCMA map as containing the Pittwater Spotted Gum EEC. The site contains species (e.g Angophora costata, Corymbia maculata) of the PSG EEC. The proposed works are within 5m of native trees on the subject site and on the neighbours property. Pursuant to B4.7, an Arborist report is required for all trees within 5m of the proposed development, and if any trees are to be removed or understorey vegetation is to be modified, a 5 part test (assessment of significance) is required under the Biodiversity Conservation Act. The Arborist report and test of significance should be based on the above-mentioned revised plans.</p> <p>The Landscape Plan (DA16) does not show what vegetation is proposed for planting. Pursuant to B4.7, a revised Landscape Plan should be provided that shows 80% of understorey plantings to be from the Pittwater Spotted Gum EEC.</p>
NECC (Development Engineering)	The proposed development does not require OSD and connection of stormwater to the existing system is satisfactory. There is no change to the existing driveway or parking on the site. The submitted Geotechnical report addresses the relevant DCP controls. No objection to approval, subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	<p>This application is recommended for approval with conditions. The proposal results does not increase impervious surfaces so does not trigger water quality controls.</p> <p>Sediment and erosion controls must be installed prior to any work on site and remain in place until groundcover is re-established.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.) DA2018/1982	The proposal was referred to Ausgrid. No response has been



External Referral Body	Comments
	received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A336679 and 13 December 2018).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

DA2018/1982

Page 7 of 35



supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.50m	35.29%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	No
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	11.50m

DA2018/1982

Page 8 of 35



Percentage variation to requirement:	35.29%
--------------------------------------	--------

Assessment of request to vary a Development Standard

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

Clause 4.6 Exceptions to Development Standards

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

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

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

Comment:

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

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

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

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

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

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

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

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

DA2018/1982

Page 9 of 35

**Comment:**

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

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

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

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

Applicants Written Request

The applicants written request argues, in part:



- *"The Building Height standard is already exceeded and the proposed alterations represent a minor change to the existing. Compliance with the height control is constrained by the placement of the existing structure and the sloping topography of the site.*
- *The development does not result in significant bulk when viewed from the street or neighbouring properties. The variation occurs due to the elevated nature of the original pole-home structure which is a proven environmentally sensitive design response to the objectives of the zone. The proposed development maintains the existing compatibility of scale with surrounding development.*
- *The mass of the proposed roof will not be apparent from the street, only the leading edge of the roof, therefore there is minimal impact to the streetscape. Currently the existing street facade appears as the 'underside' of the dwelling with the structural columns being the dominant visual element of the building. The proposed design is a better considered aesthetic design whilst maintaining the underlying environmental advantages of the current structure.*
- *The extent of the proposed alterations whilst not compliant with Council's maximum height control, result in no significant impact to surrounds in terms of view loss, overshadowing, or bulk and scale."*

Comment:

It is agreed that compliance with Council's Building height standard is constrained by the placement of the existing dwelling and the sites topographical features. As such, the proposed alterations represent a minor change to the current non-compliance. Additionally, it is acknowledged that the proposed development does not create unreasonable bulk, as the changes to the roof line and first floor are not readily visible from the street, due to the elevated position of the dwelling.

Whilst the proposal doesn't comply with Council's maximum building height development standard, it is agreed that this non-compliance will not create unreasonable impacts with regard to view loss, overshadowing, or bulk and scale. Overall, it is considered that demanding compliance with Council's maximum height standard is both unreasonable and unnecessary for this proposal, due to the constraints caused by the 'pole home' design of the existing dwelling and the sloping nature of the site.

It is considered that the applicants written request has adequately demonstrated that the proposed development will protect the surrounding natural environment, through retaining the site's existing topographical features and landscape elements. In addition, the written request has justified that the development is of good design and will protect the amenity of the surrounding built environment, therefore satisfying cl 1.3 (e) (g) of the EPA Act.

In this regard, the applicants written request has adequately identified that there are sufficient environmental planning grounds to justify breaching the development standard as required by cl 4.6(3) (b).

Therefore, it is concluded 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

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

DA2018/1982

Page 11 of 35



(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 E4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of the Development Standard

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

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

Comment:

The proposal involves a minor alteration to the existing roof line, creating a new maximum building height of 11.50m. The current roof line already sits above the 8.5m height limit (approximately 10.5m), this can be attributed to the existing 'pole home' design of the dwelling sensitively responding to the topographical features of the site.

The proposed changes to the roof form will not be readily visible from the street, due to the elevated position of the subject dwelling. The desired future character of the Bilgola locality seeks to remain primarily a low-density residential area with dwelling houses set a maximum of two storeys, which have a well integrated landscaped setting, between the landform and landscape.

Despite the proposed alterations to the roof, the existing two storey character of the building will remain consistent within the locality, by virtue of its height and scale.

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

Comment:

The existing dwelling currently exceeds the 8.5m height control. This is primarily the result of the slope of the subject site and the existing dwelling's 'pole home' design. The proposed non-compliance is a result of raising the first floor level, which subsequently requires adjusting the roof height, to create a sufficient living area with adequate floor to ceiling heights.

Additionally, the proposed roof form matches the existing and is relatively minor in nature, as they will not be readily visible from the street, due to the elevated position of the subject dwelling.

Overall, it is considered that the minor alterations to the roof form will not unreasonably affect the subject sites compatibility with the height and scale of surrounding and nearby development.

c) to minimise any overshadowing of neighbouring properties



Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the impacts on habitable rooms of the adjoining properties and public open spaces. The proposal satisfies requirements of Clause C1.4 Solar Access of the Pittwater 21 DCP, as the main private open space areas of adjoining properties receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.

The development satisfies this objective.

d) to allow for the reasonable sharing of views.

Comment:

Priority views of Pittwater waterways are obtained from the subject site in the western direction. Therefore, the proposal will not unreasonably reduce the views experienced by the properties adjoining the sides of the subject site, in particular, No. 315 and 311 Hudson Parade. In relation, to properties to the rear of the development they are situated much higher than the proposed first floor, additionally, the ridge height of the existing dwelling is remaining the same.

In summary, the proposal will allow for the reasonable sharing of views.

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

Comment:

The subject site is relatively steep and has an average slope of some 25 degrees. The 'pole home' design of the existing dwelling has responded appropriately to the slope of the site, by adequately retaining the natural topographical features of the land. The proposed works involve minimal excavation for the inclinators and any new footings that are required for the existing house.

Overall, the proposal seeks to upgrade the existing design by the means of enhancing the amenity experienced by the occupants. Notwithstanding, the proposed works will maintain the existing core values of the structure, therefore, it is considered that this design responds sensitively to the natural topography.

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

Comment:

The proposed alterations and additions will be sufficiently set back from the building line of adjoining properties, thus preserving visual privacy for neighbours. In addition, the proposal is retaining the existing 'pole home' design of the subject dwelling and only involves minimal excavation. The proposed works does not involve the removal of any surrounding native trees, nor will it unreasonably affect existing topographical features.

The site is not located in a heritage conservation area nor is there a heritage item on or near the site.

Objectives of the Zone



The underlying objectives of the E4 Environmental Living zone are:

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

Comment:

The existing 'pole home' design of the dwelling, is being retained and is considered a sensitive response to the natural topography of the site. Additionally, the installation of the inclinator provides greater occupant amenity, through increasing accessibility, without causing unreasonable environmental impacts to neighbours or to the site itself. Amenity to adjoining properties is maintained and the proposal will allow for the reasonable sharing of views.

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

Comment:

The development will not have an adverse effect on any special ecological, scientific or aesthetic values.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:

The proposed development does not dominate the natural environment and is maintaining the existing two-storey character prevalent within the localised streetscape. The proposal does not involve the removal of any native species, nor will it unreasonably disrupt existing topographical features. Overall, it is considered that the proposal successfully achieves a residential development of a low density and scale integrated with the landform and landscape.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

The development will not effect wildlife corridors nor will it have an effect on riparian and foreshore vegetation.

Conclusion on Zone Objectives

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

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument.



In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings and Floor space ratio Development Standards is assumed by the Local Planning Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	0.15m (Inclinator landing) 0.28m (Inclinator carriage) 4.55m (First floor deck)	30.77% - 97.69%	No
Rear building line	6.5m	25.65m	N/A	Yes
Side building line	2.5m (South)	2.50m (Southern roof alterations)	N/A	Yes
	1m (North)	0.35m (Inclinator carriage) 0.68m (Inclinator track) 1.20m (First floor deck)	32% - 65%	No
Building envelope	3.5m (South)	No change	N/A	Yes
	3.5m (North)	Outside envelope	N/A	Yes on merit
Landscaped area	60%	67.82% (687.72 sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
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



Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	No	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	No	Yes
D3.7 Side and rear building line	No	Yes
D3.9 Building envelope	No	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D3.13 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D3.14 Construction, Retaining walls, terracing and undercroft areas	No	Yes
D3.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.19 Incline Passenger Lifts and Stairways

Description of Non-compliance

The outer face of the inclinator carriage is set back 0.35m from the northern side boundary, additionally the inclinator track has a side setback of 0.68m. The control requires a minimum setback of 2.0m.

Merit Consideration

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

- *Incline passenger lifts and stairways that cause minimal visual and acoustic disturbance to the environment and neighbours.*

Comment:

The proposed inclinator runs for a length of 27.15m along the northern side boundary, and the

DA2018/1982

Page 16 of 35



proposed inclinator track will have a side setback of 0.68m. The proposed works involve minimal excavation for the footings of the inclinator track, additionally, the recommendations contained within the submitted Geotechnical Report (Jack Hodgson Consultants, 2018), have been included within this consent. This is to ensure geotechnical risks are adequately managed and existing topographical features are reasonably maintained.

The location of the inclinator is constrained by the existing foundations of the 'pole style' dwelling. The inclinator is a relatively minimal structure with the largest element being the carriage to transport people up and down the steep slope of the site. Additionally, the track will be close to ground level and the carriage will predominately be located at the front of the site, or in the upper rear section of the site next to the dwelling house. Therefore, the inclinator access landing and associated track and carriage will protect the existing visual quality of the streetscape and surrounding public spaces.

Imposed conditions will ensure noise generated by the inclinator shall not exceed 60dB(A), when measured one metre from any adjoining premises.

Overall, it is considered that the proposed inclinator will improve the ability for the occupants and their guests to safely access the steep site, while causing minimal visual and acoustic disturbance to the environment and neighbours.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014/P21DCP 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.

D3.6 Front building line

Description of Non-compliance

The proposed first floor balcony is set back 4.55m from the front boundary.

The proposed inclinator landing is set back 0.15m from the front boundary and the outer face of the inclinator carriage will have a 0.28m front setback when situated at the front of the property.

The control requires a minimum front setback of 6.5m.

Merit Consideration

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

- *Achieve the desired future character of the Locality.*

Comment:

The desired future character of the Bilgola locality seeks to remain primarily a low-density residential area with dwelling houses set at a maximum of two storeys, which have a well integrated landscaped setting, between the landform and landscape. Although the proposed inclinator and alterations to the first floor balcony are forward of Council's front building line control, the existing two storey character of the building will remain consistent within the locality, by virtue of its design and scale.



- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

Priority views of Pittwater waterways are obtained from the subject site in the western direction. Therefore, the proposed alterations to the first storey deck will not unreasonably reduce the views experienced by the properties adjoining the sides of the subject site, in particular, No. 315 and 311 Hudson Parade. In relation to properties to the rear of the development, they are situated much higher than the proposed first floor deck. In addition, the proposed inclinator is a relatively minor, which is low lying. In summary, the proposal will allow for the equitable preservation of views and vistas to and/or from public/private places.

- *The amenity of residential development adjoining a main road is maintained.*

Comment:

The subject site adjoins Hudson Parade, which is not a main road.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

The existing front setback area contains a diverse mix of vegetation varying in size, which currently reduces the visual impact of the built form when viewed from the street. The proposal complies with Council's landscaping numerical control, as 67.82% (687.72 sqm) of the total site area is being dedicated towards landscaping purposes. Additionally, imposed conditions will ensure that landscaping is to be implemented along the western elevation to reduce the visual impact of the undercroft area on the localised streetscape. Overall, it is considered that the vegetation of the subject site will be enhanced to visually reduce the built form.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment:

The proposed works will not have an affect on vehicle manoeuvring.

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

Comment:

The subject site is relatively steep and has an average slope of some 25 degrees. The 'pole home' design of the existing dwelling is being retained and has responded appropriately to the slope of the site by adequately retaining the natural topographical features of the land. The elevated position of the subject property above the street means that the proposed changes to the existing first floor balcony will not be readily visible from the street. Additionally, the proposed alterations to the first storey balcony will not extend above surrounding canopy trees.

The proposed inclinator is a relatively low lying structure, which will be reasonably screened by existing vegetation. In addition, a condition has been included within this report to ensure that landscaping is to be implemented along the western elevation, which will reduce the visual impact of the proposed inclinator on the localised streetscape.



Overall, it is considered that the proposed works will reasonably enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

The front boundary of the subject site is set back 9.30m from the kerb and is elevated approximately 6.0m above the street. The existing street frontage is primarily dominated by the existing sandstone retaining wall and the carriageway that provides street access to Nos. 313 and 315 Hudson Parade. The alterations to the first floor balcony will not have a significant visual impact on the street frontage, due its elevated position in relation to the street. The proposed inclinator is a relatively minor low lying structure, which will be reasonably screened by vegetation. In summary, the proposed works will not unreasonably impact the existing street frontage and pedestrian amenity.

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

Comment:

The proposal is retaining the existing dwelling's 'pole home' design, which is considered to be appropriate, with effectively managing the competing hazards and constraints that affect the site. In particular, the proximity of the development to the street allows for maximum retention of the significant bushland and natural rock outcrops at the rear of the site. The existing first floor balcony is set back 5.81m from the front boundary, whereas the proposed first floor balcony has a 4.55m front setback. When assessing the visual characteristics of surrounding buildings on Hudson Parade, they have similarly varied the minimum front setback control of 6.5m. The existing garage has a nil front setback. The proposed inclinator landing located at the front of the site is set back 0.15m from the front boundary. Overall, it is considered that the proposal responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014/P21DCP 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.

D3.7 Side and rear building line

Description of Non-compliance

The outer face of the inclinator carriage is set back 0.35m from the northern side boundary, additionally the inclinator track has a side setback of 0.68m.

The control requires a minimum side setback of 1.0m.

Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying



Objectives of the Control as follows:

- *Achieve the desired future character of the Locality.*

Comment:

The desired future character of the Bilgola locality seeks to remain primarily a low-density residential area with dwelling houses set a maximum of two storeys, which have a well integrated landscaped setting, between the landform and landscape. Although the proposed inclinator sits beyond Council's minimum side building line control, the existing two storey character of the building will remain consistent within the locality, by virtue of its design and scale.

- *The bulk and scale of the built form is minimised.*

Comment:

The proposal is retaining the existing dwelling's 'pole home' design. The bulk and scale of the dwelling house responds appropriately to the natural slope of the land. In addition, the proposed inclinator is a relatively minor structure that is low lying. Overall, it is considered that the proposed inclinator will not significantly contribute to the bulk and scale of the built form.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

The proposed inclinator is positioned low to ground and will be effectively integrated within the the natural environment. As such, the inclinator will not result in unreasonable view loss and will equitably preserve views and vistas to and/or from public/private places.

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

Comment:

Priority views of Pittwater waterways are obtained from the subject site in the western direction. The proposed inclinator is a relatively minor structure, which is low lying. Therefore, the inclinator will not unreasonably reduce the views experienced by the properties adjoining the sides of the subject site, in particular, No. 315 and 311 Hudson Parade. In relation, to properties at the rear of the development they are positioned much higher than the ridge height of the subject dwelling. In summary, the proposal encourages view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment:

The proposed inclinator is a low lying structure that will only be operated during selected times of the day, which will provide the residents and their guest with greater access of the site in a more efficient and safe manner. Imposed conditions, will ensure noise generated by the inclinator shall not exceed 60dB(A), when measured one metre from any adjoining premises. Therefore, the proposed inclinator will reasonably maintain an adequate level of privacy,



amenity and solar access within the subject site, while preserving these necessities for adjoining properties.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

The proposal complies with Council's landscaping control, as 67.82% (687.72 sqm) of the total site area is dedicated for landscaping purposes. Additionally, the proposal does not involve the removal of any canopy trees, indigenous species or habitat for wildlife. The existing 'pole home' design of the subject dwelling responds sensitively to the natural environment and topography of the site. In addition, conditions have been included within this report to ensure that landscaping is to be implemented along the western elevation to reduce the visual impact of the undercroft area on the Hudson Parade streetscape. Therefore, the proposal provides substantial landscaping, which includes a mature tree canopy, overall creating an attractive streetscape.

- *Flexibility in the siting of buildings and access.*

Comment:

The position and orientation of the existing dwelling will not be altered by this proposal. The proposed inclinator is situated along the northern side boundary and will provide the subject site a new means of access. Additionally, the inclinator will allow the residents and their guests to efficiently navigate up and down the steepness of the site.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

The site contains a diverse mix of vegetation varying in size, which currently reduces the visual impact of the built form, when viewed from public and private places. The proposal complies with Council's landscaping numerical control, as 67.82% (687.72 sqm) of the total site area is being dedicated towards landscaping purposes. Additionally, imposed conditions will ensure that landscaping is to be implemented along the western elevation to reduce the visual impact of the undercroft area on the localised streetscape. Overall, it is considered that the vegetation of the subject site will be retained by the proposal and further enhanced to visually reduce the built form.

- *To ensure a landscaped buffer between commercial and residential zones is established.*

Comment:

The subject site does not adjoin any commercial zones.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014/P21DCP 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.

D3.9 Building envelope



Description of Non-compliance

The northern side elevation of the proposed development protrudes beyond the prescribed building envelope imposed by this development control.

P21DCP Clause 3.9 states; 'Where the building footprint is situated on a slope over 16.7 degrees (ie; 30%), variation to this control will be considered on a merits basis'. The subject has an average slope of some 25 degrees, therefore, a variation of this control is considered acceptable, based on its merits below.

Merit Consideration

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

- *Achieve the desired future character of the Locality.*

Comment:

The desired future character of the Bilgola locality seeks to remain primarily a low-density residential area with dwelling houses set a maximum of two storeys, which have a well integrated landscaped setting, between the landform and landscape. The proposal involves raising the first floor level of the proposed living area and front deck. In addition, the proposal involves constructing a new master bedroom on the ground floor.

Although the proposed works on the northern elevation protrudes beyond the prescribed building envelope, the existing two storey character of the building will remain consistent within the locality, by virtue of its design and scale.

- *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:

The subject site is relatively steep and has an average slope of some 25 degrees. The 'pole home' design of the existing dwelling is being retained and has responded appropriately to the slope of the site, by adequately retaining the natural topographical features of the land. Imposed conditions will ensure that landscaping is to be implemented along the western elevation to reduce the visual impact of the undercroft area, providing visual relief to the localised streetscape. Additionally, the proposed alterations to the northern elevation will not extend above surrounding canopy trees.

Therefore, the proposal's design reasonably enhances the existing streetscape, while promoting a building scale and density that is below the height of the trees of the natural environment.

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

Comment:

The proposal is retaining the existing dwelling's 'pole home' design, which is considered a



sensitive response to the natural environment and topography of the site. In addition, the proposal does not involve the removal of any canopy trees, indigenous species or habitat for wildlife. Overall, it is considered that the proposal adequately responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

- *The bulk and scale of the built form is minimised.*

Comment:

The non-compliance with Council's building envelope has primarily been caused by the slope of the land and the dwelling's existing 'pole home' design. However, this design has responded sensitively to the natural slope of the site, by limiting excavation and preserving the topographical features of the land. In addition, the proposal's design is well articulated and incorporates different materials to soften its appearance. The proposed changes to the northern elevation are minor extensions to the ground and first floor of the existing dwelling. Additionally, the proposed works to the northern elevation sit below the existing below the height of the trees of the natural environment.

In summary, the bulk and scale of the dwelling is effectively minimised, as the existing design of the dwelling appropriately responds to the natural slope of the land.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

Priority views of Pittwater waterways are obtained from the subject site in the western direction. Therefore, the proposed alterations to the northern elevation will not unreasonably reduce the views experienced by the properties adjoining the sides of the subject site, in particular, No. 315 and 311 Hudson Parade. In relation, to properties to the rear of the development, they are situated much higher than the proposed first floor.

Overall, the proposal will allow for the equitable preservation of views and vistas to and/or from public/private places.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment:

The proposed extensions the dwelling's ground and first floor comply with Council's side setback control on the northern side boundary, which provides reasonable separation between adjoining buildings. The proposed windows for the ground floor extension that overlooks the northern boundary have no direct views into No. 311 Hudson Parade living areas. In addition, the proposed first storey deck is maintaining the existing deck's northern side setback and will not overlook into No. 311 Hudson Parade private open space areas. Additionally, the existing dwelling is orientated in the western direction, therefore, the extensions to the northern elevation will not will not create unreasonable overshadowing to the adjoining property.

Therefore, the proposed inclinator will reasonably maintain an adequate level of privacy, amenity



and solar access within the subject site, while preserving these necessities for adjoining properties.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

The site contains a diverse mix of vegetation varying in size, which currently reduces the visual impact of the built form, when viewed from public and private places. The proposal complies with Council's landscaping numerical control, as 67.82% (687.72 sqm) of the total site area is being dedicated towards landscaping purposes. Additionally, imposed conditions will ensure that landscaping is to be implemented along the western elevation to reduce the visual impact of the undercroft area on the localised streetscape.

Overall, it is considered that the vegetation of the subject site will be retained by the proposal and further enhanced to visually reduce the built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014/P21DCP 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.

D3.14 Construction, Retaining walls, terracing and undercroft areas

Description of Non-compliance

The proposed undercroft area has a maximum height of 4.90m. The control requires undercroft areas to be limited at a maximum height of 3.5 metres.

Merit Consideration

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

- *To achieve the desired future character of the Locality.*

Comment:

The desired future character of the Bilgola locality seeks to remain primarily a low-density residential area with dwelling houses set a maximum of two storeys, which have a well integrated landscaped setting, between the landform and landscape. The proposed undercroft area is created through the construction of a new master bedroom on the ground floor. Although the proposed undercroft area has a maximum height of 4.90m, the existing two storey character of the building will remain consistent within the locality, by virtue of its design and scale.

- *To protect and minimise disturbance to natural landforms.*

Comment:

The proposal is retaining the existing dwelling's 'pole home' design, which is considered a

DA2018/1982

Page 24 of 35



sensitive response to the natural environment and topography of the site. The proposed works involve minimal excavation, additionally, the recommendations contained within the submitted Geotechnical Report (Jack Hodgson Consultants, 2018), have been included within this consent. This is to ensure geotechnical risks are adequately managed and minimise disturbance to natural landforms.

- *To encourage building design to respond sensitively to natural topography.*

Comment:

The 'pole home' design of the existing dwelling is being retained, this low-impact design has responded appropriately to the slope of the site, by limiting excavation and adequately retaining the natural topographical features of the land. The proposed works involve minimal excavations that will not cause unreasonable impacts on the natural topography of the site. Overall, the design of the proposal responds sensitively to the natural topography of the land.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014/P21DCP 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

Pittwater Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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



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

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

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

The subject site currently contains a two storey pole home style dwelling. The proposal seeks consent for alterations and additions to the existing dwelling. In summary, the proposed works involve; the construction of a inclinators, modifications to the ground floor and altering the level of the first floor living area and front deck.

The development includes several non-compliances, including a breach of the height of buildings standard.

The proposal attracted no submissions to the formal notification.

This assessment has concluded that the non-compliances are reasonable and the Clause 4.6 variation to the height of buildings development standard can be supported based on the applicants written request.

Overall, the proposal will be an upgrade to the existing dwelling, while satisfying the objectives of the zone and being consistent with the desired future character of the locality.

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1982 for Alterations and additions to a dwelling house including a new inclinators on land at Lot 25 DP 233469, 313 Hudson Parade, CLAREVILLE, 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
DA2018/1982

Page 26 of 35



of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA03 - Site Analysis & Waste Management Plan	11/12/2018	Architexture
DA04 - Garage Floor Plan	11/12/2018	Architexture
DA05 - Ground Floor Plan: Rev A	11/12/2018	Architexture
DA06 - First Floor Plan	11/12/2018	Architexture
DA07 - Roof Plan	11/12/2018	Architexture
DA08 - North Elevation	11/12/2018	Architexture
DA09 - South Elevation	11/12/2018	Architexture
DA10 - East Elevation	11/12/2018	Architexture
DA11 - West Elevation	11/12/2018	Architexture
DA12 - Section A-A	11/12/2018	Architexture
DA13 - Section B-B	11/12/2018	Architexture
DA14 - Section C-C	11/12/2018	Architexture
DA14 - Section D-D	11/12/2018	Architexture

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	31 October 2018	Jack Hodgson Consultants
Arboriculture Impact & Management Statement	March 2018	Aura Tree Services

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	13/12/2018	Not stated

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

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

2. **Prescribed Conditions**

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

DA2018/1982

Page 27 of 35



- (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
DA2018/1982

Page 28 of 35



3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

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

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

4. Noise Generation

Noise generated by the inclinator shall not exceed 60dB(A), when measured one metre from any adjoining premises.

Reason: To ensure minimal acoustic disturbance to the environment and neighbours.

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

DA2018/1982

Page 30 of 35



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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

7. **Structural Adequacy and Excavation Work**

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

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
 - (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.
- Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

8. **Landscape Plan**

Prior to the issue of a Construction Certificate, a Landscape Plan is to be provided to the

DA2018/1982

Page 31 of 35



Principal Certifying Authority that shows:

- landscaping along the western elevation to reduce the visual impact of the undercroft area
- a minimum of 80% understorey plantings to be from the Pittwater Spotted Gum EEC
- retention of all rock outcrops.

Reason: To protect wildlife habitat in accordance with relevant Natural Environment LEP/DCP controls. (DACNECPCC2)

9. **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.

10. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **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.

13. **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 in the Arboricultural Impact & Management Statement prepared by Aura Tree Services, including all other site trees located beyond 5 metres of the development,
- ii) exempt trees and palms within the site under the relevant planning instruments of legislation are excluded,
- iii) all other trees and vegetation located on adjoining properties, including Tree 3 and 4,
- iv) all road reserve trees and vegetation, including Tree 1 and Tree 2.

B) Tree protection shall be generally undertaken as follows:

i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4, and the recommendations of the Arboricultural Impact & Management Statement, including:

- o No builders material of any description shall be stored within its TPZ radial distance as identified in section 5. Discussion.
- o Any excavation required for the footings to support the inclinometer & its lower level landing pad within this trees TPZ radial distance must be completed manually.
- o Inclinometer footing sites are to be flexibly located so as to further remove the chance of any significant diameter live woody root damage (significant diameter in this instance is considered to be 25mm or greater).
- o Should any significant diameter live woody tree root be exposed a Project Arborist with a AQF Level 5 Horticulture qualification must be summonsed to manage the exposed significant diameter live woody tree root.
- o This process must be documented with supporting photographic evidence & provided to the sites appointed Certifying Authority.
- 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.



14. **Protection of Habitat Features**

All natural landscape features, including rock outcrops, native vegetation, soil and watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans. Details demonstrating compliance are to be provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect wildlife habitat in accordance with relevant Natural Environment LEP/DCP controls. (DACNEEDW1)

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

15. **Condition of retained vegetation**

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

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

Reason: to ensure compliance with the requirement to retain and protect significant planting on development sites.

16. **Additional planting**

Landscaping is to be implemented along the western elevation to reduce the impact of the undercroft area. Locally native small trees and shrubs shall be incorporated at minimum 200mm pot size across the extent of the western elevation, and shall consist of at least 80% of understorey plantings to be from the Pittwater Spotted Gum EEC.

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 conditions of consent.

Reason: preservation of landscape amenity.

17. **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.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.



19. **Protection of Habitat Features**

All natural landscape features, including rock outcrops, native vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans. Details demonstrating compliance are to be provided to the Principal Certifying Authority prior to issue of any Occupation Certificate

Reason: To protect wildlife habitat in accordance with relevant Natural Environment LEP/DCP controls.(DACNEFPOC1)

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

20. **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.

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

21. **Environmental and priority weed control**

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

Reason: preservation of environmental amenity.

22. **No Planting Environmental Weeds**

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

Reason: Weed management.

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

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

Reason: To protect Aboriginal Heritage.

24. **Dead or Injured Wildlife**

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

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











Objection pursuant to CLAUSE 4.6 of Pittwater Local Environmental Plan 2014

313 Hudson Pd Clairville; alterations and additions to existing single residential dwelling

Variation Sought: Maximum building height (clause 4.3 PLEP2014)

Introduction

This objection has been prepared pursuant to Clause 4.6 of PLEP2014.

Background

Clause 4.3 limits the height of buildings, as per the "Height of Buildings Map" to 8.5m, a numerical development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

Due to the significant slope of the land and the configuration and placement of the existing dwelling and structure, the existing dwelling already achieves a maximum height exceeding 10.5m above natural ground level.

The proposed new works include a minor variation to the existing roof line (which already exceeds the maximum height) for the purpose of improving the amenity of the dwelling.

Both the existing and proposed height non-compliances can be attributed to the significant slope of the land.

Purpose of Clause 4.6

Pittwater Local Environmental Plan 2014 contains Clause 4.6 to allow for departure from a development standard

Objectives of Clause 4.6

The objectives of Clause 4.6 are:

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

The proposed variation to the standard results in a better outcome as the proposal will result in alterations and additions to an existing dwelling which is consistent with the stated objectives of the E4 Environmental Living Zone:

- To provide for low-impact residential development in areas of special ecological, scientific or aesthetic values;
- To ensure that residential development does not have an adverse effect on those values;
- To provide for residential development of a low density and scale integrated with the landform and landscape;
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

As per these objectives, the proposal allows for alterations and additions to an existing dwelling, (in preference to demolition of the existing dwelling and construction of a new dwelling) which will maintain the ecological, scientific, and aesthetic values of the area. The existing dwelling utilises "pole home" construction which is a better environmental solution, sympathetic to the vegetation, flora, fauna, and riparian waterways, but results in a higher built form due to the elevated nature of this type of construction.

Clause 4.6 provides that:

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

- a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- b) That there are sufficient environmental planning grounds to justify contravening the development standard.

The outcomes of the *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* court case conclude that:

1. the consent authority does not have to directly form the opinion of satisfaction regarding these matters, but only indirectly form the opinion of satisfaction that the written request has adequately addressed these matters;
2. that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out;

3. The consent authority must be directly satisfied that the clause 4.6 request addresses clause 4.6(4)(a)(ii) which is not merely that the proposed development will be in the public interest, but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development in the zone.

This submission supports our contention that the proposed development adequately responds to these provisions.

Justification

As a guide, variations under clause 4.6 of the Standard Instrument should be assessed as per *Samadi v Council of the City of Sydney* [2014] NSWLEC 1199, paragraph 27:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

1. Consistency with zone objectives.

The proposed development is consistent with the E4 Environmental Living Zone objectives:

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

The proposed development is consistent with the desired future character of the locality and the objectives of the E4 Environmental Living Zone. This can be demonstrated as the existing pole home is proven to be an environmentally sensitive solution for housing as it strives for minimal environmental impact. Pole home design achieves minimal impact to the ground and in doing so preserve the amenity of wildlife, flora, fauna, and overland water flow. This proposal retains the existing structure (and its underlying environmental values) and seeks to improve the amenity of the home whilst maintaining its core ecological and aesthetic value as an environmentally driven housing solution. The proposed development represents a minor change to the existing dwelling and therefore respects the already established relationship of scale and form, and relative height with respect to surrounding development.

2. Consistency with the objectives of the standard.

The objectives of Clause 4.3 are:

- (a) To ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development
- (c) to minimise any overshadowing of neighbouring properties
- (d) to allow for the reasonable sharing of views
- (e) to encourage buildings that are designed to respond sensitively to the natural topography
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The proposed alterations and additions to the existing dwelling involve a minor change to the existing roof line which already exceeds the building height development standard. Despite the proposed change to the roof, the existing dwelling was a successful response to the sloping topography of the site, and in keeping with the desired future character of the locality. The proposed change to the roof and building height are minor in nature and therefore maintain the existing character of the dwelling and its contribution to the character of the locality.

The proposed development does not result in any unreasonable impact on adjoining properties or surrounds in terms of views, privacy, or overshadowing.

The predominant character of the locality is determined by the significantly sloping topography with many of the surrounding properties also exceeding the building height development standard.

The elevated position of the subject property above the street means that the proposed changes to the existing roof line will not be visible from the street.

The existing structure is a sensitive design response to the natural topography and environment. The proposal maintains the existing structure and achieves improved amenity for the inhabitants without compromising the existing core values of the structure.

In consideration of these points, it is demonstrable that the proposal is consistent with the objectives of the development standard.

3. Consideration of a written request demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

PLEP2014 Clause 4.3 limits building height for the subject property to 8.5m. The existing dwelling is 10.5m from natural ground level due to its 'pole-home' construction as a structural and environmental design response to the topography of the land and the environmental sensitivity of the locality. In maintaining the existing structure (and inherently preserving its environmental sensitivity) this proposal seeks approval to modify the existing roof line resulting in a building height of up to 11.5m.

The development is justified because:

- The Building Height standard is already exceeded and the proposed alterations represent a minor change to the existing.
- Compliance with the height control is constrained by the placement of the existing structure and the sloping topography of the site.
- The development does not result in significant bulk when viewed from the street or neighbouring properties
- The variation occurs due to the elevated nature of the original pole-home structure which is a proven environmentally sensitive design response to the objectives of the zone.
- The proposed development maintains the existing compatibility of scale with surrounding development.
- The mass of the proposed roof will not be apparent from the street, only the leading edge of the roof, therefore there is minimal impact to the streetscape. Currently the existing street facade appears as the 'underside' of the dwelling with the structural columns being the dominant visual element of the building. The proposed design is a better considered aesthetic design whilst maintaining the underlying environmental advantages of the current structure.
- The extent of the proposed alterations whilst not compliant with Council's maximum height control, result in no significant impact to surrounds in terms of view loss, overshadowing, or bulk and scale.

Conclusion

This development proposes a minor variation to an existing non-compliant building and the building height development standard.

The objectives of the zone require design solutions that are sensitive to the environmental needs of the locality hence resulting in a pole home being built on the site. The existing pole-home has to date been a successful solution to the environmental objectives of the zone but has compromised the amenity of the occupants. The proposed development seeks to maintain the existing structure with its underlying core environmental values, whilst improving the amenity of the occupants. The pole-home structure is by its nature an elevated response to achieving environmental objectives. This results in a dwelling that exceeds the building height standard due to the significantly sloping topography and its necessary environmental solution to this topography.

The proposed alterations represent a minor variation to the existing roof line which already exceeded the building height control. Notwithstanding the numerical non-compliance, the objectives of the controls were achieved by the existing dwelling, and despite minor alterations, will be maintained and enhanced by the proposed changes.

The bulk and scale of the proposed development is consistent with the existing dwelling, and is appropriate for the site and locality.

Consideration of these points and the statements given provide sufficient environmental planning grounds to justify a variation of the development standard for building height in this instance. The objectives and the underlying purposes of the standard have been achieved notwithstanding non-compliance with numerical controls, and therefore strict compliance with the standard is unreasonable or unnecessary in the circumstances of the case.

Darren Tye
Registered Architect #8029
B.Sc.(Arch.) B.Arch.

ITEM 3.2**DA2019/0080 - 34 BEATTY STREET, BALGOWLAH HEIGHTS -
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
INCLUDING SWIMMING POOL****REPORTING MANAGER**

Steve Findlay

TRIM FILE REF

2019/329772

ATTACHMENTS

- 1 [↓](#) Assessment Report
- 2 [↓](#) Site Plan & Elevations
- 3 [↓](#) Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0080 for alterations and additions to a dwelling house including swimming pool on land at Lot 21A DP 350345, 34 Beatty Street, Balgowlah Heights, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0080
Responsible Officer:	Danielle Deegan
Land to be developed (Address):	Lot 21A DP 350345, 34 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house including swimming pool
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Luke Anthony Randell Carol Ann Randwell
Applicant:	Chrofi
Application lodged:	01/02/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	05/02/2019 to 21/02/2019
Advertised:	Not Advertised
Submissions Received:	2
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,225,000.00

ASSESSMENT INTRODUCTION

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

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



to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity

Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 21A DP 350345 , 34 Beatty Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Beatty Street.</p> <p>The site is irregular in shape with a frontage of 12.725m along Beatty Street and a depth of 52.2m (northern boundary) and 51.36m (southern boundary).</p> <p>The site has a surveyed area of 789m².</p> <p>The site is located within the E3 Environmental Management zone and accommodates a two storey dwelling house of brick construction with a metal roof, located toward the eastern (harbour) end of the allotment. There is a two storey garage/studio structure at the street frontage. An inclinator runs along the southern boundary from street level to the rear of the dwelling. There are also stairs from street level to the garden area below.</p> <p>The site slopes steeply from Beatty Street down to Forty Baskets Reserve, with the majority of the change in level occurring on the western portion of the site whilst the eastern portion, containing the existing dwelling house, is relatively flat. The total fall is approximately 15.8m.</p> <p>The site is heavily vegetated between the garage and the dwelling house, primarily with exotic tree species.</p>

DA2019/0080

Page 2 of 37



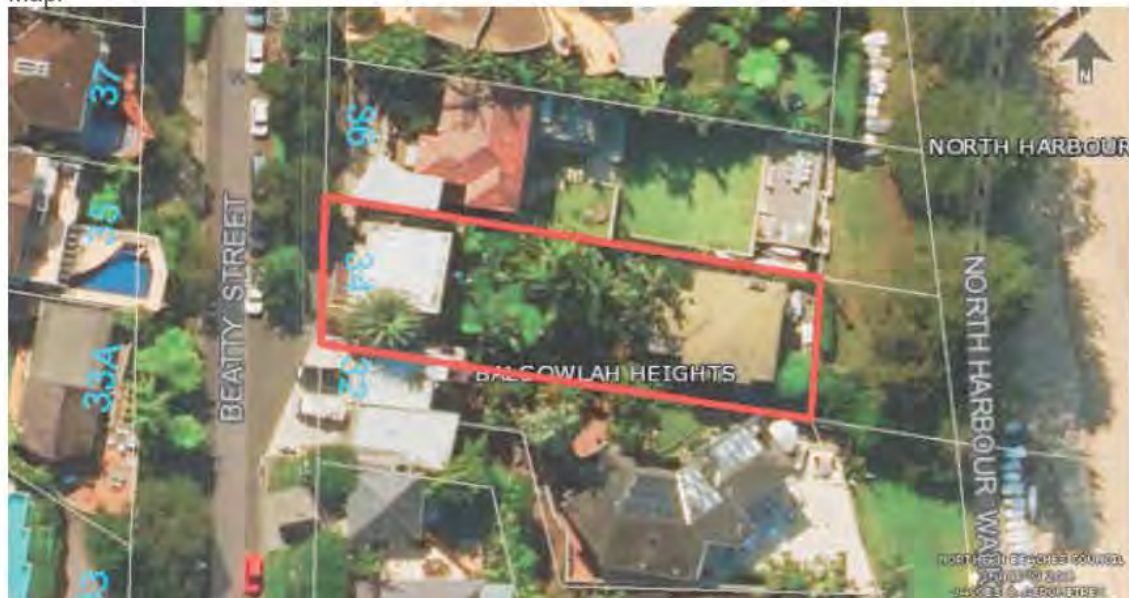
The property has an easement for services and a drainage easement running along the southern boundary. There is also a sewer pipe traversing the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining the site to the east is Forty Baskets Reserve, beach and swimming baths.

The surrounding area is characterised by large multi-level dwellings in landscaped settings. Sydney Harbour National Park is situated 200m to the south of the site and Welling Reserve is situated 120m to the north of the site, with both areas of public open space containing bushland.

Map:



SITE HISTORY

Pre-lodgement Meeting (PLM2018/0224)

On 15 November 2018, the development was the subject of a Pre-lodgement meeting. Issues discussed include; non-compliant FSR, inadequate side setbacks, flooding and the stormwater easement traversing the site. It was advised that the proposal presented was not acceptable and required redesign prior to submission, particularly to include a greater side setback to the north as well as further analysis of potential amenity impact and response to this if required.

Relevant Applications:

On 24 July 2011, Development Application No. 10.2011.189.1 for alterations and additions to an existing dwelling including ground and first floor extension, front second floor addition, swimming pool, cabana and landscaping was approved.

DA2019/0080

Page 3 of 37



On 15 March 2016, Modification Application No. 10.2011.189.2 to modify approved development (changes to windows and doors, new first floor side terrace, pool level, terrace size, roof pitch, inclusion of rear detached outbuilding and modification to roof) was approved.

The above DA has been activated. A Construction Certificate (CC) was issued for demolition and a shed was demolished in accordance with the CC.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for substantial alterations and additions to a dwelling-house including a new swimming pool.

In detail, the proposal comprises of:

- Demolition works including the removal of internal walls within the dwelling house, removal of the western wall and western wing, removal of the inclinator
- Excavation (for lift corridor and rear of dwelling) toward the western end of the site and fill toward the eastern end of site, adjacent to reserve
- Construction of a lift-shaft adjacent to the existing garage
- Additions to the dwelling house resulting in the following:
 - (i) Ground floor: living area, kitchen, central courtyard, bathroom, lift-well, subterranean
 - (ii) First floor: master bedroom suite, 3 x bedrooms, 4 bathrooms
 - (iii) Second floor: living area with east-facing balcony
- Construction of a swimming pool, located to the rear of the dwelling house
- A boat storage area with gate access to the adjoining reserve
- Sandstone/steel palisade fencing to the adjoining reserve
- Landscaping works

The existing garage/studio structure, front gates, pedestrian entry, landing and external stairs at street level will all be retained.

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)(iia) – Provisions of	None applicable.

Section 4.15 Matters for Consideration'	Comments
any planning agreement	
<p>Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)</p>	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will have an acceptable social impact in the locality considering the character of the proposal.</p>



Section 4.15 Matters for Consideration	Comments
	(iii) Economic Impact The proposed development will have an acceptable 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

A Bushfire Report was submitted with the application which confirms the proposal will comply with the provisions of Planning for Bushfire Protection and does not require referral to the NSW RFS.

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:
Wanda Szychowska	258 Sydney Road BALGOWLAH NSW 2093
Lockrey Planning And Development Solutions Pty Ltd	

The following issues were raised in the submissions:

- **Documentation inconsistencies / inadequate information**
- **Excessive height, bulk and scale**
- **Vegetation retention/removal**
- **Visual privacy impacts**
- **Acoustic impacts**
- **Construction impacts**
- **Stormwater management**

The matters raised within the submissions are addressed as follows:

DA2019/0080

Page 6 of 37



- **Consistencies/accuracy of documentation with regards to total open space, landscaped area and solar screen**

Comment:

There were some minor inconsistencies/inaccuracies identified between the Statement of Environmental Effects and the landscape plan. The applicant has submitted revised calculations which demonstrate that the proposal complies with the MDCP requirements for total open space and landscaped area. In addition, a floor space ratio calculation diagram has been submitted which verifies that the FSR has been calculated correctly.

The solar screen on the first floor level is set back 8.1 metres from the northern boundary, which will mitigate any potential impacts arising from this structure. The screen is a requirement of the BASIX Certificate.

- **Excessive height, bulk and scale resulting in unacceptable visual impacts**

Comment:

In the context of the surrounding development, as well as the previously approved DA for the site which allows a greater height and FSR than that proposed, the proposed height, bulk and scale are reasonable and acceptable. The non-complying building height and FSR are addressed in the Clause 4.6 section in this report.

Relevantly, it is noted that 36 Beatty Street has an approved height of 12.54m and floor space ratio of 0.54:1 (as per Council's assessment report), both of which exceed the subject proposal which has a height of 9.14m and floor space ratio of 0.53:1. This property also displays non-compliances with regards to wall height and side boundary setbacks.

A comparison of levels demonstrates that the height of the proposed additions is not excessive. The proposed upper level rumpus room floor (RL9.81) is 1.06 metres lower than the ground floor of 36 Beatty Street (RL 10.87). The rumpus room roof (RL 12.898 ridge) is below the level of the top of the ground floor windows of 36 Beatty Street (RL 13.0) which will ensure that all existing views from the two uppermost levels of 36 Beatty Street are retained over the top of the building. It is noted that there have been no view loss objections made.

The proposal is assessed as having an acceptable visual impact and is sympathetic to immediately adjoining property and the character of the area. The proposal maintains the character of the area by retaining the existing dwelling house and its low pitched roof with wide eaves and proposing a complementary pavilion style extension with a similar character.

- **Concerns regarding retention of vegetation given major site disturbance**

Comment:

Council's Landscape Designer has reviewed the landscape plans and Arboricultural Assessment and is supportive of the proposal. Recommended conditions of consent will require the retention



of Tree 1 and will ensure appropriate tree protection measures during construction.

- **Visual privacy concerns regarding northern elevation**

Comment:

Adequate levels of privacy are maintained between the dwellings.

- **Request that all mechanical plant be located within acoustically attenuated structures**

Comment:

A recommended condition of consent will require all mechanical plant be located within acoustically attenuated structures.

- **Request for a dilapidation report due to substantial excavation**

Comment: A recommended condition of consent will require the preparation of a dilapidation report for both adjoining properties.

- **Request for a construction management plan**

Comment:

The preparation of a construction management plan is not assessed as necessary for this proposed development.

- **Concerns raised regarding Asbestos removal and demolition impacts**

Comment:

Recommended conditions of consent will require compliance with Australian Standards for demolition and asbestos disposal.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation, and completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically: 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or Bushland Vegetation; and 4.1.5 Open Space and Landscaping.</p>
DA2019/0080	Page 8 of 37



Internal Referral Body	Comments
	<p>A Landscape Plan is provided with the development application, and this satisfies the requirements of Manly DCP2013, subject to conditions.</p> <p>A Arboricultural Impact Assessment is provided with the application, and this satisfies the requirements of Manly DCP2013, subject to conditions.</p> <p>Twenty one (21) trees and/or palms are assessed within the site under this development proposal which consist of seventeen (17) non-prescribed exempt species.</p> <p>Non-prescribed species being undesirable trees, palms or trees less than 5m in height are identified as trees T1, 2, 3, 4, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 & 20, with several small trees and shrubs scattered throughout the rear yard. Exempt species are permitted to be managed (pruned, removed or relocated) without Council consent. One (1) exempt species, identified as T1 - Canary Island Palm, is considered to provide landscape amenity and shall be conditioned to the retained and protected.</p> <p>The remaining prescribed trees, identified as T5 - Tree Fern, T6 - Tree Fern, T8 - Frangipani, and T21 - Strawberry Tree, are impacted by the proposal as assessed in the arboricultural assessment & development impact report, and shall be removed and replaced with suitable native tree planting.</p>
NECC (Bushland and Biodiversity)	The proposed development has been assessed against Manly LEP Clause 6.5 (Terrestrial Biodiversity). The subject site is previously modified with limited remnant native vegetation and wildlife habitat. It is considered that, subject to conditions of consent including those recommended by Council's Senior Landscape Architect, the proposal is consistent with the objectives of the clause.
NECC (Coast and Catchments)	<p>The application has been assessed for impacts to the Coastal Environment and impacts from the Coastal Environment. The following documents have been considered; the Sydney Harbour Regional Environment Plan 2005, Manly LEP and Manly DCP and Identification of Coastal Hazard Risk Areas to Projected Sea Level Rise for the Manly Local Government Area (WRL, 2012)</p> <p>It has been determined the proposed development will not have a significant impact subject to conditions being applied.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed development is designed generally in alignment with Council's DCP and LEP. The proposal is recommended to approval subject to conditions.
Parks, reserves, beaches, foreshore	Approval subject to conditions.

External Referral Body	Comments
DA2019/0080	Page 9 of 37



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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A336749, dated 11 January 2019). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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



Comment:

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

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

An assessment of the proposal against the following clauses has been undertaken:

- Clause 2(2) (aims of the SREP)
- Clause 14 (nominated planning principles)
- Clause 22 (relating to public access to and use of foreshores and waterways)
- Clause 23 (relating to maintenance of a working harbour)
- Clause 24 (relating to interrelationship of waterway and foreshore uses)
- Clause 25 (relating to foreshore and waterways scenic quality)
- Clause 26 (relating to maintenance, protection and enhancement of views)
- Clause 27 (relating to boat storage facilities)

The proposal is considered to be consistent with the above provisions of the SREP.

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 proposal will not result in adverse impacts on the issues identified in (a) to (g)

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

Comment:

The proposal is consistent with this Clause.

14 Development on land within the coastal use area

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

Comment:

The proposal will not unreasonably impact the coastal use area.

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

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

Development consent must not be granted to development on land within the coastal zone unless the



consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposal is unlikely to cause increased risk of coastal hazards. The application has been referred to Council's Coastal Officer who raises no objections to the proposal.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.14m	7.5%	No
Floor Space Ratio	FSR: 0.4:1	FSR: 0.53:1	32.5%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	N/A
6.12 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The majority of the building complies with the building height control in clause 4.3(2) of MLEP 2013. However, a small part of the south-eastern corner of the roof over the rumpus room exceeds the height control. The maximum building height is 9.14 metres, measured from the south-western corner of the roof (RL12.338) over a spot level of RL3.20 shown on the survey. The variation to the building height development standard is therefore calculated at 7.5%.



A written request to vary the building height development standard under Clause 4.6 of the MLEP 2013 has been submitted with the application. This request is addressed below.

4.4 Floor space ratio

The building has a floor space ratio (FSR) of 0.53:1, which exceeds the maximum FSR of 0.4:1 permitted under clause 4.4(2) of MLEP 2013. The variation to the FSR development standard is calculated at 32.5%.

A written request to vary the building height development standard under Clause 4.6 of the MLEP 2013 has been submitted with the application. This request is addressed in below.

4.6 Exceptions to development standards

Description of Non-compliances:

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	9.14m
Percentage variation to requirement:	7.5%
Development standard:	Floor Space Ratio
Requirement:	0.4:1
Proposed:	0.53:1
Percentage variation to the requirement:	32.5%

Assessment of request to vary a Development Standard

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

Clause 4.6 Exceptions to Development Standards

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

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

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

Comment:

Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio development standards are 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) has demonstrated that the objectives of the development standards are achieved, notwithstanding the non-compliance with the development standards.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standards is unreasonable and 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 standards

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

DA2019/0080

Page 15 of 37



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 variation to the development standards does not reduce the amenity of other dwellings in the vicinity of the site or the public domain but results in significantly enhanced amenity for the proposed dwelling house in terms of the spaciousness of the living areas.
- The variation to the development standards does not result in unreasonable overshadowing.
- The variation to the development standards does not result in additional impacts on the streetscape as the existing streetscape presentation is maintained.
- The form of the development, its appearance and its size is entirely consistent with the existing character of the area which comprises of large dwelling houses in landscaped settings orientated towards the views of the adjacent waterway.

The reasons provided by the applicant are supported. The absence of external impacts and the increased internal amenity of the dwelling house constitute sufficient environmental planning grounds to justify the proposed departures from the development standards.

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, the assessment finds that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings and Floor space ratio development standards and the objectives of the E3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of Development Standards

(i) CLAUSE 4.3 - HEIGHT OF BUILDINGS

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

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 maximum building height of the proposed dwelling house is less than that of its neighbours. No 36 Beatty Street has a building height of 12.54 metres (refer to the Assessment Report for DA 315/2015) and 32 Beatty Street has a building height of approximately 11m (roof ridge RL 11.48 over ground level of approximately RL3.48). This can be compared with the proposed building height of 9.14m, which is 1.8 – 3.4 metres less than its neighbours.

The proposed roof form is consistent with the locality which includes a variety of roof forms e.g. flat roofs, pitched roofs and hipped roofs.

The proposal follows the topography of the land, stepping up the site from east to west.

There is no impact on the streetscape as the existing garage and front entrance are maintained.

b) to control the bulk and scale of buildings,

Comment:

The majority of the proposal is compliant with the building height control, with the variation sought for a small corner of the proposed rumpus room.

The proposed development demonstrates high architectural merit, incorporating



façade articulation and fenestration to break up the bulk and reduce the perceived scale of the building. Furthermore, the building is composed of a number of separate elements; the existing house, the new western wing and the garage/studio. These distinct building elements assist in reducing the bulk and scale of the building.

c) to minimise disruption to the following:

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

Comment:

The proposed development will have an acceptable visual impact when viewed from the harbour and surrounding foreshore areas. The proposed development will result in the reasonable view sharing of views. In particular, the proposal provides for a more considerate and equitable outcome than that which was previously approved by Council (DA 189/2011).

The proposal does not result in any disruption to views between public spaces.

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

Comment:

The proposal retains solar access to neighbouring properties in excess of the requirements of the MDCP 2013. The proposal does not result in any additional overshadowing of the adjoining reserve.

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

Comment:

The proposal retains the majority of the existing vegetation on site. The four prescribed trees that are proposed to be removed have been assessed in the Arboricultural Impact Assessment (prepared by RainTree Consulting). Council's Landscape Officer requires that one exempt tree, T1 - Canary Island Date Palm, provides landscape amenity and is to be retained. The proposal includes additional landscaping which will soften its appearance. The proposal does not result in any conflicts with bushland or surrounding land uses.

(ii) CLAUSE 4.4 - FLOOR SPACE RATIO

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

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



Comment:

The proposal has minimal impact on the streetscape character of the area. The presentation to the street is largely unchanged with the exception of the lift-shaft and entry.

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 density of the development complies with the relevant controls in the MDCP 2013. As discussed above, the bulk is consistent with that envisaged by the built form controls applying to the land. The proposal will not obscure any significant landscape or townscape features.

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

Comment:

As discussed above, the proposal has a building height that is lower than that of its immediate neighbours. The proposal is compatible with surrounding development.

The character of development in Beatty Street in the vicinity of the site comprises of large dwelling houses. Council recently approved the demolition of all existing structures and the construction of a new dwelling house at 38 Beatty Street with a greater floor space ratio than that which is proposed (0.54:1, DA 2017/1218). The proposal includes additional landscaping to ensure that an appropriate relationship is maintained with the landscaped setting.

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

Comment:

The proposed development will have minimal adverse environmental impacts on adjoining land and the public domain.

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

Comment:

This objective is not relevant to the proposed development.

Objectives of the Zone

The underlying objectives of the E3 Environmental Management zone are addressed below:

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

Comment:



The proposal includes measures to address stormwater run-off and potential erosion and sedimentation. It is connected to reticulated sewerage to manage pollution impacts. Impacts on existing trees are assessed in the Arboricultural Impact Assessment by RainTree Consulting.

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

Comment:

Dwelling houses are a permissible type of development in the E3 zone. The proposed development will be managed in accordance with the documentation submitted with the development application and conditions of consent in order to achieve this objective.

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

Comment:

Dwelling houses are a permissible type of development in the E3 zone. A dwelling house by its nature is a residential use which has low impact.
The proposal will enhance the tree canopy in accordance with the landscape plan.

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

Comment:

Subject to recommended conditions of consent requiring appropriate site management during construction, the proposal will have no impact on nearby foreshore areas. Vegetation loss is minimal (4 prescribed trees) and offset by additional planting. The Geotechnical Report by White Geotechnical Group demonstrates that impacts on geological features can be managed appropriately.

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

Comment:

The site will have no impact on the nearby foreshore subject to appropriate construction management controls. Measures are proposed to control stormwater runoff.

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

Comment:



As discussed above, the height and bulk of the building are considered to be appropriate for the site in the context of neighbouring development of a similar or greater bulk and scale.

Conclusion:

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

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

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

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

6.4 Stormwater management

The site is not a flood control lot. The site is identified in the Draft Manly to Seaforth Flood Study as being subject to flooding. A Flood Risk Management Report has been prepared by NB Consulting Engineers and forms part of the development proposal, demonstrating compliance with the requirements of clause 6.3(3) of MLEP 2013. The report concludes:

"The proposed development is not envisaged to have an adverse effect on surrounding property. Information has been adopted for this assessment. The proposed development generally meets the requirements of clause 6.3(3) of MLEP 2013."

Stormwater will be disposed of in accordance with the plans and details prepared by NB Consulting Engineers. These plans will form part of the approval documents.

6.5 Terrestrial biodiversity

The site is identified as being affected on the Terrestrial Biodiversity Map. The impact of the proposal on local flora and fauna is assessed in the Terrestrial Biodiversity Impact Assessment report by GIS Environmental Consultants. This report concludes:

"The proposal will not have a significant impact to terrestrial biodiversity and meets the requirement of clause 6.5 of the MLEP 2013."

We recommend that ameliorative conditions and management recommendations in this report be followed to reduce disturbance during construction and to improve ecological outcomes."

Manly Development Control Plan



Built Form Controls

Built Form Controls - Site Area: 789m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1/1150m ² per dwellings	1/798m ² per dwelling	N/A	Yes
4.1.2.1 Wall Height	7.2m (north)	7.5m (north)	N/A	No
	7.5m (south)	6.1m (south)	N/A	Yes
4.1.2.2 Number of Storeys	2	part 2/part 3	N/A	No
4.1.2.3 Roof Height	Height: 2.5m	700mm	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line/6.0m	Nil (existing garage)	N/A	N/A
		21.1m (proposed dwelling)	N/A	Yes
4.1.4.2 Side Setbacks (dwelling)	1.7m - 2.5m (north) 1.1m - 2.0m (south)	1m - 2.2m (north) 1.525m - 3.22m (south)	N/A	No Yes
4.1.4.2 Side Setbacks (lift shaft)	2.4m (south)	1.5m	N/A	No
4.1.4.4 Rear Setback	8.0m	4.5m - 5.3m	N/A	Existing
4.1.5.1 Total Open Space Requirements: OS4	Open space 60% of site area	73.4%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 24% of open space	24%	N/A	Yes
	3 native trees	15 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm	> 18sqm	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	at finished ground level	N/A	Yes
	1m curtilage/1.5m water side setback	1m north side	N/A	No
Schedule 3 Parking and Access	2 spaces	2 spaces	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
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	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



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	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
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

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

DA2019/0080

Page 23 of 37



Wall Height

The southern façade of the dwelling house fully complies with the wall height control. The majority of the northern facade of the dwelling house also complies with a small area of localised breach on the northern façade of the building. The proposal exceeds the northern wall height requirement by a maximum of 0.3m.

The proposed lift-shaft also exceeds the wall height control on its southern and eastern elevations. Given the location of this element immediately adjacent the existing garage, the non-compliance is acceptable as it will be visually consistent with the adjoining structure.

The variation to the wall height control is acceptable for the development as the variation is minimal and the proposal will detract from the amenity of the adjoining neighbours.

Number of Storeys

The proposed development will be primarily two storeys in height with a small section of three storeys where the upper level rumpus room overlaps the covered outdoor space. The upper level has a generous 16.5m setback from the reserve boundary and therefore will have minimal visual impact.

The dwelling is generally consistent with the local area with several dwellings having a three storey design due to the slope of the properties along Beatty Street.

Therefore, the three storey component is supported.

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

Side Boundary Setback - Description of Non-compliance

The proposal generally complies with the side setback requirements. However, a portion of the proposed dwelling is located on a 1.0m setback to the northern boundary where a 1.7m setback is required and the lift shaft is setback 1.5m from the southern boundary where a 2.4m setback is required.

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 areas of non-compliance will have minimal impacts to the streetscape.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between*



- *buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The area where the 1.0m setback is proposed is adjacent to a raised terrace on the adjoining property. In this regard, the ground level and finished floor level on the subject site is RL3.9 whilst the level of the adjacent property is RL7.4. The wall height relative to the neighbour's site for this portion of the northern façade is 2.86m (parapet RL10.26) and the 1.0m side setback complies with the 1/3 wall height control when using the levels on the neighbour's site.

It can therefore be seen that the proposal achieves the underlying objectives of the control by providing separation between buildings and maintaining a reasonable bulk and scale when viewed from the neighbouring property.

The variation required for the lift shaft is reasonable considering the nature of the adjoining development – it adjoins a garage and covered pedestrian passageway at 32 Beatty Street, the roof of which (RL 22.21) is at approximately the same level as the proposed lift shaft (RL 22.33) and which is located without any side boundary setback whereas the lift shaft has a 1.5m setback.

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

Comment:

The proposal incorporates varied setbacks in response to site opportunities and constraints.

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 will not have any detrimental impacts on natural features of the site.

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

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP 2013 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.

Rear Boundary Setback - Description of Non-compliance

The proposal retains the existing dwelling house which is setback 4.5m - 5.3m from the rear boundary. Whilst not complying with the rear setback control, no new impacts will arise.



4.4.5 Earthworks (Excavation and Filling)

The proposal involves cut and fill to provide for level building platforms, the swimming pool, the lift shaft and lift corridor.

Whilst the extent of the cut and fill is generally less than 1.0m, the new pool and new section of dwelling requires excavation of up to 4.4m. The lift-shaft requires excavation up to 12.0m in depth for a width of 1.5m. A geotechnical report has been prepared by White Geotechnical Group and contains recommendations for construction. If approval is granted, it is recommended that this report forms part of the approval documents.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Inconsistent 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 DA2019/0080 for Alterations and additions to a dwelling house including swimming pool on land at Lot 21A DP 350345, 34 Beatty Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-000A Schedule of Finishes	01.02.2019	Chrofi
DA-001A Survey	01.02.2019	Chrofi
DA-002A Site Plan	01.02.2019	Chrofi
DA-004A Ground Floor Demolition Plan	01.02.2019	Chrofi
DA-005A First Floor Demolition Plan	01.02.2019	Chrofi
DA-006A Roof Level Demolition Plan	01.02.2019	Chrofi
DA-008A Cut and Fill Plan	01.02.2019	Chrofi
DA-101A Ground Floor Plan	01.02.2019	Chrofi
DA-102A First Floor Plan	01.02.2019	Chrofi
DA-103A Second Floor Plan	01.02.2019	Chrofi
DA-104A Roof Plan	01.02.2019	Chrofi
DA-201A Elevations (North and South)	01.02.2019	Chrofi
DA-202A Elevations (East and West)	01.02.2019	Chrofi
DA-301A Sections	01.02.2019	Chrofi
DA-302A Sections	01.02.2019	Chrofi

Engineering Plans		
Drawing No.	Dated	Prepared By
180599 D01B	15.01.2019	NB Consulting Engineers
180599 D02A	07.01.2019	NB Consulting Engineers
180599 D03B	15.01.2019	NB Consulting Engineers
180599 D04A	07.01.2019	NB Consulting Engineers

DA2019/0080

Page 27 of 37



180599 D05B	15.01.2019	NB Consulting Engineers
180599 D06A	07.01.2019	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Environmental Effects	January 2019	Symonds Goodyer
BASIX Certificate A336749	11 January 2019	ECOMODE Design
Geotechnical Investigation	24 January 2019	White Geotechnical Group
Arboricultural Management Report	15 January 2019	Rain Tree Consulting
Terrestrial Biodiversity Report	January 2019	GIS Environmental Consultants
Bushfire Risk Assessment	9 October 2019	Bushfire Planning Services
Flood Risk Management Report	23 January 2019	NB Consulting Engineers
Waste Management Plan	25 October 2016	Chrofi Architects

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
BT1 Landscape Site Plan	17.01.2019	Libby Birley
BT2 Landscape Elevation and Pool Detail	17.01.2019	Libby Birley
BT3 Planting Plan	17.01.2019	Libby Birley

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
DA-007 Waste Management Plan	01.02.2019	Chrofi

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

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

2. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon



- plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement

3. General Requirements

DA2019/0080

Page 29 of 37



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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

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

An inspection fee in accordance with Council adopted fees and charges (at the time of payment)



is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

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

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

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

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

5. Installation and Maintenance of Sediment and Erosion Control

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

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

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site. (DACHPCPC1)

6. 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 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.

7. Flooding

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering



Committee (2006).

Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Flood Planning Level of 3.7m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

Storage of Goods – D1

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

Flood Emergency Response – E2

Appropriate access to a shelter in place refuge above the Probable Maximum Flood Level should be available from all areas of the new development.

Floor Levels – F1

New floor levels within the development shall be set at or above the Flood Planning Level of 3.7m AHD.

Floor Levels – F8

New first floor levels within the development shall be set at or above the relevant Probable Maximum Flood Level for the specific locations.

Fencing – H1

Fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open for passage of flood waters - All new fencing on the property must be design with a minimum of 50% open area between the 1% flood level and natural ground level, to allow flood waters to pass through.

Recommendations

The development must comply with all recommendations outlined in:

- The Flood Management Report prepared by Northern Beaches Consulting Engineers dated 23 January 2019.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

DA2019/0080

Page 33 of 37



8. **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.

9. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

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

10. **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.

11. **Dilapidation Report**

The applicant shall supply Council with a dilapidation report for the adjoining properties at 32 Beatty St and 36 Beatty St which documents and photographs the condition of the buildings and improvements on those properties. The dilapidation report shall be submitted as a PDF in Adobe format or in A4 format. A copy of the report must be provided to Council, any other owners of public infrastructure and the owner of nominated properties. Council shall be provided with a list of owners to whom a copy of the report has been provided. (DACPLCPCC1)

12. **Excavation, Backfilling and Support for Neighbouring Buildings**

Excavation works shall not commence prior to the issue of the Construction Certificate or the issue of any relevant notices to adjoining owners, the Principal Certifying Authority or Council as required by other conditions of this consent. (DACPLCPCC2)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. **Reserves Vehicular Access Permit**

A Reserves Vehicular Access Permit is required for vehicular access over land under Council

DA2019/0080

Page 34 of 37



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. (DACHPDPC2)

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

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

15. **Approval of Works in Public Beach Reserve**

No works are to be carried out from or within the public beach reserve without the written approval of Council.

Reason: To ensure no damage is done to the public beach reserve

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

16. **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 in the Arboricultural Assessment & Development Impact report, prepared by RainTree Consulting, being T1,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation,
- iv) all foreshore 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, and the recommendations of the Arboricultural Assessment & Development Impact report,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- iv) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,
- vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist,
- viii) no existing ground levels around trees and vegetation are permitted to be altered, without consultation with a AQF Level 5 Arborist,
- ix) should either or all of v), vi), vii) and viii) occur during site establishment and construction

DA2019/0080

Page 35 of 37



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.

17. **Project Arborist**

Any work on Council's foreshore reserve must be supervised by a AQF Level 5 Project Arborist, qualified in Horticulture, to supervise and certify tree protection works in accordance with AS4970- 2009 Protection of Trees on Development Sites, noting that a request for vehicular access over land under the management and care of Council is subject to Council approval and may not necessarily be granted by Council.

Any approved vehicular access must protect the existing foreshore trees and comply with the recommended tree management requirement listed under section 2.2.1 (1) of the Arboricultural Assessment & Development Impact report, including tree trunk and ground protection measures, as prepared by RainTree Consulting.

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

Reason: to ensure tree protection is provided and maintained.

18. **Construction Hours – Manly LEP Clause 6.5**

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

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

19. **Pollution Control**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

20. **Pollution Control**

Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the stormwater network and/or receiving waterways.

Reason: To ensure that building associated chemicals and pollutants don't enter the surrounding environment.

21. **Demolition**

All demolition work must be carried out in accordance with the provisions of Australian Standard 2601: The Demolition of Structures. (DACPLEDW1)



22. **Asbestos Material**

Where asbestos material is removed or disturbed as a result of any proposed demolition, alteration or addition, all work must be carried out by a person licensed under the Work Health and Safety Regulation 2017 and undertaken in accordance with the requirements of the Protection of the Environment Operations (Waste) Regulation 2014. All asbestos to be removed must be disposed of at a tip recommended by the NSW Environment Protection Authority and under no circumstances shall be re-used or sold. (DACPLEDW2)

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

24. **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 plan.

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

25. **Environmental and priority weed control**

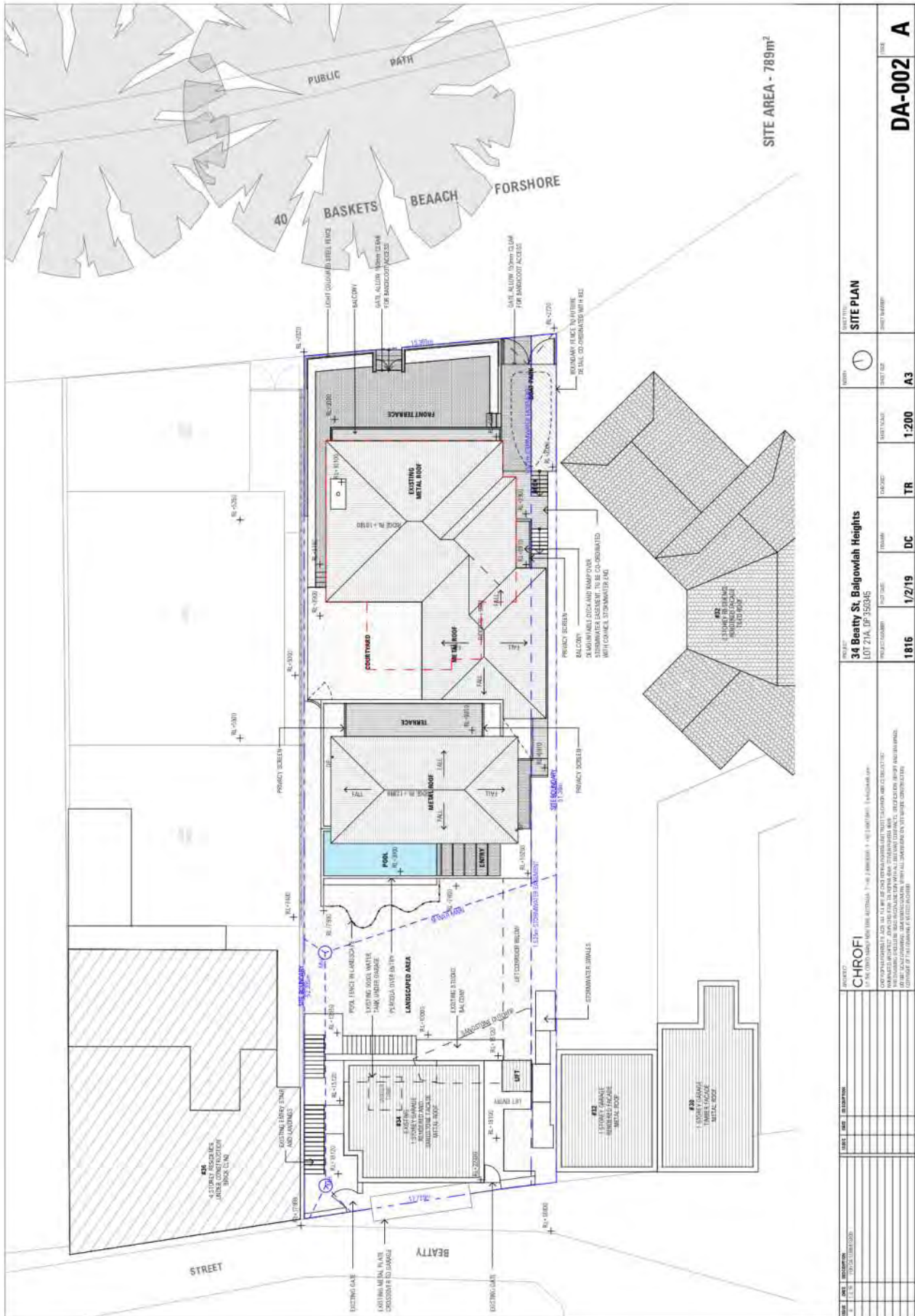
All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

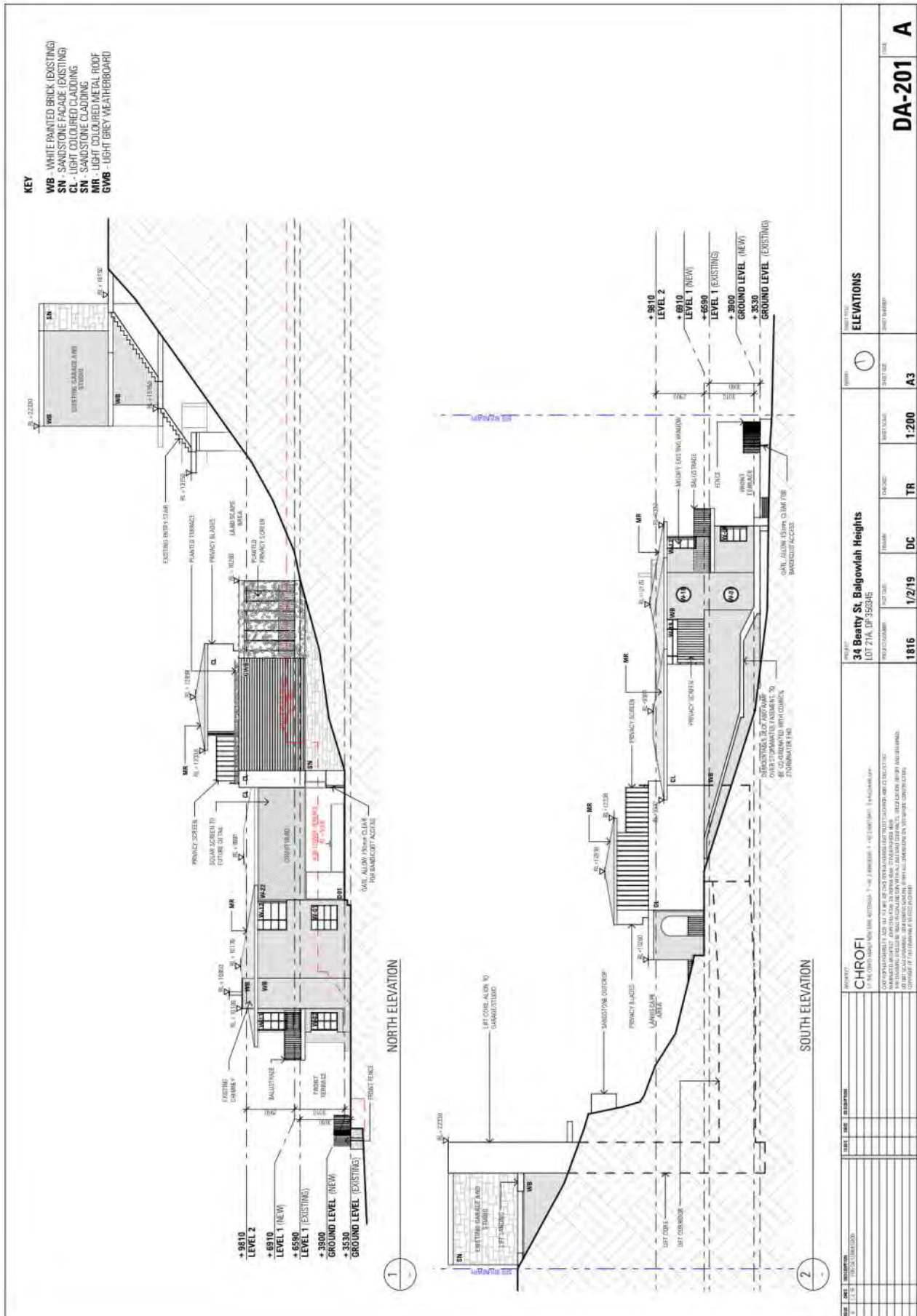
Reason: preservation of environmental amenity.

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

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

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







Appendix B – Clause 4.6 variation – building height and floor space ratio

Address: 34 Beatty Street, Balgowlah Heights

Proposal: Alterations and additions to existing dwelling house and construction of a swimming pool.

1. Manly Local Environmental Plan 2013 (“MLEP”)**1.1 Clause 2.2 and the Land Use Table**

Clause 2.2 and the Land Zoning provide that the subject site is zoned E3 – Environmental Management (the E3 zone) and the Land Use Table in Part 2 of MLEP specifies the following objectives for the E3 zone:

- * *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- * *To provide for a limited range of development that does not have an adverse effect on those values.*
- * *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- * *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- * *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- * *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The proposed development is for the purpose of a dwelling house which is a permissible use in the E3 zone.

1.2 Clause 4.3 – Building Height

Clause 4.3 of MLEP sets out the building height development standard as follows:

- (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,*
 - (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.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

1.3 Clause 4.4 – Floor Space Ratio

Clause 4.4 of MLEP sets out the FSR development standard as follows:

- (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,*
 - (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.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*
- (2A) *Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.*

The Floor Space Ratio Map specifies a maximum floor space ratio of a building on the land is 0.4:1.

- 1.5 The Dictionary to MLEP operates via clause 1.4 of MLEP. The Dictionary defines “building height” and “ground level (existing)” as:

building height (or height of building) means:

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

- 1.6 Clause 4.5(2) of MLEP defines “floor space ratio” as:

*“The **floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.”*

- 1.7 The Dictionary defines “gross floor area” as:

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

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and

- (h) *any space used for the loading or unloading of goods (including access to it), and*
- (i) *terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) *voids above a floor at the level of a storey or storey above.*

1.8 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

- (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.*

The latest authority in relation to the operation of clause 4.6 is the decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*). *Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP provides:

- (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.*

Clause 4.4 (the FSR development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

- (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.*

The proposed development does not comply with the FSR development standard pursuant to clause 4.4 of MLEP which specifies an FSR of 0.45:1 however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

- (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.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition of satisfaction requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent

authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

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

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and may assume the concurrence of the Secretary under cl 4.6(4)(b). Nevertheless, the Council should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.7(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

2. The Nature and Extent of the Variation

- 2.1 This request seeks a variation to the building height and FSR development standards contained in clauses 4.3 and 4.4 of MLEP.
- 2.2 Clause 4.3(2) of MLEP specifies a maximum building height for development on the subject site of 8.5 metres.
- 2.3 The proposed building has a maximum building height of 9.138 metres. The non-compliance equates to 0.638 metres. The non-compliance occurs at the south-western corner of the roof over the proposed rumpus room. The development otherwise complies with the building height control.
- 2.4 Clause 4.4(2) of MLEP specifies a maximum FSR for the subject site of 0.4:1.
- 2.5 The subject site has an area of 789m².
- 2.6 The FSR standard of 0.4:1 is equivalent to a gross floor area of 315.6m². The proposal has a floor space ratio of 0.53:1 and a gross floor area of 418.2m². The non-compliance is 0.13 which equates to 102.6m².

3. Relevant Caselaw

3.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29] as follows:

13. The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.
14. The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Woolworths Ltd v Pallas Newco Pty Ltd* (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135; [2000] HCA 5 at [28]; *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].
15. The first opinion of satisfaction, in cl 4.6(4)(a)(i), is 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). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.
16. As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe v Pittwater Council* at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.
17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* at [42] and [43].
18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe v Pittwater Council* at [45].

19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe v Pittwater Council* at [46].
20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47].
21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.
22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.
23. 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.
24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening

the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].

25. The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in *Randwick City Council v Micaul Holdings Pty Ltd* at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see *Wehbe v Pittwater Council* at [38].
26. The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).
27. The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).
28. The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to

development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

29. *On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: Fast Buck\$ v Byron Shire Council (1999) 103 LGERA 94 at 100; Wehbe v Pittwater Council at [41].*

3.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard?
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the E3 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

4. Request for Variation

4.1 Are clauses 4.3 and 4.4 of MLEP a development standards?

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act includes:
 - (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
 - (d) *the cubic content of floor space of a building."*
- (b) Clause 4.3 of MLEP relates to the height of a building. Clause 4.4 of MLEP relates to floor space of a building. Accordingly clauses 4.3 and 4.4 are development standards.

4.2 Is compliance with clauses 4.3 and 4.4 unreasonable or unnecessary ?.

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the building height standard and reasoning why compliance is unreasonable or unnecessary is set out below:

- (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 proposed building height is less than that of its neighbours. 36 Beatty Street has a building height of 12.54 metres (according to the Assessment Report for DA 315/2015) and 32 Beatty Street has a building height of approximately 11.0 metres (roof ridge RL 11.48 over ground level of approximately RL3.48). This can be contrasted with a proposed building height of 9.138 metres, which is 1.8 – 3.4 metres less than its neighbours.

Roof forms in the locality are varied and include flat roofs, pitched roofs and hipped roofs.

The proposal follows the topography of the land, stepping up the site from east to west.

There is no impact on the streetscape.

This objective is achieved.

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

The proposal is almost entirely compliant with the building height control, with the variation being sought for only a small corner of the proposed rumpus room.

The building is architecturally designed and includes façade articulation and fenestration to break up the bulk and reduce the apparent scale of the building. Furthermore, the building is composed of a number of separate elements: the existing house, the connecting wing, the western wing, and the garage/studio. This further serves to reduce the bulk and scale of the building.

This objective is achieved.

- (c) *to minimise disruption to the following:*

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

The proposed building forms part of the urban backdrop to Forty Baskets Beach and Reserve. The proposal seeks to retain and improve the appearance of the existing dwelling house and not add to its bulk and scale by providing additional accommodation away from the foreshore and generally hidden by the existing building. This objective is achieved.

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

The issue of views from neighbouring sites is assessed in detail in the body of this Statement of Environmental Effects and concludes that reasonable view sharing is maintained. In particular, the proposal provides for a more considerate and equitable outcome than that which was previously approved by Council (DA 189/2011). This objective is achieved.

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

The proposal does not result in any disruption to views between public spaces. This objective is achieved.

- (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,*

As discussed in the body of this Statement of Environmental Effects, the proposal retains solar access to neighbouring properties in excess of the requirements of the MDCP 2013.

The proposal does not result in any additional overshadowing of Forty Baskets Beach Reserve.

This objective is achieved.

- (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 development respects existing vegetation on site and the proposal involves the removal of only four prescribed trees (as assessed in the Arboricultural Impact Assessment by RainTree Consulting). The proposal includes additional landscaping of the site to soften its appearance. The building is generally 2 storeys in height with the small 3-storey element set back on the site and relating well to the rise in the site from east to west.

The proposal does not result in any conflicts with bushland or surrounding land uses.

This objective is achieved.

- (d) Each objective of the FSR standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

The proposal has no impact on the streetscape character of the area. The presentation to the street is essentially unchanged with the works being proposed on the lower part of the site, away from the street frontage. This objective is achieved.

- (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,*

The density of the development complies with the relevant controls in the MDCP 2013. As discussed above, the bulk is commensurate with that envisaged by the suite of controls applying to the land. The proposal will not obscure any important landscape and townscape features. This objective is achieved.

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

As discussed above, the proposal has a building height that is substantially less than that of its neighbours. Consistent with the decision of Roseth SC in *Project Ventures Developments v Pittwater Council* [2005] NSWLEC 191, it is my opinion that “most observers would not find the proposed building offensive, jarring or unsympathetic”.

The character of development in Beatty Street in the vicinity of the site is of large dwelling houses. Council recently approved the demolition of all existing structures and the construction of a new dwelling house at 38 Beatty Street with a greater floor space ratio than that which is proposed (0.54:1, DA 2017/1218).

The proposal includes new landscaping to ensure that an appropriate relationship is maintained with the landscape of the area.

This objective is achieved.

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

This objective contemplates that development may have adverse environmental impacts. The purpose of the objective is to minimise not prevent those impacts.

The building has been designed to minimise impacts on adjoining land and the public domain. Particular consideration has been given to addressing potential privacy impacts by orienting windows and decks

to the front and rear of the site and providing privacy screens where needed.

With regards to overshadowing, shadow diagrams demonstrate that solar access is retained to neighbouring properties in excess of the requirements of the MDCP 2013. There is no additional overshadowing of the adjacent Forty Baskets Beach Reserve.

With regards to impacts on views, the proposal locates the bulk of the building towards the western portion of the site to maintain views enjoyed by neighbouring dwelling houses.

Views from the adjacent public reserve to the site are maintained because the existing 2-storey dwelling house is retained and improved.

This objective is achieved.

- (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.*

This objective is not relevant to the proposed development.

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

There are sufficient environmental planning grounds to justify contravening the development standard. Whilst there is no requirement that the development comply with the objectives set out in clause 4.6(1) it is relevant to note that objective (b) provides:

"to achieve better outcomes for and from development by allowing flexibility in particular circumstances." (emphasis added)

It should be noted at the outset that in *Initial Action* the Court held that it is incorrect to hold that the lack of adverse impact on adjoining properties is not a sufficient ground justifying the development contravening the development standard when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse impacts.

The variation to the development standards does not reduce the amenity of other dwellings in the vicinity of the site or the public domain but results in significantly enhanced amenity for the proposed dwelling house in terms of the spaciousness of the living areas.

The variation to the development standards does not result in additional overshadowing.

Additionally, the variation to the development standards does not result in additional impacts on the streetscape as the existing streetscape presentation is maintained.

The form of the development, its appearance and its size is entirely consistent with the existing character of the area which generally reflects large dwelling houses set in landscaped settings sited so as to provide views of the adjacent waterway.

The absence of external impacts and the increased internal amenity of the dwelling house constitute sufficient environmental planning grounds to justify the proposed departures from the development standards.

4.4 Is the proposed development in the public interest because it is consistent with the objectives of clauses 4.3 and 4.4 and the objectives of the E3 Environmental Management zone?

(a) Section 4.2 of this written requests demonstrates that the proposed development meets each of the applicable objectives of clauses 4.3 and 4.4. As the proposed development meets the applicable objectives it follows that the proposed development is also consistent with those objectives.

(b) Each of the objectives of the E3 zone and the reasons why the proposed development is consistent with each objective is set out below:

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

The proposal includes measures to address stormwater run-off and potential erosion and sedimentation. It is connected to reticulated sewerage to manage pollution impacts. Impacts on existing trees are assessed in the Arboricultural Impact Assessment by RainTree Consulting.

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

Dwelling houses are a permissible type of development in the E3 zone. The proposed development will be managed in accordance with the documentation submitted with the development application and conditions of consent in order to achieve this objective.

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

Dwelling houses are a permissible type of development in the E3 zone. A dwelling house by its nature is a residential use which has low impact. The proposal will enhance the tree canopy in accordance with the landscape plan.

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

Subject to appropriate conditions ensuring appropriate site management during construction the proposal will have no impact on nearby foreshore areas. Vegetation loss is minimal (4 prescribed trees) and offset by proposed planting. The Geotechnical Report by White

Geotechnical Group demonstrates that impacts on geological features can be managed appropriately.

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

The site will have no impact on the nearby foreshore subject to appropriate construction management controls. Measures are proposed to control stormwater runoff.

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

As discussed above, the height and bulk of the building are considered to be appropriate for the site in the context of neighbouring development of a similar or greater bulk and scale.

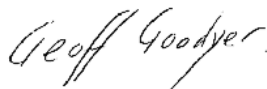
4.5 Has council obtained the concurrence of the Director-General?

Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation pursuant to the Assumed Concurrence notice issued on 21 February 2018.

4.6 Has Council considered the matters in clause 4.6(5) of MLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) There are no other matters required to be taken into account by the secretary before granting concurrence.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and exception to the development standards is reasonable and appropriate in the circumstances of the case.



Geoff Goodyer
17 May 2019

ITEM 3.3

DA2018/1835 - 24 CARAWA ROAD, CROMER - DEMOLITION OF EXISTING DWELLINGS AND CONSTRUCTION OF A SENIORS LIVING DEVELOPMENT COMPRISING 8 UNITS AND STRATA SUBDIVISION

REPORTING MANAGER

Daniel Milliken

TRIM FILE REF

2019/329797

ATTACHMENTS

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

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2018/1835 for demolition of existing dwellings and construction of a Seniors Living development comprising 8 units and strata subdivision on land at Lot 5 & 6 DP 11438, 24 Carawa Road, Cromer, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1835
Responsible Officer:	David Auster
Land to be developed (Address):	Lot 6 DP 11438, 22 Carawa Road CROMER NSW 2099 Lot 5 DP 11438, 24 Carawa Road CROMER NSW 2099
Proposed Development:	Demolition of the existing dwellings, the construction of a seniors living development comprising 8 units, and strata subdivision
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under SEPP (HSPD)
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Angelina Caruso Nicola Caruso Pina Caruso
Applicant:	Nicola Caruso
Application lodged:	16/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	12/12/2018 to 20/01/2019
Advertised:	15/12/2018
Submissions Received:	3
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,982,963.00

EXECUTIVE SUMMARY

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site.

The proposal is generally consistent with the requirements of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. It is also generally consistent with the



requirements of Warringah LEP and DCP, with an exception for the side boundary envelope control in the DCP, which is considered acceptable in the circumstances.

Three submissions were received from neighbours. These issues have been addressed in the Submissions section of this report. The submissions raised concerns including Over development, Privacy, Tree removal, Excavation, Over 55 living, Incorrect plans, Construction noise and impacts of delays, Location of development, Private open space, and Wheel chair access. In some cases conditions have been recommended to satisfy concerns raised.

Council's Development Engineers have not been satisfied by the proposed provisions for stormwater disposal (which was proposed to drain to Carawa Road). The Engineers have instead provided deferred commencement conditions to ensure that the applicants will need to gain easements for stormwater to drain to Fisher Road North.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

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

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description: DA2018/1835	Lot 6 DP 11438 , 22 Carawa Road CROMER NSW 2099 Page 2 of 61
---	---



	Lot 5 DP 11438 , 24 Carawa Road CROMER NSW 2099
Detailed Site Description:	<p>The site is comprised of two rectangular lots - Lots 5 and 6, DP 11438, numbers 22 and 24 Carawa Road. The consolidated allotment is rectangular in shape having frontage and address to Carawa Road of 27.43 metres, depth of 65.02 metres and an area of 1783 square metres.</p> <p>The site falls approximately 3 metres from front to rear and contains a number of trees located generally towards the rear of the site. The property is currently occupied by 1 and 2 storey detached dwellings with various detached outbuildings. A 1.5 metre high timber slatted fence delineates the front boundary of both allotments.</p> <p>The immediately adjoining properties are occupied by single storey detached dwelling houses with the property directly to the rear (247 Alfred St) accessed via a battle axe handle from Alfred Street. Surrounding development comprises a mix of 1 and 2 storey detached residential dwellings with a small group of neighbourhood shops located to the west of the site along Carawa Road.</p>

Map:



SITE HISTORY

The site has a history of residential use.

Pre-lodgement Meeting PLM2017/0051 was held on 27/06/2017 for Demolition of existing dwellings and construction of a seniors living development comprising 8 dwellings with basement parking. The minutes from this meeting were generally supportive of the proposal, but noted that the height of the development would need to be reduced to a maximum single storey in the rear 25% of the site, in accordance with SEPP (HSPD).



PROPOSED DEVELOPMENT IN DETAIL

The proposal involves the demolition of all existing on site structures, and the construction and strata subdivision of a seniors housing development. The development is to include 2 x 2 bedroom and 6 x 3 bedroom in-fill self-care housing units and basement car parking for 18 vehicles pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD). The application also proposes footpath installation along Carawa Road.

The development will be characterised by two buildings separated above ground, with basement parking generally below ground level. There will be a courtyard between the two buildings. The proposed floor levels will be comprised of the following:

Basement:

- Car parking for 18 vehicles (including 2 visitor spaces)
- bulky goods waste storage
- storage for each apartment
- plant room

Ground level:

- Units 1, 2, 5 and 6 (all three bedroom apartments). Living rooms are facing towards the rear in both buildings, and each unit has a rear deck area.

First Floor:

- Units 3, 4, 7 and 8 (all two bedroom apartments). Living rooms and decks situated to the rear of each unit.

Amendments to Plans

Council's Urban Designer, and Traffic Engineers, initially raised concerns with aspects of the development (see referral comments). The applicant provided amended plans with only minor changes to the development to satisfy these concerns. This included acoustic treatments to windows to satisfy the urban design comments, and provision of a footpath and upgrading of the pedestrian island to the west of the site to provide safe access to public transport. Due to the minor nature of these changes, re-notification of the development was not considered necessary in accordance with clause A.7 *Exhibition, Advertisement and Notification of Applications* of the Warringah DCP.

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 DA2018/1835	Warringah Development Control Plan applies to this Page 4 of 61



Section 4.15 Matters for Consideration'	Comments
development control plan	proposal.
Section 4.15 (1) (a)(iii) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact</p> <p>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>



Section 4.15 Matters for Consideration'	Comments
	<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:
Mr Peter Edward Downman	26 Carawa Road CROMER NSW 2099
Mr Denzil Aston Crasta	247 Alfred Street CROMER NSW 2099
Mr Antonino Sidoti	249 Alfred Street CROMER NSW 2099

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

- **Over development**
- **Privacy**
- **Tree removal**
- **Excavation**
- **Over 55 living**
- **Incorrect plans**
- **Construction noise and impacts of delays**



- Location of development
- Private open space
- Wheel chair access

The matters raised within the submissions are addressed as follows:

- **Over development**

Concerns were raised that the proposal is an over development in a low density area, and out of character with the area. Further concern was raised with the proposed floor space ratio, amenity impacts, and height.

Comment:

The site meets the criteria listed under clause 40 of SEPP (HSPD) to allow for a development of this type (greater than 1000sqm in area, greater than 20m in width), and the development also complies with the standards for height, number of storeys and rear setback under clause 40.

Further, the development is generally compliant with the built form controls under the Warringah LEP and DCP, with the exception of the side boundary envelope and landscaped open space controls. The non-compliance with the side boundary envelope is relatively minor and confined to the upper eastern side of the rear building. This non-compliance is mainly the result of an architectural feature, which could be designed out relatively easily if the impacts were considered to be unreasonable (see discussion under clause B3 Side Boundary Envelope in this report). The landscaped open space non-compliance is not able to be used by Council as grounds for refusal, as the development provides for landscaping in accordance with clause 50 of the SEPP.

Overall therefore, the development generally complies with the relevant controls that dictate the density and bulk and scale of development in the area. With regard to character, the development has been broken into two above ground buildings, which will be more in keeping with the character created by the surrounding detached dwellings, as opposed to one single building containing the 8 units. The landscaping provided will help to screen and break up the built form further, and Council's Landscape Officer is satisfied with the landscaping proposed. The amenity impacts are not considered to be unreasonable. There will be no unreasonable loss of views or solar access, and privacy will be maintained to a reasonable level by the orientation of the balconies and privacy screens (see more detailed discussion below).

Particular concerns were raised with the proposed height and floor space ratio.

Clause 50 of the SEPP lists standards *that cannot be used to refuse development consent*. In relation to height, the proposal complies with the overall height limit of 8.5m in the Warringah LEP (being 8.3m in height). Under the SEPP, the height of the development is measured to the ceiling (not the overall height of the building as under the LEP), and the proposal also complies with the 8m height standard in clause 40 of the SEPP in this regard. As such, Clause 50 ensures the height of the development cannot be used as grounds for refusal.

Clause 50 also states that the development cannot be refused if the floor space ratio (FSR) is less than 0.5:1. In this case the proposed FSR is 0.69:1. However, there is no FSR control in the Warringah LEP, or in clause 40 of the SEPP, and as such, there is no reason to refuse the application on the basis of FSR. Density in land falling under the Warringah LEP is controlled by application of the built form controls under the WLEP and WDCP, and as assessed in this report, the application generally complies with those controls, with exceptions for the side boundary envelope and landscaped area as discussed above.



Given the above considerations, the proposal is not an over development of the site, and the issue does not warrant refusal of the application.

- **Privacy**

Concerns were raised regarding privacy impacts in relation to number 26 Carawa Road to the west.

Comment:

The proposal has orientated the private open spaces of each unit towards the rear. The upper level decks are provided with privacy screens on the floor plans to prevent viewing across the side boundaries, though these screens are not shown on the elevations. A condition of consent is therefore recommended to ensure these screens are constructed. These screens will limit direct overlooking of both the eastern and western neighbours. In addition, the rear first floor decks of units 7 and 8 in the rear building will be surrounded by a planter box, which will give further screening and protection from downwards viewing into neighbouring lots.

Given the nature of the east facing windows at number 26, the proposal will not create direct views into the main living areas of the neighbour. Generally the side facing windows at the first floor level to both east and west are bedroom windows, with the exception of one ensuite window (W02 in unit 7), a small glass block window from bedroom 3 / study in Unit 3 (W04), and similar small west facing windows in the corners of living areas of units 4 and 8. All the living areas are orientated with their main views towards the rear, and side views are generally limited and obscured by the size and location of windows, and privacy screening.

To the rear, the proposed setback to the rear boundary is a minimum of 9m, and the rear first floor decks are located a further 1m back due to the planter box. Further to this, lillypilly screen planting is proposed along the perimeter of both the side and rear boundaries to a height of approximately 3m at maturity, and 3 new anghophoras in the rear setback area (mature height of 15m - 20m). The screen planting proposed will further preserve privacy from the first floor levels, and will adequately mitigate any concerns arising from the ground floor.

Given these considerations, and subject to a condition to ensure the privacy screens are constructed on the east and west elevations of the first floor decks, privacy will be maintained to a reasonable level.

- **Tree removal**

Concerns were raised regarding the removal of trees on site.

Comment:

The site currently contains 17 trees, with 14 trees proposed to be removed. the existing canopy trees on site are generally confined to the rear of the site. Council's Landscape Officer has assessed the proposal and is generally satisfied with the landscape plans provided and the replacement planting proposed. A condition has been recommended for an additional canopy tree to be planted on site, due to the number of existing canopy trees lost.

The loss of the existing trees is unfortunate, but the trees proposed for removal are generally within the developable area of the site (as dictated by the applicable built form controls). The landscaped areas provided on the plans, and replacement planting will ensure the site retains a landscaped setting. This issue does not warrant refusal of the application.

- **Excavation**

Concerns were raised with the amount of excavation required for the development, and the



related impacts including noise, dust, diesel pollution and potential structural damage to neighbouring dwellings.

Comment:

The proposal will require a substantial amount of excavation to provide for the proposed basement car parking area. The proposed excavation is up to 3.2m in depth. The application includes a geotechnical report which states that *Due to the prevailing geologic conditions on site and the distance of excavation from the neighbouring properties, there is a minimal potential to create significant ground vibrations which could damage neighbouring houses and Carawa Road reserve provided the recommendations for rock excavation equipment in this report are followed.*

The report further states:

The exact strength of the bedrock that will be encountered during the excavation is unconfirmed and is likely to vary with depth and across the site. However there is a potential for the lower/deeper portions of the excavation to intersect medium strength and potentially high strength (HS) bedrock which will require rock excavation equipment (i.e. rock hammer). The use of rock hammers has the potential to create ground vibrations which could impact adjacent structures. These should be limited to ≤300kg to maintain low ground vibrations levels as per the AS2187.2-2006 requirements at adjacent structures...

...The proposed works are considered suitable for the site and may be completed with no impact to the adjacent properties provided the recommendations of this report are implemented in the design and construction phases.

The recommendations of the geotechnical report will be included in the conditions of consent should the application be approved, and subject to this condition, the proposal is considered acceptable in this regard.

With regard to noise and other impacts, these are unfortunate but temporary side effects of construction. Standard conditions of consent will limit the hours of operation for excavation to between 8.00 am to 5.00 pm Monday to Friday only. Subject to this condition the issue is not considered to warrant refusal of the application.

- **Over 55 living**

Concerns were raised with the regulation of the development in the future in terms of enforcement of the minimum age for residents of senior's housing.

Comment:

Conditions of consent are recommended requiring the creation of a positive covenant to be placed on title stipulating that Council is the sole authority to release or modify the covenant and that the development is only permitted to be occupied by persons detailed as follows:

- (a) seniors or people who have a disability;
- (b) people who live within the same household with seniors or people who have a disability;
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

Subject to this condition, the submission is considered to be reasonably satisfied in relation to this issue.



- **Incorrect plans**

Concerns were raised that the plans were incorrect and that there were various inaccuracies and inconsistencies between the plans and documentation provided.

Comment:

The plans provided appear to be generally accurate and consistent. Concerns were raised that side elevations were not provided, but side elevations have been provided on plan DA-20, with front and rear elevations provided on plan DA21. Other concerns in relation to interpretation of heights and floor space ratio have been addressed above (under 'Over development').

Concern was also raised that the geotechnical report provided did not correctly describe the development currently on 26 Carawa Road, but referred to the prior development on that land. This is true, the geotechnical report provided does not correctly describe the neighbouring development at number 26. The findings and recommendations of that report indicate little potential for damage to neighbouring property, and that the proposed works *"may be completed with no impact to the adjacent properties provided the recommendations of this report are implemented in the design and construction phases"*. However, given the failure to correctly identify the neighbouring development at number 26, a condition is recommended requiring the geotechnical report to be amended prior to issue of the construction certificate to assess any possible changes required to the recommendations based on the location and setbacks of the development at number 26.

Subject to this condition, the submissions are considered to be reasonably satisfied.

- **Location of development**

Concerns were raised regarding the location of the site with regard to commercial centres.

Comment:

The site is not within close walking distance to any commercial centre, although there is a small mixed use commercial and residential development currently under construction at the corner of Fisher Road North and Carawa Road approximately 150m to the east of the site. However, SEPP (HSPD) allows for this type of development as long as there is access to public transport within 400m walking distance of the site which provide regular access to commercial centres. The site complies with these requirements (see assessment under SEPP HSPD section of this report), and conditions of consent will ensure adequate footpath access is constructed by the applicant to access the local bus stops.

This issue does not warrant refusal of the application.

- **Footpath**

A request was made that the footpath be constructed in accordance with broader Council plans for shared footpaths.

Comment:

The draft Northern Beaches Bike Plan includes a draft cycle way along the southern side of Carawa Road. This plan is currently in draft, anticipated to be presented to Council in August 2019. The site is on the northern side of Carawa Road, and the development will involve construction a new footpath on the northern side of the road. Council's Engineers have provided conditions of consent to ensure that the footpath is constructed in accordance with Council policy for footpath construction.

The submission is considered to be reasonably satisfied in this regard.



- **Private Open Space**

Concerns were raised that sufficient private open space was not provided for the development.

Comment:

The proposal provides a minimum of 15sqm of private open space for each proposed unit, which complies with the minimum requirements of SEPP (HSPD). Additionally, all units except unit 3 have more than the required minimum, and the ground level units have substantially more so.

This issue does not warrant refusal of the application.

- **Wheel chair access**

Concerns were raised that there are no provisions for wheel chair access in the development.

Comment:

All residential parking spaces proposed are accessible spaces, with access to the elevator from all levels of the building. Further, the access report provided with the application indicates that wheelchair access will be available at compliant gradients to the bus stops local to the site. The access report demonstrates that the development will comply in all respects with the requirements for access under SEPP(HSPD).

This issue does not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application proposes demolition of existing structures and construction of 2 (two) separate 3 storey residential buildings each containing a basement car park servicing 4 residential units each.</p> <p>No objections to the development subject to inclusion of the attached conditions and the note below.</p> <p><i>Note: The proposed development may not fully comply with some requirements of the Building Code of Australia (BCA) and the Premises Standards. It is considered that in this instance, these issues may be determined at Construction Certificate Stage without recourse to a Modification.</i></p>
Landscape Officer	<p>The Arborist's Report and Landscape Plan submitted with the application are noted.</p> <p>The sites currently contain 17 trees, with 14 trees proposed to be removed.</p> <p>3 prescribed canopy trees are indicated for retention.</p> <p>The Landscape Plans indicate replanting of 25 additional trees of varying mature heights on site.</p>

Internal Referral Body	Comments
	<p>In view of the extensive canopy being removed, it is recommended that one larger canopy tree be provided to the front of the site and street trees be incorporated to enable better integration to the streetscape.</p> <p>It is also noted that a pathway in the road reserve is required to be installed. The proposed path would need to be constructed adjacent to mature street trees in the Carawa Road road reserve. Specific tree protection conditions have been included, including preparation of tree protection plans and appointment of a Project Arborist to oversee works adjacent to trees.</p> <p>Recommended conditions have been included if the proposal is to be approved. It is further recommended that the Landscape Plans be included in the approved documentation if the proposal is to be approved.</p>
NECC (Development Engineering)	<p>Final Comments 11/06/19</p> <p>It has been requested that a deferred commencement condition be provided in regard to the provision of a downstream inter allotment easement as the the previous drainage solution was not acceptable to Council. The deferred commencement condition will also require the provision of a drainage design which details an on site detention system(s) to be drained to the rear of the site and then via an inter allotment drainage easement to Fisher Road North.</p> <p>The stormwater drainage design is to be in accordance with Councils policies and specifications.</p> <p>Further assessment dated 29/3/19</p> <p>Reference is made to the letter dated 12 March 2019 by Taylor Consulting.</p> <p>The stormwater drainage proposal outlined in the above letter is not acceptable to Council for the following reasons:</p> <p>1.The development site falls generally away from the street. Stormwater runoff from the development is proposed to be discharged to the kerb in Carawa Road which is contrary to section 2.3 of Council's Stormwater Drainage from Low Level Properties Technical Specification and not consistent with Development Engineers' advice provided at the pre-lodgement meeting PLM2017/0051. Therefore the proposal is not acceptable to Council.</p> <p>2.In the event of a failure of the OSD drainage system, overflow from the system would result in stormwater damage to the development site and adjacent properties. If the development site had a drainage easement, any overflow from the OSD tank would be safely conveyed to a public road without negatively impacting the development site and</p>

Internal Referral Body	Comments
	<p>adjacent properties.</p> <p>Not supported for approval due to lack of information to address:</p> <ul style="list-style-type: none"> • Stormwater drainage for the development in accordance with clause C4 Stormwater of the DCP <p>Previous Assessment</p> <p><u>Stormwater:</u></p> <p>The proposed Stormwater Concept Plan is unsatisfactory. Stormwater drainage for the site shall be in accordance with Council's Stormwater Drainage from Low Level Properties Technical Specifications. In particular, the following matters have been identified:</p> <ul style="list-style-type: none"> • Section 2.3, stormwater disposal shall generally be via a gravity fed pipeline where properties fall away from the street. This will require an easement to drain water through downstream property and evidence of owners consent provided with the development application. Insufficient information has been provided to indicate this has been exhaustively investigated by the Applicant, including copies of any letters sent to all potential downstream property (a Sample Letter can be referred to in Appendix 1) and a Statutory Declaration by the property owner stating that consent was not able to be obtained. <p>It is noted that the Applicant has previously been advised of the requirements for stormwater drainage for the subject development in pre-lodgement (PLM2017/0051).</p> <p>Insufficient information has been provided to demonstrate compliance with Council's Onsite Stormwater Detention (OSD) Technical Specification. The minimum information required to be submitted is detailed in Section 3.3, including the provision of DRAINS model. In particular, the following matters have been identified:</p> <ul style="list-style-type: none"> • Section 2.4, mechanical methods of stormwater disposal (e.g. pump-out systems) for the purpose of on-site detention is not permitted. • Section 2.4, the diversion of flows from one catchment to another catchment will generally not be permitted, and as such, this clause has not been satisfactorily addressed. Any proposed drainage outside of its natural catchment would be subject to demonstration that such discharge would not adversely affect downstream lands, drainage system or receiving watercourse. In this regard, the capacity of the kerb

Internal Referral Body	Comments
	<p>and gutter, including any low level driveways, shall be considered.</p> <ul style="list-style-type: none"> Section 4.8, permissible site discharge shall not exceed 20L/s per 15m run of kerb for all storms up to and including the 100 year ARI. <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> Stormwater drainage for the development in accordance with clause C4 Stormwater.
Road Reserve	No impact on existing council road assets. Provision of footpath to access public transport is supported.
Strategic and Place Planning (Urban Design)	<p>The proposal in its current form can be supported. Please find following Urban Design comments for consideration:</p> <p>1. SEPP Housing For Seniors or People with a Disability</p> <p><i>2 Aims of Policy</i> (1) <i>This Policy aims to encourage the provision of housing (including residential care facilities) that will:</i> (a) <i>increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and</i> (b) <i>make efficient use of existing infrastructure and services, and</i> (c) <i>be of good design.</i> (2) <i>These aims will be achieved by:</i> (a) <i>setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and</i> (b) <i>setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and</i></p> <p><i>Part 2 – Design Principals</i> <i>Division 1 General</i> <i>34 Visual and acoustic privacy</i> <i>The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:</i> (a) <i>appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and</i> (b) <i>ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</i></p> <p><u>RESPONSE</u> It will be a condition of consent that adequate external screening features are applied to all windows, with appropriate operable internal screening devices for all windows and doors. They can be either</p>

Internal Referral Body	Comments
	<p>metal or timber louvre treatments but should retain the aesthetic of the overall design and intent of the proposed developed design and articulation.</p> <p>2. SENIORS LIVING POLICY : Urban Design Guideline for Infill Housing 2004</p> <p><i>2. Site Planning and Design (page 6)</i> <i>Objectives</i> ... - To provide high levels of amenity for new dwellings ...</p> <p><u>RESPONSE</u> Site planning generally meets with the requirements of Site Planning and Design Seniors Living Policy.</p> <p><i>5. Internal Site Amenity (page 12)</i> <i>Design Principles and better practice</i> <i>In villa or townhouse style developments provide dwellings with a sense of individual identity through building articulation, roof form and other architectural elements;</i> - Provide buffer spaces and or barriers between dwelling and driveways, or between dwellings and communal areas - Use trees, vegetation and fencing or screening devices to establish curtilages for individual dwellings, . . . - Provide a sense of address for each dwelling</p> <p><u>RESPONSE</u> Units 2 and 4 have bedrooms planned and oriented adjacent the entry driveway. Whilst the constraints of the site and the preference to have habitable rooms designed with adequate fenestration is preferred, the acoustic pollution from cars entering and exiting the driveway may pose acoustic issues for these bedrooms. A combination of external planting along with the screening addressed above in addition to internal fittings/blinds that have high level of acoustic attenuation properties to assist with acoustic pollution from the driveway activity.</p> <p>3. Built Form Controls</p> <p>WLEP 2011 1.2 Aims of Plan (1) This Plan aims to make local environmental planning provisions for land in that part of Northern Beaches local government area to which this Plan applies (in this Plan referred to as Warringah) in accordance with the relevant standard environmental planning instrument under section 33A of the Act.</p> <p>(2) The particular aims of this Plan are as follows: (d) in relation to residential development, to: (i) protect and enhance the residential use and amenity of existing</p>

Internal Referral Body	Comments
	<p>residential environments, and (ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and (iii) increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah,</p> <p><u>RESPONSE</u> The proposed development demonstrates there will be little impacts on the surrounding residential neighbourhood development. The mass and bulk of the development maintains a semi detached R2 residential feel.</p> <p>4.3 Height of buildings (1) The objectives of this clause are as follows: (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development, (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access, (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments, (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.</p> <p><u>RESPONSE</u> There is a minor encroachment exceeding the height of buildings control. The minor encroachment can be supported.</p> <p>WDCP 2011</p> <p>D7 Views Objectives • To allow for the reasonable sharing of views. • To encourage innovative design solutions to improve the urban environment. • To ensure existing canopy trees have priority over views. Requirements 1. Development shall provide for the reasonable sharing of views.</p> <p><u>RESPONSE</u> Orientation of the main living spaces to the north of the proposed development optimises solar gain to these areas promoting reasonable sharing of views to the majority of units in the proposed development.</p> <p>D9 Building Bulk 1 Applies to Land This control applies to land to which Warringah Local Environmental Plan 2011 applies. 2 Objectives • To encourage good design and innovative architecture to improve</p>

Internal Referral Body	Comments
	<p><i>the urban environment.</i></p> <p><i>• To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.</i></p> <p>3 Requirements</p> <p><i>1. Side and rear setbacks are to be progressively increased as wall height increases.</i></p> <p><i>2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.</i></p> <p><i>3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:</i></p> <p><i>The amount of fill is not to exceed one metre in depth.</i></p> <p><i>Fill is not to spread beyond the footprint of the building.</i></p> <p><i>Excavation of the landform is to be minimised.</i></p> <p><i>4. Building height and scale needs to relate to topography and site conditions.</i></p> <p><i>5. Orientate development to address the street.</i></p> <p><i>6. Use colour, materials and surface treatment to reduce building bulk.</i></p> <p><i>7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.</i></p> <p><i>8. Articulate walls to reduce building mass.</i></p> <p>RESPONSE</p> <p>The architectural style, material palette and articulation devices articulate the facades and break down the mass and bulk adequately. The planning across the site and the roof forms assist to minimise impacts on the adjoining dwellings. As such the proposed development can be supported.</p> <p>As discussed above the external screening devices could take cues from the architectural detail inherent to the design; externals mounted vertical timber batten screens similar to timber detailing throughout the project; a vertical articulation with the screening devices picking up upper and lower windows as a vertical expression.</p> <p>CONDITION OF CONSENT</p> <p>Privacy screening is to demonstrate adequate acoustic privacy is achieved in accordance with the ADG principle recommendations (as a reference). Documentation is to demonstrate privacy screening has been addressed prior to CC. Privacy screening is installed to the satisfaction of the Certifier prior to issue of interim/final Occupation Certificate.</p>
Traffic Engineer	<p>A two-storey aged housing complex of 8 units is proposed on the lot with the following:</p> <ul style="list-style-type: none"> ▪ A total of 8 units; • basement parking split into two sections;



Internal Referral Body	Comments
	<ul style="list-style-type: none"> • 8 resident car parking spaces; • 2 visitor car parking spaces. <p>Traffic: Generation of the site is deemed negligible on the network. No concerns are raised.</p> <p>Parking: The Traffic report is not consistent with the submitted plans. According to the Basement Carpark Plan (DA10G) there is a total of 16 residential parking spaces and 2 visitor spaces. Whilst the report is incorrect, the provisions shown in the plan are deemed adequate.</p> <p>Car Park: The layout of the carpark is generally in compliance with AS2890.1:2004. No concerns are raised.</p> <p>Servicing: There has been no provision of a servicing bay onsite however approval of the waste servicing arrangements (subject to conditions) has been recommended by Council's Waste Officer so no concerns are raised.</p> <p>Pedestrian: The low speed environment within the basement is deemed safe for pedestrian and vehicular interactions.</p> <p>As a seniors living development, the applicant is required to provide safe access to public transport services. The applicant has provided plans indicating that footpaths will be installed between the site and Alfred Street and the pedestrian refuge at Alfred Street will be upgraded to RMS standards. These works will facilitate safe access to the nearest bus stops on either side of the road. Conditions requiring engineering drawings of the proposed works will be required prior to release of the construction certificate.</p>
Waste Officer	No comments. Satisfactory subject to conditions.
External Referral Body	Comments
Ausgrid; (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the assessment,



many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 973849M).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	45	45

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

SEPP (Housing for Seniors or People with a Disability) 2004

The development application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for in-fill self-care housing.

Chapter 1 – Preliminary

The aims of the Policy are set out in Clause 2 and are as follows;

This Policy aims to encourage the provision of housing (including residential care facilities) that will;

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- (b) make efficient use of existing infrastructure and services, and*
- (c) be of good design.*

Comment:

The proposed development is considered to be consistent with the aims of the Policy as set out above



for the following reasons:

- (a) The development will increase the supply and diversity of residences that meet the needs of seniors or people with a disability.
- (b) The proposed development also makes efficient use of existing infrastructure and services, in that the site is well serviced by existing public transport and is located within 400m of the nearest bus stop. The site is located approximately 250m - 300m from a local retail centre (Carawa Road Shops) which provides a mix of retail and commercial services.
- (c) When considering the development against the aim of achieving good design, the development must be considered in context with other provisions of the SEPP.

In particular, that development pursuant to this SEPP is to be of a scale so that it is able to fit reasonably within its local context.

In this regard, this assessment has found that the built form of the development maintains a reasonable level of amenity and is compatible with the area in which it will sit. The development does not give rise to any adverse amenity impacts in terms of privacy, view loss or overshadowing and will fit reasonably within its local context.

Chapter 2 – Key Concepts

Comment:

The development comprises self-contained dwellings, which are to be occupied by seniors or people with a disability. On this basis, it is considered that the proposed development is consistent with Chapter 2 of the SEPP.

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. If the application is approved the required condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	The subject site has satisfactory access to these services via local bus services in accordance with Clause 26(2)(b).	Yes
26(2)	Access complies with this clause if: (a) the facilities and services referred are DA2018/1835	There are bus stops located between 55 to 120 metres walking distance from the site on Carawa Road to access bus routes 146/E79 which travel to Dee Why,	Yes

Development Criteria			
Clause	Requirement	Proposal	Complies
	located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400metres away.	Brookvale, Warringah Mall and Military Road to Sydney CBD. Council's Traffic Engineer has provided conditions of consent to ensure a footpath is constructed to the west of the site and a traffic island to enable safe access to the bus stop on the opposite side of Carawa Road.	
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	The site is not bush fire prone land.	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	Given the existing residential use of the site and documentation provided, the site has access to reticulated water and sewerage infrastructure.	Yes
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard to the following criteria specified in Clauses 25(5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v): i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision, v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.	The development is compatible with the surrounding natural environment and existing residential use of land within the vicinity of the proposed development. The site is served by existing infrastructure (electricity, water and sewerage) that is capable of meeting the demands that will arise from the development. For the reasons outlined within this report, the development is considered to be compatible with the bulk, scale, built form and character of the surrounding area.	Yes
PART 3 - Design Requirements – Division 1			
	DA2018/1835		Page 21 of 61



Development Criteria			
Clause	Requirement	Proposal	Complies
30	A site analysis is provided.	A detailed site analysis in plan form and within the Statement of Environmental Effects has been provided which satisfactorily addresses the requirements of this control.	Yes

Clause 31 Design of in-fill self-care housing

Pursuant to Cause 31 in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

The provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* have been taken into consideration in the assessment of the application against the design principles set out in Division 2, Part 3 of SEPP HSPD. A detailed assessment of the proposals inconsistencies with regards to the requirements of SLP is undertaken hereunder.

Section	Requirements	Comment
1. Responding to context	Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form. Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.	The area is characterised by detached dwellings, one and two storeys in height. The proposed 8 units are broken into two separate buildings, more visually consistent with the existing pattern of development. The proposal is also generally consistent with the pattern of development expected in the area, as indicated by the general level of compliance with the WLEP overall height standard, and WDCC built form controls. Only a minor non-compliance with the side boundary envelope (caused mainly by an architectural feature) is proposed, and a non-compliance to landscaped area. Council is unable to refuse the development on landscaped area.
2. Site Planning and design	Objectives of this section are to: -Minimise the impact of new development on neighbourhood character -Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.	The development will present as two buildings of part single and part two storey elements when viewed from surrounding properties. The built form is generally consistent with the bulk and scale of surrounding buildings. The bulk and scale of the development has been effectively minimised by appropriate building setbacks, articulation and landscaping. Parking is to be provided below ground in the basement, and in this regard will not be visually dominant.

Section	Requirements	Comment
3. Impacts on streetscape	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape. 	<p>The general level of compliance with the LEP and DCP built form controls, particularly with the front (southern) building which complies in full, will minimise impacts on the streetscape. The landscape plan includes trees in the front setback area of a height that will provide effective screening of the built form.</p> <p>Parking is provided below ground, and will not dominate the streetscape in this regard.</p>
4. Impacts on neighbours	<p>The proposal is generally in accordance with the requirements of this section.</p>	<p>The development has been assessed with regards to privacy, overshadowing, building bulk and view sharing.</p> <p><u>Privacy</u> The development has been designed having regard to maintaining a reasonable level of acoustic and visual privacy between properties.</p> <p>Appropriate building setbacks and effective use of privacy treatments maintain a reasonable level of privacy to adjoining properties. Privacy screens have been provided to the upper level decks. The ground floor rear deck on the eastern side is raised up to 910mm above ground level. However, the proposed landscape plan includes lilly pilli hedge planting along the side boundaries, to a height of approximately 3m at maturity. Given the side setback of the deck (between 2m and 3m from the eastern side boundary), the screen planting proposed is considered sufficient to maintain privacy, without the need for a privacy screen attached to the eastern side of the deck.</p> <p>The development satisfies the requirements and objectives of Clause D3 – 'Noise' and of Clause D8 – 'Privacy' under the WDCP 2011 under the WDCP 2011.</p>

Section	Requirements	Comment
		<p><u>Overshadowing</u> The shadow diagrams provided by the applicant indicate that the development will not result in any unreasonable overshadowing of the neighbouring residential properties.</p> <p>The development satisfies the requirements and objectives of Clause D6 – 'Access to Sunlight' under the WDCP 2011.</p> <p><u>Building bulk</u> As detailed throughout this report, the bulk of the building and its impacts on neighbouring properties have been effectively minimised by way of appropriate building setbacks, articulation and varied building height.</p> <p>The development satisfies the requirements and objectives of Clause 4.3 - Height of Buildings Development Standard under WLEP 2011 and Clause D9 - 'Building Bulk' under WDCP 2011.</p> <p><u>View sharing</u> The development will not have any adverse impact on view sharing and satisfies the Planning Principle established in <i>Tenacity Consulting v Warringah [2004] NSWLEC 140</i> and Clause D7 – 'Views' under the WLEP 2011. No unreasonable view loss was identified, and no submissions have been received in this regard.</p>
5. Internal site amenity	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> -Provide safe and distinct pedestrian routes to all dwellings and communal facilities. 	<p>The development is served by pathway, lift and stairwell access/egress that provides safe and distinct pedestrian routes to all levels of the building, individual dwellings and to the communal facilities of the development.</p>

Clause 32 Design of residential development

In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2



of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	<p>The subject site is located within the R2 Low Density Residential zone. Surrounding land is similarly zoned, with the exception of a neighbourhood centre at the corner of Fisher Road North and Carawa Road.</p> <p>The character of the area can be described as predominantly single and two storey dwelling houses and detached garages. There is a mixed use development (commercial and residential) under construction at the corner of Carawa Road and Fisher Road North.</p> <p>The development recognises the desirable elements of the subject sites current character and adopts a design that is consistent in built form with that of detached style housing in the local area, by varying the height of the building, in particular including one and two storey elements, by varied setbacks, generally greater than the minimum requirements under the Warringah DCP, and by architectural features to break up the built form.</p> <p>The buildings have been well designed through appropriate building separation, setbacks and articulation.</p> <p>The development is well served by areas of landscaping which will enhance and soften the visual appearance of the development when viewed from surrounding properties.</p>	Yes
DA2018/1835	b. Retain,	The subject site is not located	Yes

Control	Requirement	Proposed	Compliance
	<p>complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.</p> <p>c. Maintain reasonable neighbour amenity and appropriate residential character by;</p> <p>(i) providing building setbacks to reduce bulk and overshadowing</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development,</p> <p>(iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours.</p>	<p>within close proximity to a heritage conservation area or any heritage items identified under WLEP 2011..</p> <p>The development maintains a reasonable level of neighbour amenity and appropriate residential character.</p> <p>The development has been designed having regard to maintaining a reasonable level of privacy to adjoining properties and for future dwelling occupants. Appropriate building separation, setbacks and articulation have been adopted in the design of the building to ensure the visual bulk and scale is appropriately minimised.</p> <p>The development allows for a reasonable level of solar access to be provided to adjoining properties and for future dwelling occupants in accordance with the requirements of the SEPP and Clause D6 - Access to Sunlight under WDCP 2011..</p> <p>The siting and design of the buildings appropriately relates to the sites land form and local topography.</p> <p>The development will fit generally within the side boundary envelope, with a minor exception at the rear, and within the maximum height of buildings.</p>	<p>Yes</p>
DA2018/1835	d. Be designed so that	The front setback of the front	Yes

Control	Requirement	Proposed	Compliance
	the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,	building is 6.5m, consistent with the setback requirement of the DCP, and generally consistent with the prevailing front setbacks of the dwellings along Carawa Road.	
	e. embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape.	36% of the total site area is landscaped area. Landscaped areas are provided around the perimeter and through the central part of the site. The areas identified as soft landscaping provide a satisfactory level of landscaping through the provision of trees and shrubs which will assist in softening the appearance of the development when viewed from the street and neighbouring properties. Council's Landscape Officer has reviewed the landscape plans provided, and is satisfied subject to conditions including the requirement for replacement canopy planting.	Yes
	f. retain , wherever reasonable, major existing trees, and	The proposal includes the removal of a number of major trees which are located within the developable area of each subject site. The site currently contains 17 trees, with 14 trees proposed to be removed. 3 prescribed canopy trees are indicated for retention. The Landscape Plans indicate replanting of 25 additional trees of varying mature heights on site. The application has been reviewed by Council's Landscape Officer who raises no objections to the removal of trees, retention of trees and provision of landscaping proposed subject to conditions	Yes

DA2018/1835

Page 27 of 61

Control	Requirement	Proposed	Compliance
	g. be designed so that no building is constructed in a riparian zone.	which have been included in the recommendation of this report. The site is not located within a riparian zone.	Yes
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	The development has been designed having regard to maintaining a reasonable level of acoustic and visual privacy between properties. Appropriate building setbacks and effective use of privacy treatments maintain a reasonable level of privacy to adjoining properties. The development satisfies the requirements and objectives of Clause D3 – 'Noise' and of Clause D8 – 'Privacy' under the WDCP 2011. The development satisfies this Principle.	Yes
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	The individual clauses are addressed as follows: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, <u>Comment</u> 100% of apartments will receive a minimum of two hours direct sunlight between 9am and 3pm in mid-winter. The shadow diagrams provided by the applicant indicate that the development will not result in any unreasonable overshadowing over the neighbouring residential properties to the east and west.	Yes

Control	Requirement	Proposed	Compliance
		<p>The development satisfies the requirements and objectives of Clause D6 – 'Access to Sunlight' under the WDCP 2011.</p> <p>(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.</p> <p><u>Comment:</u> The development is accompanied by NatHERS Certificates which indicates that the development will have a rating of between 4.9 stars and 7.2 stars with an average of 6.1 stars under the Nationwide House Energy Rating Scheme which is considered satisfactory for the location of the site.</p> <p>The environmental performance of the development is also guided by the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. The development is defined under cl.3(1) of the Environmental Planning and Assessment Regulation, 2000 as BASIX Affected Development because it involves the erection of a BASIX Affected Building.</p> <p>A BASIX certificate has been submitted with the application which demonstrates the development will achieve compliance with the minimum targets.</p>	

Control	Requirement	Proposed	Compliance
		Therefore, the development satisfies the requirements of the SEPP.	
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	Council's Development Engineers have provided conditions of consent including a deferred commencement condition to provide plans that demonstrate that the development will adequately manage stormwater run off on site in accordance with Council's requirements, including the requirement to obtain an easement to drain water from the rear of the property to Fisher Road North. The proposal is recommended for approval by Council's Development Engineer subject to conditions which have been included in the recommendation of this report.	Yes
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who	The development accommodates 8 units and is therefore not subject to an assessment under the principles of Crime Prevention Through Environmental Design (CPTED). Notwithstanding the above, the proposed development is considered to be generally consistent with the principles of CPTED.	Yes



Control	Requirement	Proposed	Compliance
	approaches their dwellings without the need to open the front door.		
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	<p>The development is capable of providing for obvious and safe pedestrian links to bus stops on Carawa Road through the provision of a public pathway located adjacent to the main pedestrian entrance to the site which will provide a continuous path to the local public transport. A condition of consent is included in the recommendation requiring the footpath to be constructed along Carawa Road to the west, and to construct a pedestrian island at the intersection of Carawa Road and Alfred Street to provide safe access to the bus stop on the southern side of Carawa Road.</p> <p>The development provides for a safe environment for pedestrians and motorists with convenient access and on-site parking for residents and visitors.</p>	Yes
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	<p>Waste facilities are provided at ground level at the front of the site in the form of a bin storage area and within the basement car park.</p> <p>A Waste Management Plan has been provided with the application and accepted by Council's Waste Management Department.</p>	Yes

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Proposed	Compliance
Site Size	1000 sqm	1782sqm	Yes

DA2018/1835

Page 31 of 61



Control	Required	Proposed	Compliance
Site frontage	20 metres	26.35m	Yes
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	8m	Yes
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	The buildings are no more than two storeys in height above ground.	Yes
	A building located in the rear 25% of the site must not exceed 1 storey in height (development within 15.51 metres of the rear boundary).	The proposal complies with this requirement.	Yes

Clause 41 Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development.

The application is supported by an Access Report (refer to Access Report prepared by Accessibility Solutions dated 5 November 2018) that demonstrates the development is capable of achieving the requirements of Clause 41.

In this regard, compliance with the recommendations and requirements contained within the Access Report is included as a condition of consent within the Recommendation of this Report.

Part 5 Development on land adjoining land zoned primarily for urban purposes

This part is not applicable to the subject site.

Part 6 Development for vertical villages

This part is not applicable to the proposed development.

Part 7 Development standards that cannot be used as grounds to refuse consent

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50.

The following table outlines compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to	8m	Yes



Control	Required	Proposed	Compliance
	ground level immediately below)		
Density and scale	0.5:1	0.69:1	No - There is no applicable floor space ratio control under the Warringah LEP 2011. As such, refusal of the application is not recommended on this basis. The density of the development is generally in accordance with the density permitted by the relevant built form controls under the WLEP and WDCP, with the exception of landscaped open space as measured in accordance with the DCP. However, the application cannot be refused on the basis of landscaped area (see below).
Landscaped area	30% of the site area is to be landscaped	36%	Yes
Deep soil zone	15% of the site area Two thirds of the deep soil zone should preferably be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	26%. Approximately 55% of the deep soil area is located in the rear setback area. Substantial areas are also located between the buildings and in the front setback area.	Yes - note that Council's Development Engineers have included a condition of consent requiring that on site detention tanks not be located within the landscaped area on site. As such, the landscaping in the front setback area has been included as deep soil area.
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	The shadow diagrams demonstrate that at least 6 of the 8 (75%) of apartments will receive the required solar access.	Yes



Control	Required	Proposed	Compliance
Private open space	15sqm of private open space per dwelling not less than 3 metres long and 3 metres wide	All units provided with sufficient private open space.	Yes
Parking	(22 bedrooms proposed – 11 car parking spaces required)	16 car spaces are provided including two visitor spaces.	Yes

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	8.3m	Yes

Compliance Assessment

Clause	Compliance with Requirements
DA2018/1835	Page 34 of 61



Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.6m	N/A	Yes
B3 Side Boundary Envelope	E 4m	Breach up to 740mm	18.5%	No
	W 4m	Complies	N/A	Yes
B5 Side Boundary Setbacks	E 0.9m	3.6m	N/A	Yes
	W 0.9m	2.7m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	6.5m	N/A	Yes
B9 Rear Boundary Setbacks	6m	9m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	22.3%	44.25%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

The proposed rear building will breach the envelope on the eastern side by up to 740mm. This breach is mainly caused by the architectural feature running along the top of the wall.

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

Comment:

The design of the building has the highest point of the roofs at the eastern corners of the buildings. The breach of the envelope could be designed out relatively easily through reversing the pitch of the roof. However, this is a design feature that is meant to help break up the bulk of the building, and reversing the pitch to create a more standard pitched roof design for the whole rear building would not necessarily result in a better design outcome. The impacts caused by the non-compliance are not considered to be unreasonable in terms of amenity to the surrounding neighbours. Solar access and privacy will be maintained to a reasonable level. Large side setbacks will be maintained (a minimum of 3m to the eastern side boundary), and this will enable planting in the side setback areas. Hedges are proposed along the side and rear boundaries which will also help to screen the built form. Given these considerations, the visual dominance of the new development will be minimised, despite the proposed non-compliance.



- *To ensure adequate light, solar access and privacy by providing spatial separation between buildings.*

Comment:

The proposed breach will not result in any unreasonable impacts on light, solar access or privacy. The site is on a north/south orientated block, and as such both eastern and western neighbours will receive solar access in accordance with the requirements of the DCP (confirmed by the shadow diagrams provided). There are also no areas outside the envelope where residents might stand and overlook the neighbouring properties.

- *To ensure that development responds to the topography of the site.*

Comment:

The topography is relatively flat, with a gradual fall to the rear. The envelope breach is not as a result of the topography, but as a result of the design as discussed above. The proposal is adequately responsive to the topography.

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.

D1 Landscaped Open Space and Bushland Setting

The proposal results in approximately 22.3% landscaped open space as measured in accordance with clause D1 of the DCP. However, clause 50 of the SEPP (HSPD) prevents Council from refusing the development based on landscaped area provided it meets the landscaping requirements of the SEPP. The development achieves these requirements. No further consideration is required in this regard.

D9 Building Bulk

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The proposal is generally compliant with the relevant built form controls, with an exception for the side boundary envelope as discussed in this report. This non-compliance is mainly caused by an architectural feature which is meant to provide visual interest to the development and help to mitigate the bulk and scale of the proposal. The proposed 8 units have been broken into two separate (above ground) buildings. These buildings will be relatively large. However, the roof form helps to give an architectural impression of each building being further separated into two. Varied finishes and articulated projecting elements have been included in the design, to further help break up the built form. The proposed landscaping will also contribute to screening the built form, and Council's Landscape Officer has provided a condition of consent requiring an extra canopy tree in the front setback area, which will further screen and soften the development.

As such, the development is considered to be sufficiently well designed, and may be expected to improve the urban environment.



- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

For the reasons discussed above, the visual impact of the development will be adequately minimised. The proposal is overall generally compliant with the relevant built form controls, and includes architectural features and articulation to break up the built form. The proposed landscaping will further soften the visual impact 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 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 \$ 2,982,963		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 28,338
Section 7.12 Planning and Administration	0.05%	\$ 1,491
Total	1%	\$ 29,830

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.

DA2018/1835



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

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

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

In summary, a detailed assessment has been required for the following specific issues:

- State Environmental Planning Policy (Housing for Seniors or People with a Disability)
- Side boundary envelope
- Submissions received

The assessment has found that the non-compliance with the side boundary envelope is acceptable within the context of the site and the performance of the development against the remaining built form controls, particularly the significant side setbacks.

The proposal is also generally consistent with all relevant planning controls, including with regard to SEPP (HSPD). The submissions received have been addressed and are not considered to have raised issues that warrant the refusal of the application, subject to conditions of consent with regard to privacy screening and updating of the geotechnical report.

Council's Development Engineers and were not satisfied with the original proposal to drain storm water to Carawa Road, and the locating of the OSD basin within the front landscaped area was also unacceptable. As such, a deferred commencement consent is recommended, requiring the applicants to provide a satisfactory storm water design, including drainage via easement from the rear of the property to Fisher Road North, and the relocation of the OSD tank outside of any landscaped areas, prior to activation of the consent.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1835 for Demolition of the existing dwellings, the construction of a seniors living development comprising 8 units, and strata subdivision on land at Lot 6 DP 11438, 22 Carawa Road, CROMER, Lot 5 DP 11438, 24 Carawa Road, CROMER, subject to the conditions printed below:

DEFERRED COMMENCEMENT CONDITIONS



1. Stormwater Drainage Easement

As the natural fall of the land is towards the rear of the site the disposal of stormwater drainage is to via an interallotment drainage easement through the downstream property(ies) and connecting to Councils drainage network in Fisher Road North. The easement is to be created under Sections 88B and/or 88K of the Conveyancing Act 1919. The applicant must provide Council with evidence of the creation of the easement in order to activate the consent.

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

2. Stormwater Drainage Design

Stormwater drainage plans indicating all engineering details relevant to the site regarding the collection and disposal of stormwater from the site, buildings, and adjacent areas, must be submitted to Council for written approval. Stormwater must be conveyed by gravity via a suitably designed stormwater line from the site to Councils drainage network in Fisher Road North. The plans are to detail the provision of On site Stormwater Detention in accordance with Councils "On site Detention Technical Specification" noting that On Site Detention storage areas are to be excluded from landscaping areas.

A certificate is to be provided to Council by a qualified experienced practicing Civil Engineer, with membership of the Institute of Engineers Australia (M.I.E.) that the downstream drainage line located within the interallotment drainage easement is designed to safely convey all flows to Councils drainage network in Fisher Road North.

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

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

3. 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
DA-01 Issue G	12.11.18	Artelier Architects
DA-02 Issue A	27.03.19	Artelier Architects
DA-10 Issue G	12.11.18	Artelier Architects
DA-11 Issue H	27.03.19	Artelier Architects
DA-12 Issue G	12.11.18	Artelier Architects

DA2018/1835

Page 40 of 61



DA-13 Issue G	12.11.18	Artelier Architects
DA-20 Issue G	12.11.18	Artelier Architects
DA-21 Issue G	12.11.18	Artelier Architects
Material and Finishes Schedule	Not dated	Not named
Window Schedule Rev B	27.02.19	Not named
LDA-01 Issue 01	12/11/18	Stone Rose Landscapes
LDA-02 Issue 01	12/11/18	Stone Rose Landscapes
LDA-03 Issue 01	12/11/18	Stone Rose Landscapes

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Site Investigation Project No. 2018-161	November 2018	Crozier Geotechnical Consultants
Access Report	5 November 2018	Accessibility Solutions
BCA Assessment Report Project No. W538	13 November 2018	GRS Building Reports
Arboricultural Impact Assessment	31 October 2018	Footprint Green

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
Northern Beaches Council Waste Management Plan	1-11-18	Mr Nicola Caruso

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.

4. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:



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

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

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

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

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

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

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

Reason: Legislative Requirement

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 sewer 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.

6. **Occupation of Seniors Housing or Housing for Persons with a Disability**

A positive covenant pursuant to s88E of the Conveyancing Act 1919 is to be registered on the title of the land to which this development consent applies.

The covenant shall stipulate that Council is the sole authority to release or modify the covenant and that the development is only permitted to be occupied by persons detailed as follows:

- (a) seniors or people who have a disability;
- (b) people who live within the same household with seniors or people who have a disability;
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

(Note: Under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004):



Seniors are people aged 55 or more years, people who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 <http://www.comlaw.gov.au/> of the Commonwealth) is provided and / or people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

AND

People with a disability are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.)

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue any Interim / Final Occupation Certificate.

Reason: Statutory requirements. (DACPLB11)

FEES / CHARGES / CONTRIBUTIONS

7. **Policy Controls**

Northern Beaches Council Contributions Plan 2018

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

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 2,982,963.00		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 28,338.15
Section 7.12 Planning and Administration	0.05%	\$ 1,491.48
Total	1%	\$ 29,829.63

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.

8. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with

DA2018/1835

Page 45 of 61



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.

9. **Construction, Excavation and Associated Works Bond (Footpath works and Pedestrian refuge)**

A Bond of \$75000 as security against any damage or failure to complete the construction of footpath to the intersection of Carawa and Alfred street and reconstruction of the pedestrian refuge as part of this consent.

Reason: Protection of Council's Infrastructure

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

The developer/applicant must lodge with Council a Maintenance Bond of \$30000 for the construction of footpath and upgraded pedestrian refuge. The Maintenance Bond will only be refunded on completion of the six month Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing practical completion and may be exchanged for the works bond.

Reason: To ensure adequate protection of Council infrastructure

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

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

An Application for Works to be approved within Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the design of the footpath and upgraded pedestrian refuge (corner Alfred street) which are to be generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and/ or Council's Minor Works Policy. The plan shall be prepared by a qualified structural engineer. The design must include the following information:

- 1) The provision of 1.5m wide footpath from the site to the corner Alfred Street and Carawa Road on an approved alignment. This footpath is to continue to the east of the site to provide access to the bus stop in front of number 20 Carawa Road.
- 2) A 1600 x 2100 concrete boarding area adjacent to the kerb and footpath to the bus stop in front of 20 Carawa Road, in accordance with the Access Report prepared by Accessibility Solutions dated 5 November 2018.

DA2018/1835

Page 46 of 61



3) Reconstruction and upgrade of the pedestrian refuge at the intersection of Carawa Road and Alfred Street in accordance with current RMS standards.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Council prior to the issue of the Construction Certificate

Reason: To provide public and private safety.

12. Tanking of Basement Level

The basement area is to be permanently tanked. Details of the tanking are to be prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Water. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Principal Certifying Authority. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements

13. 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.

14. Tree Protection Plan

(a) A Tree Protection Plan prepared by a AQF Level 5 Arborist (or equivalent) is to be prepared showing the following:

- Layout of the approved development
- Location of trees identified for retention
- Extent of canopy spread
- Location of tree protection fencing / barriers (fencing in accordance with AS2470 – 2009)
- General tree protection measures
- Construction methods and Protection measures for street trees adjacent to new pathways required to be installed in Cawara Rad.

(b) The Tree Protection Plan is to be submitted to the Principal Certifying Authority for approval prior to issue of a Construction Certificate.

(c) Tree protection measures identified on the plan are to be in place prior to commencement of works.

(d) The requirements of the Tree Protection Plan are to be overseen on site by the Project Arborist.



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

15. **Amendments to the Landscape Plan**

a) Landscape Plan(s) are to be amended as follows:

The plans are to replace one of the *Tristaniosis laurina* trees indicated in the front landscape setback with 1 x *Angophora costata*

b) Details shall be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the provision of suitable landscape amenity and character.

16. **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.

17. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

18. **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.

19. **Requirements for Seniors Housing or Housing for Persons with a Disability**

The development is for the purposes of Seniors Housing or Housing for Persons with a Disability and is required to comply with all the standards specified in Schedule 3 - "Standards concerning accessibility and useability for hostels and self-contained dwellings".



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

Reason: To ensure public safety and equitable access for seniors or people with a disability. (DACPLC16)

20. **Amendment to Geotechnical Report**

The Geotechnical Report (Geotechnical Site Investigation Project No. 2018-161, dated November 2018, prepared by Crozier Geotechnical Consultants) is to be updated to reflect the existing neighbouring development. The update is to make clear if this changes any of the recommendations of the report, and if so, any updated recommendations are to be incorporated into the development.

Details demonstrating compliance are to be submitted to the Principle Certifying Authority prior to issue of the construction certificate.

Reason: Site stability and protection of neighbouring development.

21. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the certifying Certifying authority Authority prior to issue of any Construction Certificate.

The CTMP must address following:-

- The proposed phases of construction works on the site, and the expected duration of each construction phase;
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored on site, at all times;
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the



surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.

- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- Proposed protection for Council and adjoining properties;
- The location and operation of any on site crane; and

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner’s property rights and protects amenity in the locality, without unreasonable inconvenience to the community. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

22. **Pedestrian sight distance at property boundary**

A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas.

Reason: To maintain pedestrian safety.

23. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Council Waste Management Guidelines, including the required Northern Beaches Council Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with Northern Beaches Council Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided. (DACWTC01)



CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

24. Tree trunk, branch and root protection

- (a) Existing trees which must be retained
 - i) All trees not indicated for removal in the Arboricultural Impact Assessment dated 31 October 2018 prepared by Footprint Green, unless exempt under relevant planning instruments or legislation
 - ii) Trees located on adjoining land
 - iii) Street trees adjacent to works required to be undertaken within the road reserve.
- (b) Tree protection
 - i) No tree roots greater than 30mm diameter are to be cut from protected trees unless authorised by the Project Arborist on site.
 - ii) All structures are to bridge tree roots greater than 30mm diameter unless directed otherwise by the Project Arborist on site.
 - iii) All tree protection to be in accordance with the Arboricultural Impact Assessment dated 31 October 2018 prepared by Footprint Green, the approved Tree Protection Plan and AS 4970-2009 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.

25. Project Arborist

- i) A Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works.
- ii) The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the Arboricultural Impact Assessment dated 31 October 2018 prepared by Footprint Green, the approved Tree Protection Plan and AS4970-2009 Protection of trees on development sites.
- iii) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

Reason: Tree protection

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

26. Road Reserve

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

Reason: Public Safety.

27. Removing, Handling and Disposing of Asbestos

DA2018/1835

Page 51 of 61



Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act
- o Work Health and Safety Regulation
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)] and
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)]
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005.
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

28. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

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

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

- (a) Footpath sub-grade trimmed and compacted **
- (b) Base-course laid and compacted **
- (c) Kerb and gutter construction
- (d) Prior to pouring of the footpath and upgrade of the pedestrian refuge.
- (e) Landscaping and vegetation
- (f) Clean-up of site, and of adjoining Council roadway and drainage system.

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

30. **Civil Works Supervision**

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



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

31. **Traffic Control During Road Works**

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

Reason: Public Safety

32. **Vehicle Crossings**

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

33. **Maintenance of Sediment**

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

Reason: To ensure sediment controls are effective

34. **Site Entry Access way**

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

Reason: To reduce sediment being taken offsite

35. **Stormwater Pipeline Construction**

Where connection to Council's nearest stormwater drainage system is required, being Fisher Road North, the applicant shall construct the pipeline in accordance with AUSPEC specification for engineering works (see www.northernbeaches.nsw.gov.au) and shall reconstruct all affected kerb and gutter, bitumen reinstatements, adjust all vehicular crossings for paths, grass verges and household stormwater connections to suit the kerb and gutter levels. All works shall be undertaken at the applicant's cost, and upon completion certified by an appropriately qualified and practicing Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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



36. 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.

37. Trees Condition

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

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

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

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

Reason: Protection of Trees.

38. 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.

39. Waste/Recycling Requirements (Waste Plan Submitted)

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

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



40. **Landscape Certification**

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Principal Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the approved Landscape Drawing and a maintenance program has been established.

Reason: This is to ensure the landscaping is planted in accordance with the drawing and maintained appropriately.

41. **Condition of retained vegetation**

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

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

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites, and protect the existing amenity that trees and/or bushland vegetation provide.

42. **Authorisation of Legal Documentation Required for Onsite Detention**

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

43. **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

44. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

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



to the issue of any interim / final Occupation Certificate.

Reason: To ensure stormwater disposal is constructed to Council's satisfaction. (DACENF10)

45. Positive Covenant and Restriction as to User for On-site Stormwater Detention

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

46. Restoration of Damaged Public Infrastructure

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

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

47. Required Planting

Trees shall be planted in accordance with the following schedule:

No. of Trees Required.	Species	Location	Pot Size
All trees	As indicated in the approved Landscape Plans (as amended by conditions of consent)	As indicated on the Landscape Plans	As indicated on the Landscape Plans

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

Reason: To maintain environmental amenity.

48. Street Tree Planting

a) Street tree planting shall be provided within the road reserve in accordance with the following schedule:



No. of Trees Required Species Location
Minimum Pot Size

2
Eucalyptus haemastoma or Carawa
Road road reserve 45 litres
Banksia integrifolia forward
of the property,
clear of driveway
sightlines

b) all street trees shall be planted into a prepared planting hole a minimum of 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, and mulched to 75mm depth minimum, watered and maintained to ensure establishment
Reason: Preservation of the streetscape character of the area.

49. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.
(DACPLF03)

50. **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.

51. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted

DA2018/1835

Page 57 of 61



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.

52. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

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

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

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

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

53. **Occupation of Seniors Housing or Housing for Persons with a Disability**

A positive covenant pursuant to s88E of the Conveyancing Act 1919 is to be registered on the title of the land to which this development consent applies.

The covenant shall stipulate that Council is the sole authority to release or modify the covenant and that the development is only permitted to be occupied by persons detailed as follows:

- (a) seniors or people who have a disability;
- (b) people who live within the same household with seniors or people who have a disability;
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

(Note: Under State Environmental Planning Policy (Housing for Seniors or People with a Disability 2004):

Seniors are people aged 55 or more years, people who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 <http://www.comlaw.gov.au/> of the Commonwealth) is provided and/or people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

AND

People with a disability are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.)

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue any Interim / Final Occupation Certificate.



Reason: Statutory requirements. (DACPLF11)

54. **Certification of completion of requirements for Seniors Housing or Housing for Persons with a Disability**

Details demonstrating that all stipulated requirements of this development consent for Seniors Housing or Housing for Persons with a Disability have been completed.

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

Reason: To ensure statutory requirements have been completed, public safety, and equitable access for seniors of people with a disability. (DACPLF12)

55. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Interim or Final Occupation Certificate.

Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

56. **Privacy Screens**

Privacy screens are to be constructed on the upper level decks/planter boxes in the locations shown on the approved first floor plan (DA-12 Issue G dated 12/11/18 prepared by Artelier Architects). The screens are to have a minimum height of 1.8m above the finished floor levels of the decks to which they are attached/adjacent.

Details demonstrating compliance are to be submitted to the Principle Certifying Authority prior to issue of an occupation certificate.

Reason: Protection of privacy.

57. **Shared Zone Bollard**

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with Australian Standards.

58. **Footpath & refuge construction**

The footpath and pedestrian refuge amendments as indicated on context plan DA-02 dated sep 27.03.19, in accordance to Council's standard specifications, shall be constructed to Council's satisfaction. The footpath is also to be constructed to the east of the site to access the bus stop in front of number 20 Carawa Road, in accordance with the Access Report prepared by



Accessibility Solutions dated 5 November 2018.

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

Reason: To provide safe pedestrian access to and from the property and nearby public transport.

59. Waste and Recycling Facilities Certificate of Compliance

The proposal shall be constructed in accordance with Northern Beaches Council Waste Management Guidelines

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 waste and recycling facilities are provided. (DACWTF01)

60. Waste/Recycling Compliance Documentation

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

61. Positive Covenant for Waste Services

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

62. Authorisation of Legal Documentation Required for Waste Services

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land. (DACWTF04)

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

63. Landscape maintenance

i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.



ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity.

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

64. Prior to issue of Strata Plan (Strata)

Prior to the issue of the Strata Plan of Subdivision (including any Stratum), all relevant matters pertaining to this Plan, are to be satisfied to the satisfaction of the Certifying Authority, and evidence provided that the Plan complies with clause 17 Strata Schemes Development Regulation 2016 and the relevant parts of Section 58 Strata Schemes Development Act 2015.

Reason: To ensure compliance with the Consent issued, compliance with relevant legislation, and to ensure adequate provision is made, where required for fire safety, occupant safety, egress, access and appropriate facilities in the premises for building occupants.



ITEM 3.4	DA2019/0210 - 9 ADELAIDE STREET, BALGOWLAH HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2019/329693
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0210 for alterations and additions to a dwelling house on land at Lot 18 Sec D DP 2610, 9 Adelaide Street, Balgowlah Heights, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0210
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 18 DP 2610, 9 Adelaide Street BALGOWLAH HEIGHTS NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Julia Jacqueline Warnock
Applicant:	Pittwater Design & Draft
Application lodged:	04/03/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	08/03/2019 to 26/03/2019
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval
Estimated Cost of Works:	\$ 658,845.00

Executive Summary

The application is for alterations and additions to the existing dwelling and includes a variation of 32.1% to the floor space ratio development standard. As the variation is greater than 10%, the application is referred to the Development Determination Panel.

Notwithstanding the extent of the FSR non-compliance, the majority of the additional gross floor area is achieved within an existing subfloor area and the proposal does not result in excessive building bulk.

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

ASSESSMENT INTRODUCTION

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



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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 18 DP 2610 , 9 Adelaide Street BALGOWLAH HEIGHTS NSW 2093
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Adelaide Street.</p> <p>The site is regular in shape with a frontage of 12.19m along Adelaide Street and a depth of 42.67m. The site has a surveyed area of 520.2m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling house.</p> <p>The site slopes 2.5m from front (north) to rear (south).</p>



The site contains a number of significant trees in addition to planted garden beds in the front and rear yards.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwelling houses.

Map:



SITE HISTORY

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

DA0182/1994 - DA0182/94 BA201/94 Additions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes alterations and additions to the existing dwelling resulting in:

Lower floor plan:

- Rumpus
- Laundry and bath
- Store

Ground floor plan:

- Kitchen, dining and living room
- Bed 1, 2 & 3
- Bathroom

DA2019/0210

Page 3 of 26



- Mudroom
- Rear balcony

First floor plan:

- Master bed with ensuite and robe
- Bed 4 with robe and balcony
- Bathroom
- Western balcony

External works:

- New roof to dwelling and carport
- New cladding to dwelling and carport
- New front entry path and stair

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 requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the</p>



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.



BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following condition of consent.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

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



Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8m	N/A	Yes
Floor Space Ratio	0.4:1 208.08m ²	0.53:1 274.9m ²	32.1%	No

Note: The proposed First Floor Plan includes two (2) partially enclosed balconies that have been excluded from the gross floor area calculation in accordance with **Haralambis Management Pty Ltd v Council of the City of Sydney [2013] NSWLEC 1009**. The balconies contain timber bi-fold doors/slatted screens with no glass filling the openings and will not remain permanently closed to create additional habitable rooms. Rather, the doors/screens will be positioned to respond to the environmental conditions.

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1 (208.08m ²)
Proposed:	0.53:1 (274.9m ²)
Percentage variation to requirement:	32.1%

Assessment of request to vary a development standard:



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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the



objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- In relation to Object (b) of the EPA Act:

Comment:

"The proposed development is general alterations and additions to an existing dwelling that will allow the owners of the dwelling to utilise their house without the need to demolish and rebuild. The proposed extension has been designed to minimise the impact on the site and on the adjoining neighbours by utilising the existing undercroft area for the development to provide



more space for the occupants without impacting on views, privacy or overshadowing."

- In relation to Object (g) of the EPA Act:

Comment:

"The proposed development has been designed to improve the appearance of the dwelling through architectural features but not result in a visually intrusive development. The changes to the upper floors are mainly cosmetic with minor increases to the floor space with the majority of the floor space ratio non compliance being located on the lower ground floor area. It is considered that the lower ground floor utilises the existing undercroft area resulting in a good design outcome. It is considered that the proposed development fits within the character of the locality and will improve the amenity of the built environment."

The proposed development generally retains the existing building footprint/envelope while also improving the appearance and design of the dwelling. The proposed works to the upper floor result in a minor increase to GFA and the works to the lower floor plan are an efficient use of an existing subfloor area to create additional habitable space. Notwithstanding the non-compliance, the proposal is not considered to result in any unreasonable visual or amenity impacts on the adjoining properties or surrounding area.

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

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

DA2019/0210

Page 10 of 26



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

Comment:

The proposed 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,

Comment:

The proposal is not of unreasonable density or bulk and will not obscure important landscape or townscape features.

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

Comment:

The proposal will maintain an appropriate visual relationship with the existing character of the area, which contains a mix of older dwellings and more recent contemporary developments.

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

Comment:

The proposed development will not unreasonably impact the use or enjoyment of adjoining land or the public domain.

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

Comment:

N/A

Zone objectives

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

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

Comment:

The proposed development retains the existing low density residential use.

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:

N/A

Conclusion:

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

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

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

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

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The proposed excavation indicated on the section drawings provided generally does not exceed 500mm and is not anticipated to unreasonably impact the water table.

6.2 Earthworks

The proposal does not include any significant earthworks.

6.9 Foreshore scenic protection area

The proposal is for alterations and additions to an existing dwelling and have no unreasonable impacts in relation to visual aesthetic amenity or views to and from Sydney Harbour.

Mainly Development Control Plan



Built Form Controls

Built Form Controls - Site Area: 520.2m ²	Requirement	Proposed	Complies
4.1.2.1 Wall Height	East: 6.8m	GF (balcony): 5.4m	Yes
		FF (master): 7.8m	No
	West: 6.8m	GF (balcony): 5.3m	Yes
		FF (ensuite): 7.6m	No
4.1.2.2 Number of Storeys	2	2	Yes
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.4m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Carport: 1.6m	No (existing)
		Dwelling: 6.8m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East GF: 1.8m	1.151m	No
	East FF: 2.6m	1.151m	No
	West GF: 1.77m	0.985m - 1.9m	No
	West: FF: 2.53m	1.3m - 1.9m	No
4.1.4.4 Rear Setbacks	8m	13.6m	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area 312.12m ²	62.7% 326.3m ²	Yes
	Open space above ground 25% of total open space 81.6m ²	16.2% 53m ²	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space 130.5m ²	27.7% 90.5m ²	No (existing)
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% of frontage up to maximum 6.2m	6m	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.3.2 Preservation of Trees or Bushland Vegetation

No trees are proposed or approved for removal as part of this application.

3.4.1 Sunlight Access and Overshadowing

Compliance with controls:

Based on the existing physical separation between and orientation of adjoining sites, the proposed additions will retain compliant sunlight access to the open spaces and living areas of adjoining sites in accordance with this Clause.

Merit consideration:

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

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

Comment:

The proposal will result in no unreasonable overshadowing of adjoining properties or the subject site. There is additional overshadowing of the rear yards of No. 11 Adelaide Street and No. 18 Alma Street at 9am and No. 7A Adelaide Street at 3pm. There is also minor additional overshadowing of the subject site at 12pm.

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.

DA2019/0210

Page 14 of 26



Comment:

Adequate sunlight access is retained to the windows and private open spaces of the subject site and adjoining properties.

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

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

Comment:

The proposal is sufficiently modulated and set back to encourage sunlight access to adjacent properties. Despite the setback non-compliance, the adjoining property to the east is further separated from the subject site by the adjoining pedestrian access pathway.

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

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The proposed development is designed to maintain privacy to the subject site and adjoining properties. The proposed front and rear balconies incorporate suitable timber privacy screening to the side boundaries. Further, the rear deck is orientated to the south towards the available harbour views. The proposed ground floor eastern windows will not result in any unreasonable privacy impacts due to their location and height above ground, and the physical separation provided by the pedestrian access path adjoining the subject site to the east. The floor and elevation plans of the proposed dwelling have minor discrepancies relating to window treatments, however, they generally indicate that the west-facing living room windows and east-facing master bedroom window include vertical slatted timber screens. A condition of consent is included to ensure that these screens are shown consistently across all plans.



Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

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

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal provides opportunities for passive surveillance.

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

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

Description of non-compliance

The proposed eastern and western wall heights to the first floor are non-compliant by 1m and 0.8m respectively.

Merit consideration:

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

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

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

Comment:

The proposed non-compliant wall heights relate only to the first floor and result from the new flat roof design. Despite the non-compliance with the wall height control, the overall building height is compliant and the rear portion of the dwelling steps with the topography to remain significantly below the 8.5m.

b) to control the bulk and scale of buildings,

Comment:

The proposed dwelling is not of unreasonable bulk or scale and maintains consistency with existing development in the surrounding area.

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 unreasonable disruption to views to, from or between residential development and public spaces.

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

Comment:

The proposal does not result in excessive additional building bulk and will not cause any unreasonable overshadowing impacts.

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

Comment:

N/A

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

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

Description of non-compliance

The proposed eastern and western side setbacks to the dwelling are non-compliant. The front and eastern side carport setbacks are also non-compliant, however the garage works are generally aesthetic and do not alter the siting of the structure.

Merit consideration:

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

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

Comment:

The proposal largely retains the side setbacks of the existing dwelling. The additions at the front of the first floor provide sufficient articulation in the form of balconies and glazing. The proposed timber cladding and screens also assists in reducing the visual impact of the built form. As discussed above, the location of the existing carport is retained and the proposed flat roof will reduce the bulk of the structure and maintain consistency with the new roof form of the dwelling.

Objective 2) To ensure and enhance local amenity by:



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

Comment:

The proposal is appropriately designed to mitigate any unreasonable impacts in relation to privacy, sunlight access, views, streetscape character and traffic conditions.

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

Comment:

The proposal largely retains the existing setbacks while improving the amenity and appearance of the dwelling.

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 results in negligible change to the landscaped area on the site.

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

Comment:

N/A

Having regard to the above assessment, it is concluded that the proposed development is 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

The proposal results in negligible change to the existing landscaped area on the site. Additional vegetation planting is proposed within the front setback.

4.4.5 Earthworks (Excavation and Filling)

DA2019/0210

Page 18 of 26



The proposal includes no significant excavation.

5.4.1 Foreshore Scenic Protection Area

The proposal is for alterations and additions to an existing dwelling and have no unreasonable impacts in relation to visual aesthetic amenity or views to and from Sydney Harbour.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

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

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

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



RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0210 for Alterations and additions to a dwelling house on land at Lot 18 DP 2610, 9 Adelaide Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA-01 Site Plan	Rev. 1, 23 January 2019	Pittwater Design and Draft
DA-02 Lower Floor Plan	Rev. 1, 23 January 2019	Pittwater Design and Draft
DA-03 Ground Floor Plan	Rev. 1, 23 January 2019	Pittwater Design and Draft
DA-04 First Floor Plan	Rev. 1, 23 January 2019	Pittwater Design and Draft
DA-05 Roof Plan	Rev. 1, 23 January 2019	Pittwater Design and Draft
DA-06 Elevations - Sheet 1	Rev. 1, 23 January 2019	Pittwater Design and Draft
DA-07 Elevations - Sheet 2	Rev. 1, 23 January 2019	Pittwater Design and Draft
DA-08 Sections	Rev. 1, 23 January 2019	Pittwater Design and Draft

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A341975	28 February 2019	Leigh Sym

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:

DA2019/0210

Page 20 of 26



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 (DACPLB09)

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. (DACPLB10)

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:

DA2019/0210

Page 23 of 26



- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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



structures or appliances are to be removed within 7 days.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. Security Bond

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

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

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

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



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

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

7. **Stormwater Disposal**

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

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

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

8. **Window screens**

The two (2) west-facing living room windows and the east-facing master bedroom window are to incorporate privacy screens constructed of slatted timber or a similar material.

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

Reason: To ensure consistency between approved plans and maintain sufficient privacy to the subject site and adjoining properties.



NEW/ALTERED WORKS

EX. ROOF TO BE DEMOLISHED



SITE CALCULATIONS

	Required	Proposed
Site Area	N/A	5202m ²
4.13 Floor Space Ratio	N/A	N/A
4.14 Setbacks		
-North (front)	8000mm	6785
-South (rear)	8000mm	13658
-East (side)	115mm (existing)	existing
-West (side)	985mm (existing)	existing
EXISTING RESIDENTIAL AREA		187m ²
PROPOSED RESIDENTIAL AREA		1847m ²
EXISTING HARD SURFACE AREA		4015m ²
PROPOSED HARD SURFACE AREA		3639m ²
EXISTING LANDSCAPED AREA		865m ²
PROPOSED LANDSCAPED AREA		12488m ²
		1956m ²



Aerial view of 9 Adelaide Street, Balgowlah Heights



Zoning Map of 9 Adelaide Street, Balgowlah Heights



**PITTPATER
DESIGN + DRAFT**
CUSTOM HOMES | ALTERATIONS | ADDITIONS

Ph: 02 937 534 96 | 02 937 534 96
102 Epsom Street, Sydney NSW 1540
102 Epsom Street, Sydney NSW 1540
E: info@pittwaterdesign.com.au
www.pittwaterdesign.com.au

Revisions	No.	Description	Date
1	1	General Revisions	23/01/2019

Client: B. CARROLL
This document is not to be used for any other purpose than the one for which it was prepared. It is the property of the Designer and shall remain the property of the Designer. It is to be used only for the purpose for which it was prepared and shall not be used for any other purpose without the written consent of the Designer. It is to be used only for the purpose for which it was prepared and shall not be used for any other purpose without the written consent of the Designer.

Sheet: SITE PLAN + ANALYSIS
Address: 9 ADELAIDE STREET
BALGOWLAH HEIGHTS, NSW 2093

Project No.	Date
1804	24/10/18
Drawn By	Checked By
LS	LS
Dwg No.	Issue
DA-01	1

[illegible]



<p>Revisions</p> <p>No. Description</p> <p>1 General Revisions</p>	<p>Client</p> <p>B. CARROLL</p> <p>23/01/2019</p> <p>Date</p>	<p>Sheet</p> <p>ELEVATIONS - SHEET 2</p> <p>Address</p> <p>9 ADELAIDE STREET BALGOWLAH HEIGHTS, NSW 2063</p>	<p>Project No.</p> <p>DA-07</p> <p>Issue</p> <p>1</p>
<p>Drawn By</p> <p>LS</p>	<p>Checked By</p> <p>LS</p>	<p>Project No.</p> <p>DA-07</p>	<p>Date</p> <p>23/01/2019</p>
<p>Scale</p> <p>1:100</p>	<p>Scale</p> <p>1:100</p>	<p>Sheet</p> <p>ELEVATIONS - SHEET 2</p>	<p>Issue</p> <p>1</p>
<p>Drawn By</p> <p>LS</p>	<p>Checked By</p> <p>LS</p>	<p>Project No.</p> <p>DA-07</p>	<p>Date</p> <p>23/01/2019</p>
<p>Scale</p> <p>1:100</p>	<p>Scale</p> <p>1:100</p>	<p>Sheet</p> <p>ELEVATIONS - SHEET 2</p>	<p>Issue</p> <p>1</p>

PITTWATER
DESIGN + DRAFT

CUSTOM HOMES | ALTERATIONS | ADDITIONS

Private Design and Draft
ABN 97 534 961 725
PO Box 1523 Mona Vale
NSW 1546
M 421 332 050 383
E info@pittwater.com.au
www.pittwater.com.au



Outlook

Planning &
Development

CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD

Floor Space Ratio Variation

9 Adelaide Street,
BALGOWLAH HEIGHTS

Clause 4.6 (Floor Space Ratio)
9 Adelaide Street, Balgowlah Heights

Clause 4.6 Exception to Development Standard

9 Adelaide Street, Balgowlah Heights

Contact:

(mob) 0432 848 467
email: admin@outlookplanningdevelopment.com.au
web: www.outlookplanningdevelopment.com.au

QUALITY ASSURANCE

This document has been prepared, checked and released in accordance with the Quality Control Standards established by Outlook Planning and Development

Copyright © Outlook Planning and Development

Disclaimer

This report has been prepared based on the information supplied by the client and investigation undertaken by Outlook Planning and Development & other consultants. Recommendations are based on Outlook Planning and Development professional judgement only and whilst every effort has been taken to provide accurate advice, Council and any other regulatory authorities may not concur with the recommendations expressed within this report. This document and the information are solely for the use of the authorised recipient and this document may not be used, copied or reproduced in whole or part for any purpose other than that for which it was supplied by Outlook Planning and Development. Outlook Planning and Development makes no representation, undertakes no duty and accepts no responsibility to any third party who may use or rely upon this document or the information.

Confidentiality Statement

All information, concepts, ideas, strategies, commercial data and all other information whatsoever contained within this document as well as any and all ideas and concepts described during the presentation are provided on a commercial in confidence basis and remain the intellectual property and Copyright of Outlook Planning and Development and affiliated entities.

Clause 4.6 (Floor Space Ratio)
9 Adelaide Street, Balgowlah Heights

1 Introduction

A development application was lodged for alterations and additions at 9 Adelaide Street Balgowlah Heights. The application provided details on the FSR and stated compliance with the clause. Further investigation identified that the calculation of FSR in the statement of environmental effects was incorrect and the actual Gross Floor Area of the development resulting in a FSR of 61%. This is a 52.5% variation of the development standard which specifies a maximum floor space ratio of 40%.

The non compliance results from the size of the subject site, being 520.2sqm and the existing non compliant floor space ratio for the existing house. It is noted that the existing house has a floor space ratio of 51%. It is considered that the proposed development has minimal impact on the character of the area and will not result in any perceivable environmental impacts. The design of the additions is complimentary to the existing dwelling and surrounding locality.

2 Clause 4.4 Floor Space Ratio - Variation Request

FSR requirement: 40% or 208.08sqm

Existing FSR: 51% or 265.17sqm

Proposed FSR: 61% or 319.2sqm

Variation Requested: 52.5%

The request seeks exception to a development standard under clause 4.6 - Exceptions to Development Standards of Manly Local Environmental Plan 2013. The development standard for which a variation is sought is that of floor space ratio restriction contained within Clauses 4.4.

The variation has been prepared in response to a specific request from Council and in accordance with the NSW Department of Planning and Infrastructure (DP & I) guideline *Varying development standards: A Guide*, August 2011, and has incorporated as relevant, principles identified in the *Wehbe v Pittwater Council [2007] NSWLEC 827*

Clause 4.6 Exceptions to development standards establishes framework for varying development standards applying under a local environmental plan.

Objectives to clause 4.6 at 4.6(1) 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.*

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

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

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

- (a) the consent authority is satisfied that:*

Clause 4.6 (Floor Space Ratio)
9 Adelaide Street, Balgowlah Heights

- (i) the applicants written request has adequately address 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*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

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

A detailed assessment has been carried out below:

2.1 What is the Development Standard proposed to be varied?

Clause 4.4 of the MLEP refers to the floor space ratio map with the site being located in the B area requiring a maximum floor space ratio of 40%.

The subject site has a lot size of 520.2sqm and therefore the maximum gross floor area allowed is 208.08sqm.

The proposed alterations and additions results in a floor space ratio of 0.61:1 resulting in a variation request for 51%.

Objectives of clause 4.4 Floor Space Ratio

The objectives of clause 4.4 are as followed:

- (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,*

2.2 Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In determining this, the 5 Part test established in *Wehbe v Pittwater Council* [2007] NSWLEC 827 has been utilised as a guide

Clause 4.6 (Floor Space Ratio)
9 Adelaide Street, Balgowlah Heights

1. Is the proposal consistent with objectives of the standard notwithstanding non-compliance;

The proposal, despite non-compliance with Clause 4.4(2) of the MLEP, is considered to remain consistent with the underlying objective of the development standard as follows:

Objective A: *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment: The proposed alterations and additions have been designed to minimise the bulk and scale of the development with the majority of the increased floor space located on the lower ground level.

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,*

Comment: The proposed alterations and additions to the existing dwelling at the subject site will result in a built form that does not obscure important landscape or townscape features as the additional floor space is situated discreetly on the lower ground level.

Objective C: *To maintain an appropriate visual relationship between new development and the existing character and landscape of the area*

Comment: The proposed development is alterations and additions to the existing dwelling and therefore have minimal impact on the character of the locality. The alterations have been designed to be visually appealing and unobtrusive to the locality.

Objective D: *To minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain.*

Comment: The proposed development will have minimal impacts on adjoining properties as identified in the statement of environmental effects.

2. Is the underlying objective or purpose of the standard not relevant to the development and therefore compliance is unnecessary;

The underlying objective or purpose of the Standard is relevant. As demonstrated above, the proposal retains consistency with the objectives of Clause 4.4 of MLEP, despite non-compliance.

3. Would the underlying object of purpose be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying objectives or purpose of the standard would not be defeated or thwarted if compliance was required, however, as outlined above consistency with objectives is achieved despite noncompliance.

4. Has the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

Clause 4.6 (Floor Space Ratio)
9 Adelaide Street, Balgowlah Heights

The standard has not been abandoned or destroyed however it is noted from Council's Clause 4.6 Variations register that the Council regularly grants consent for development despite a non compliance with the Floor Space Ratio clause 4.4.

DA2018/0788	15 Griffiths Street Fairlight	Residential - Alterations and additions	19.50%
DA2018/0789	15 Griffiths Street Fairlight	Residential - Alterations and additions	13.70%
DA2018/0046	36 Malvern Avenue Manly	Residential alterations and additions	12.90%
DA2018/0852	12 Moore Street Clontarf	Residential alterations and additions	34.70%
DA2018/0540	57 Addison Road Manly	Residential - Other	92.10%
DA2018/1062	12 Rosedale Avenue Fairlight	Residential - Alterations and additions	14.05%
DA2018/1286	2 Lombard Street Balgowlah	Residential - Alterations and additions	5.80%

5. Is the zoning of the particular land unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary.

The zoning of the land is appropriate for the site.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed development is considered to appropriately address and respond to the relevant matters for consideration under S4.15(1) of the EP&A Act 1979.

Specifically, it is considered that the development has been designed in accordance with the objectives outlined in section 1.3 of the EP&A Act 1979 as followed:

Object (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

Comment: The proposed development is general alterations and additions to an existing dwelling that will allow the owners of the dwelling to utilise their house without the need to demolish and rebuild.

Clause 4.6 (Floor Space Ratio)
9 Adelaide Street, Balgowlah Heights

The proposed extension has been designed to minimise the impact on the site and on the adjoining neighbours by utilising the existing undercroft area for the development to provide more space for the occupants without impacting on views, privacy or overshadowing.

Object (g) to promote good design and amenity of the built environment,

Comment: The proposed development has been designed to improve the appearance of the dwelling through architectural features but not result in a visually intrusive development. The changes to the upper floors are mainly cosmetic with minor increases to the floor space with the majority of the floor space ratio non compliance being located on the lower ground floor area. It is considered that the lower ground floor utilises the existing undercroft area resulting in a good design outcome. It is considered that the proposed development fits within the character of the locality and will improve the amenity of the built environment.

It is considered that there are sufficient environmental planning grounds to justify the non-compliance with the development standard as provided above. Additionally, the development complies with the outcomes of the R2 Low Density Residential zone as well as the outcomes of the FSR Development Standard.

2.3 Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the standard and zone as set out above.

There is public benefit in maintaining a degree of flexibility in specific circumstances, particularly when site constraints warrant a variation and the development is still able to achieve the outcomes of the control. In the current case, strict compliance would limit the development potential of the site and limit the lifestyle of the occupants of the dwelling. As identified above, the development achieves the outcomes of the development standard and is considered to be in the public interest.

3 Conclusion

As provided above, the development complies with the outcomes of the development standard and is considered to be in the public interest. Strict compliance with this control is deemed unnecessary and restricts the use of the site by the owner due to the site constraints. It is considered that the development results in a good planning and design outcome for the property and the community.

ITEM 3.5	DA2018/2004 - 92 CUTLER ROAD, CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Matthew Edmonds
TRIM FILE REF	2019/329733
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan & Elevations 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2018/2004 for alterations and additions to a dwelling house on land at Lot 32 Sec B DP 2610, 92 Cutler Road, Clontarf, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/2004
Responsible Officer:	Seth Dias
Land to be developed (Address):	Lot 32 DP 2610, 92 Cutler Road CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Cassandra Campbell
Applicant:	Cassandra Campbell David Campbell
Application lodged:	18/12/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	31/12/2018 to 29/01/2019
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Approval
Estimated Cost of Works:	\$ 107,000.00

Executive Summary

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site. The Application requires determination from the Development Determination Panel due to a Floor Space Ratio variation greater than 10% in a single residential dwelling building. Apart from this, the Development Application also presents variations to wall height and encroaches within the side setback area. Finally, minor view sharing concerns were also raised by a neighbour.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.



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

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 32 DP 2610 , 92 Cutler Road CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Cutler Road.</p> <p>The site is irregular in shape with a frontage of 12.45m along Cutler Road and a depth of 33.46m along the northern boundary and 35.87m along the southern boundary. The site has a surveyed area of 417.3m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house currently being renovated under a previously approved Complying Development Certificate.</p> <p>The site slopes upward from south to north at an average slope of approximately 19%.</p>



The site contains a large tree and turfed grass in the small front yard of the lot. There is also turfed grass in the rear yard of the lot.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by other dwelling houses with multiple different architectural styles.

Map:



SITE HISTORY

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

- CDC2018/0911- Alterations & additions to an existing dwelling

PROPOSED DEVELOPMENT IN DETAIL

The development seeks consent for alterations and additions to a dwelling house. The property had a Complying Development Certificate (CDC2018/101/01) issued in 2018. This DA proposes works in addition to the approved works, which include:

- Ground floor: A new terrace space, tiling, external staircases, replacement of a non-compliant staircase, and glass balustrades.
- First floor: A new bedroom and ensuite, containing a large balcony area/terrace area. Privacy screens will also be provided on the proposed balcony. The approved roof will be extended to

DA2018/2004

Page 3 of 24



- cover the new balcony.
- External: Sandstone cladding will be added to the existing western ground floor walls and concrete stairs to the entrance.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

DA2018/2004

Page 5 of 24



Name:	Address:
Nigel Tsa	Level 24 52 Martin Place SYDNEY NSW 2000

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

- Concerns were raised outlining the impact the proposed development had on the south-east facing views for a property at 31 Moore Street, Clontarf

The matters raised within the submissions are addressed as follows:

- The proposed development in this application is an extension of a previously approved Complying Development Certificate (2018/101/01) for a first floor addition. Following a site visit, it is very clear that any possible view loss comes almost exclusively from the approved Complying Development Certificate, which potentially affects the views of three (3) properties on Moore Street. This Development Application proposes steel framing and glass balustrades obscured by the works under the CDC as viewed from 31 Moore Street. These works are in addition to major works under the approved CDC, meaning that view loss as a result of the additional works under the current development application is very minor, and minimised as best as possible, and not unreasonable.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation.</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>One significant tree is located on site, and this large significant Eucalyptus is recommended for retention and protection within the Statement of Environmental Effects, and is assessed as suitable for retention in the arboricultural report.</p>
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following conditions of consent.

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



ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A334915 dated: 11/12/2018).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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



Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.44m	N/A	Yes
Floor Space Ratio	FSR: 0.4:1	FSR: 0.45:1	12.5%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.4:1
Proposed:	0.45:1
Percentage variation to requirement:	12.5%



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

DA2018/2004

Page 9 of 24



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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

The applicant argues that the proposed alterations and additions will create a dwelling that is sensitive and appropriate for the location and topography of the site. The works will create an attractive residential development that positively improves the general character of the area. The appropriate use of form, shape and building material will also add to the attractive nature of the development. Finally,



clause 4.1.3.1 of the Manly DCP provides a scope for a variation to the required FSR where the lot is less than the minimum required lot size under council's LEP Lot Size Map. The exception applies, and as such should be taken into consideration when considering the Clause 4.6 variation.

After reviewing the development and the applicants justification of the variation, the development is consistent with the outcomes of the control and as such should be viewed as acceptable.

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.

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

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 Control development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

Zone objectives

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

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

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

Comment:

The variation is minor in nature meaning that bulk and scale is minimised, the utilisation of a low pitched contemporary roof form ensures consistency with surrounding development and reducing the visual impact of the development.

- 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 development does not obscure any important landscape and townscape features. Any obstruction is likely to have been caused by the approved CDC.

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

Comment:

The proposed development will add to the character of the area. The balcony will allow the dwelling to further integrate with the surrounding properties and the Development Application adequately responds to the topography of the site.

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

Comment:

The development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

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:

The property is in a residential zone making this outcome not relevant to the assessment.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The development improves the dwelling that already exists on the site. By increasing the amenity of the dwelling, the application further provides housing for the community.

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:

The application seeks consent for a balcony, pergola and an internal floor space increase for a dwelling house. All these additions will allow for additional services to those utilising the dwelling house.



It is considered that the development satisfies this objective.

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

Comment:

The development Application proposes additions to an existing/approved dwelling house. As the works match what's existing through form and materiality we can assume that it correlates with the landscaped settings of the area.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 417.3	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling(s)	1	N/A	Yes
	Dwelling Size: 102sqm	189.5 sqm	N/A	Yes
4.1.2.1 Wall Height	N: 6.75m (based on gradient 1:25)	6.49m	N/A	Yes
	S: 6.5m (based on gradient 0)	6.3m	N/A	Yes
	E: 8.0m (based on gradient 1:4+)	7.5m	N/A	Yes
	W: 7.2m (based on gradient 1:9)	7.6m	N/A	No*
4.1.4.1 Street Front Setbacks	Prevailing building line	Not consistent with prevailing setback	N/A	No*
4.1.4.2 Side Setbacks and Secondary Street DA2018/2004	East: 2.66m (based on wall height)	1.8m	N/A	No*
		1.6m		No*



Frontages	West: 2.40m (based on wall height)			
4.1.4.4 Rear Setbacks	8m	Works are located at the front of the dwelling house	N/A	N/A
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	69.37%	N/A	Yes
	Open space above ground 25% of total open space	7.5%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	60.9%	N/A	Yes
4.1.5.3 Private Open Space	18sqm	Unchanged by proposed development	N/A	Yes

***Note:** See detailed assessment for discussion of non-compliances

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of DA2018/2004	No	Yes Page 14 of 24



Clause	Compliance with Requirements	Consistency Aims/Objectives
Storeys & Roof Height)		
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

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

The proposal contains an encroachment of the allowable wall height along the western elevation. The non-compliance does not exacerbate the building bulk, solar access or view loss any further than the already approved Complying Development Certificate. As such, the encroachment is considered minor in nature and not against council's outcomes for this control.

4.1.3 Floor Space Ratio (FSR)

Please see the discussion in this report regarding a Clause 4.6 submission.

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

Description of non-compliance

The proposal encroaches within the side and front setback areas of the property. The development varies by 33.33% on the western elevation, 32.33% on the eastern elevation and is not within the prevailing street front setback for the area.

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 changes to the streetscape include a pergola and a balcony. Whilst, the development encroaches within the street front setback area, these changes are normal and often seen on the front facade of a dwelling house. The site is also situated above the street frontage as it is accessed by a driveway off Cutler Road that services multiple residencies.

Objective 2) To ensure and enhance local amenity by:

DA2018/2004

Page 15 of 24



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

Comment:

The encroachment does not exacerbate any view loss or solar access issues already established by the approved CDC. The building is not on a corner lot and the space between buildings is adequate when considering the unique topography of the area.

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

Comment:

The proposal seeks consent for alterations and additions to an already developed house. As such, there will be a very limited impact on the flexibility of building siting.

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 development meets the requirement for total open space and landscaped area requirements. The areas that are landscaped are adequate and appropriate.

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

Comment:

The site is not on bush fire prone land

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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



their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Manly Section 94 Development Contributions Plan

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/2004 for Alterations and additions to a dwelling house on land at Lot 32 DP 2610, 92 Cutler Road, CLONTARF, 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 Proposed Roof Plan 01	11/12/2018	Sue Conner Architects
DA05 Proposed Ground Level	11/12/2018	Sue Conner Architects
DA06 Proposed Level One	11/12/2018	Sue Conner Architects
DA07 Sections AA & BB	11/12/2018	Sue Conner Architects
DA08 North and South Elevations	11/12/2018	Sue Conner Architects
DA09 East and West Elevations	11/12/2018	Sue Conner Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Environmental Effects	December 2018	Vaughan Milligan Development Consulting Pty Ltd
Arborist Report	November 2018	Growing My Way Tree Consultancy
Preliminary Landslip Assessment	05/12/2018	Crozier Geotechnical Consultants

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:

Landscape Plans		
Drawing No.	Dated	Prepared By
DA02 Existing Site and Analysis Plan	11/12/2018	Sue Conner Architects
DA10 Open Space/Floor Space Diagrams	11/12/2018	Sue Conner Architects

Waste Management Plan		
Drawing No./Title.	Dated	Prepared By
DA11 Waste Management and Sediment Control	11/12/2018	Sue Conner Architects
Waste Management Plan	12/12/2018	Vaughan Milligan Development Consulting

DA2018/2004

Page 18 of 24



		Pty Ltd
--	--	---------

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

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

2. Prescribed Conditions

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

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

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



- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and



machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

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

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

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

Reason: To ensure that works do not interfere with reasonable amenity expectations of



residents and the community.

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

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

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

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

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

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

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

5. Compliance with Standards

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

6. Project Arborist

A minimum AQF Level 5 Project Arborist, qualified in Horticulture, shall be engaged to supervise and certify tree protection works for the existing tree identified as tree number 1 in the Construction Impact & Management Statement prepared by Growing My Way Tree Consultancy, dated November 2018.

Tree protection measures shall be undertaken in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4, and as recommended in the Construction Impact & Management Statement under section 6 - Site Specific Tree Plan of management.

Details shall be submitted to the Certifying Authority prior to the Occupation Certificate, including certified reports and photographic documentation of all relevant activities undertaken and/or



supervised by the Project Arborist.

Reason: to ensure tree protection is provided and maintained.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

7. 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.

8. Traffic Control During Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

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 site plans, and in particular the large Eucalyptus within the front setback as identified in the Construction Impact & Management Statement prepared by Growing My Way Tree Consultancy, dated November 2018,

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, and the Construction Impact & Management Statement,

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

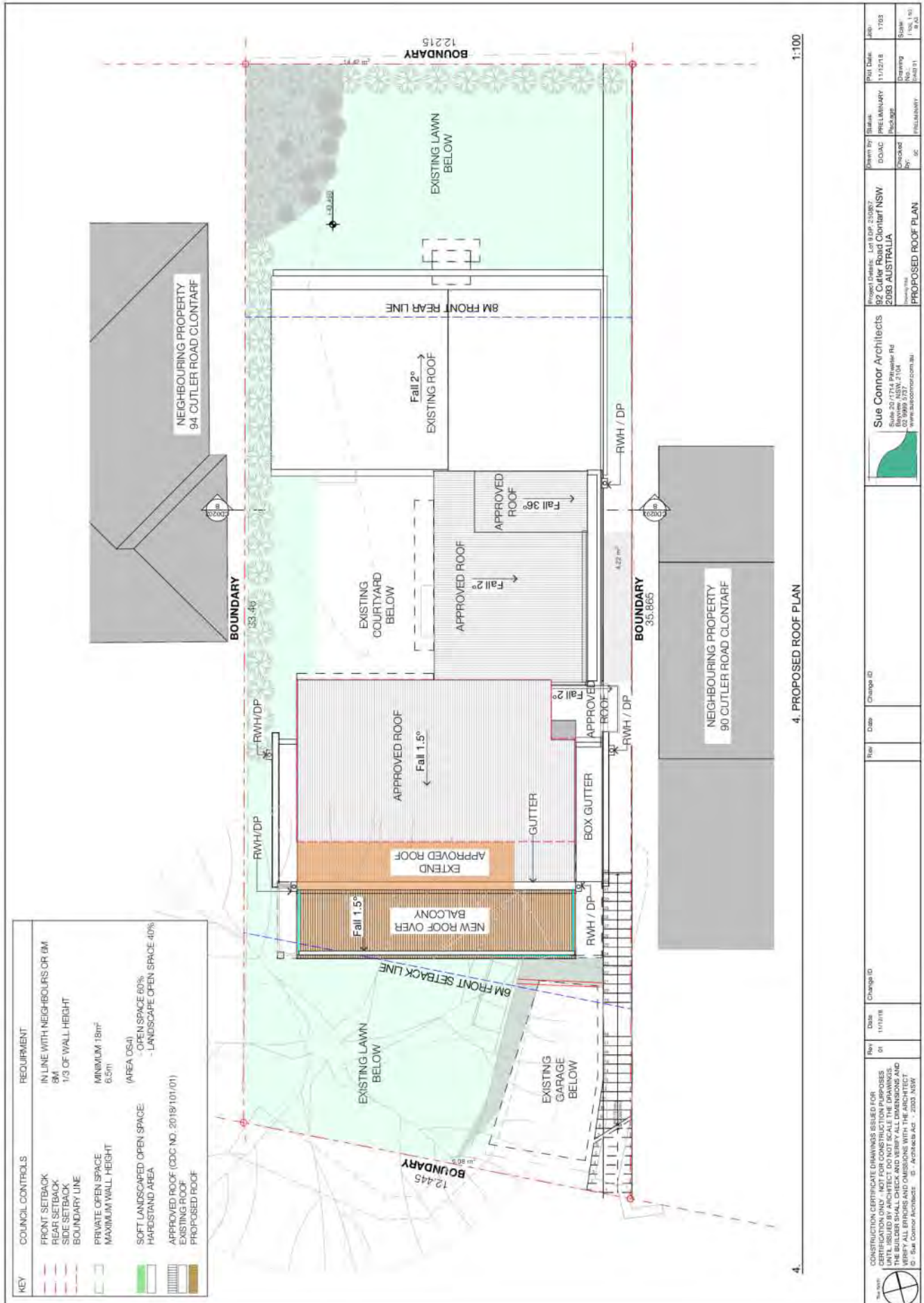
DA2018/2004

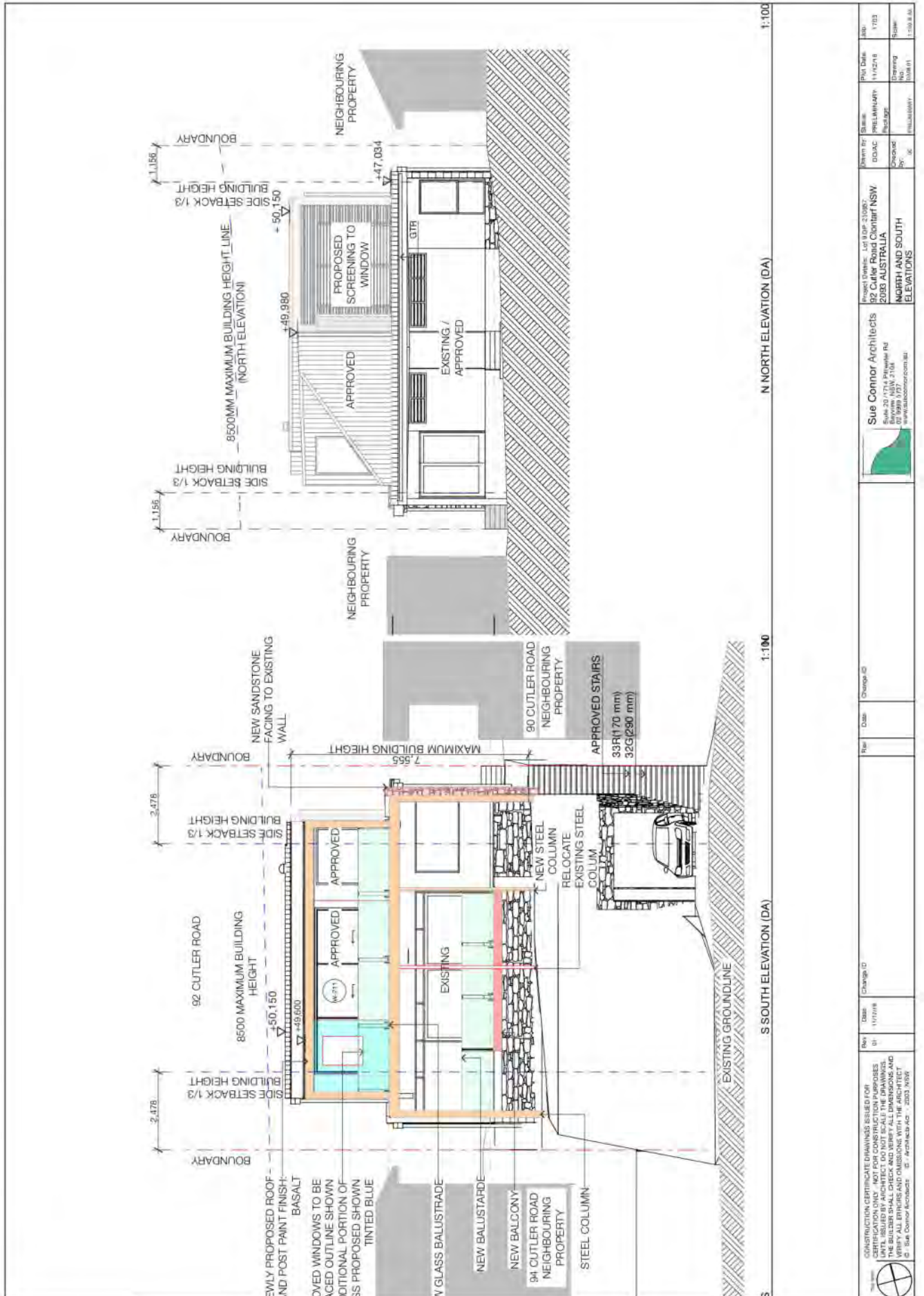
Page 23 of 24



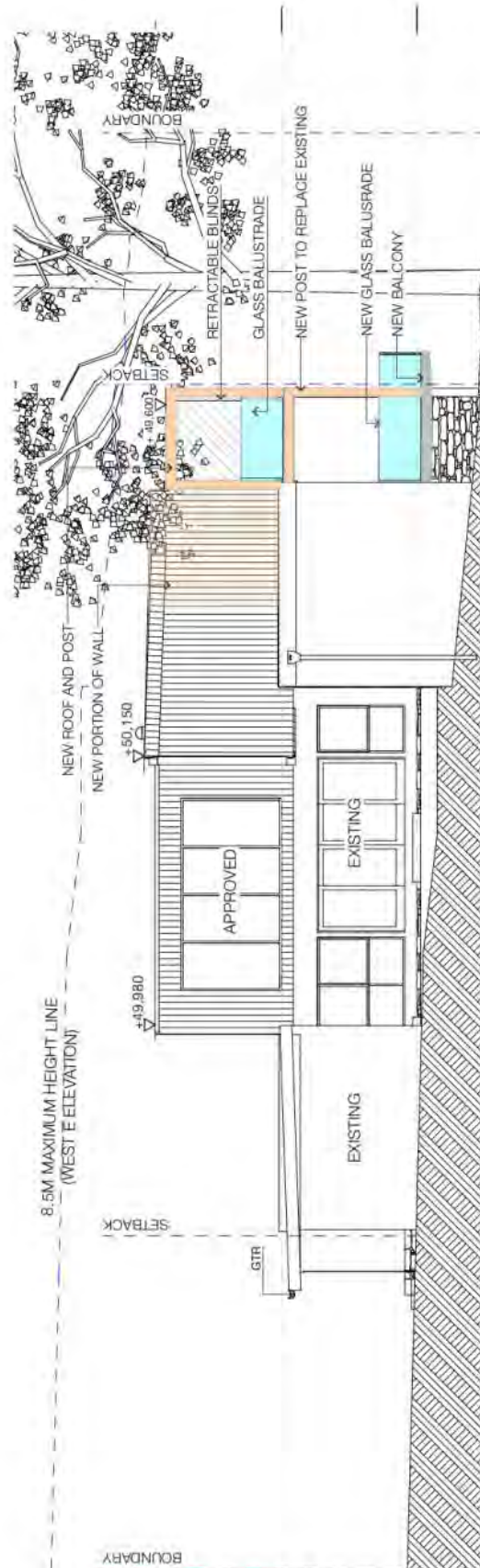
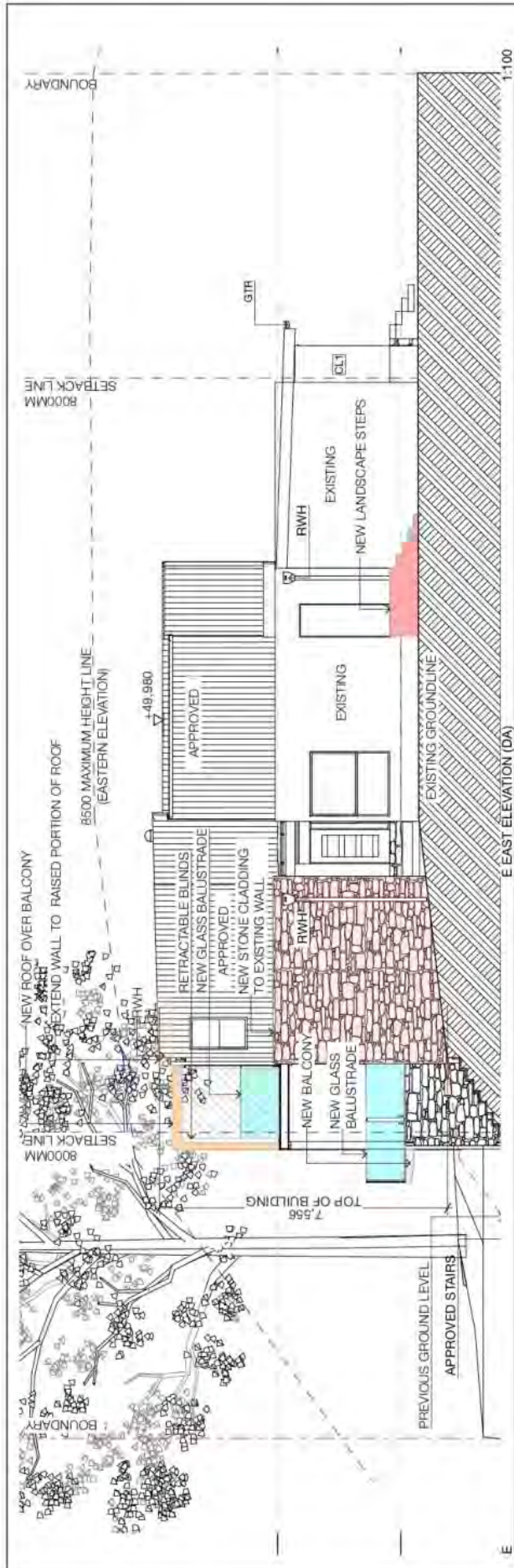
using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
x) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in
accordance with AS4373-2009 Pruning of Amenity Trees.

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





	<p>CONSTRUCTION CERTIFICATE DRAWINGS ISSUED FOR THE BUILDING OF THE PROPOSED DEVELOPMENT UNTIL ISSUED BY ARCHITECT. DO NOT SCALE THE DRAWINGS. THE BUILDER SHALL CHECK AND VERIFY ALL DIMENSIONS AND LOCATIONS OF ALL WORKING AND OFFICE AND SITE. © Sue Connor Architects 2019. 2019. 2019.</p>	<p>Rev: 1 Date: 11/12/18 Change ID: 1</p>	<p>File: 1 Date: 11/12/18 Change ID: 1</p>	<p>Project Name: 92 Cutler Road Client: NSW 2003 AUSTRALIA NORTH AND SOUTH ELEVATIONS</p>	<p>Drawn by: [Name] Checked by: [Name] Scale: 1:100 & DA</p>	<p>Plot Date: 11/12/18 Drawing No: 10001</p>	<p>Scale: 1:100 & DA</p>	<p>1:100</p>
---	--	---	--	---	--	--	------------------------------	--------------



<p>CONSTRUCTION CERTIFICATE DRAWINGS ISSUED FOR UNITS INSURED BY ARCHITECT. DO NOT SCALE THE DRAWINGS. THE BUILDER SHALL CHECK AND VERIFY ALL DIMENSIONS AND LEVELS BEFORE COMMENCING CONSTRUCTION AND OBTAINING ALL NECESSARY APPROVALS FROM THE LOCAL COUNCIL. © Sue Connor Architects 2019. 2019. 10/26</p>	<p>Rev. Date Change ID</p>	<p>Rev. Date Change ID</p>	<p>Rev. Date Change ID</p>	<p>Rev. Date Change ID</p>	<p>Rev. Date Change ID</p>	<p>Rev. Date Change ID</p>	<p>Rev. Date Change ID</p>	<p>Rev. Date Change ID</p>	<p>Rev. Date Change ID</p>
<p>W</p>	<p>1:100</p>	<p>1:100</p>	<p>1:100</p>	<p>1:100</p>	<p>1:100</p>	<p>1:100</p>	<p>1:100</p>	<p>1:100</p>	<p>1:100</p>
<p>Sue Connor Architects Suite 20/174A Pyramide Rd Beverly NSW 2104 www.sueconnorarchitects.com.au</p>	<p>Project Name: 82 Catter Road Clontarf NSW 2033 AUSTRALIA EAST AND WEST ELEVATIONS</p>	<p>Client: 82 Catter Road Clontarf NSW 2033 AUSTRALIA EAST AND WEST ELEVATIONS</p>	<p>Architect: Sue Connor Architects Suite 20/174A Pyramide Rd Beverly NSW 2104 www.sueconnorarchitects.com.au</p>	<p>Scale: 1:100</p>	<p>Scale: 1:100</p>	<p>Scale: 1:100</p>	<p>Scale: 1:100</p>	<p>Scale: 1:100</p>	<p>Scale: 1:100</p>
<p>Project Name: 82 Catter Road Clontarf NSW 2033 AUSTRALIA EAST AND WEST ELEVATIONS</p>	<p>Client: 82 Catter Road Clontarf NSW 2033 AUSTRALIA EAST AND WEST ELEVATIONS</p>	<p>Architect: Sue Connor Architects Suite 20/174A Pyramide Rd Beverly NSW 2104 www.sueconnorarchitects.com.au</p>	<p>Scale: 1:100</p>	<p>Scale: 1:100</p>	<p>Scale: 1:100</p>	<p>Scale: 1:100</p>	<p>Scale: 1:100</p>	<p>Scale: 1:100</p>	<p>Scale: 1:100</p>

Vaughan Milligan Development Consulting Pty Ltd

OBJECTION PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

92 CUTLER ROAD, CLONTARF

PROPOSED ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM FLOOR SPACE RATIO
CONTROL AS DETAILED IN CLAUSE 4.4 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013**

For: Alterations and additions to an existing dwelling
At: 92 Cutler Road, Clontarf
Owner: Cassandra and David Campbell
Applicant: Cassandra and David Campbell
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This objection is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard it is requested Council support a variation with respect to compliance with the maximum floor space ratio as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

Clause 4.4 restricts the maximum floor space area control within this area of the Clontarf locality and refers to the floor space ratio noted within the "Floor Space Ratio Map."

The relevant maximum floor space control in this locality is 0.4:1 or for this site, a maximum gross floor area of 166.92m² and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

Due to the extent of existing development on site, the proposed new works will present a floor area of 189.5m² or 0.45:1, and therefore presents a variation of 22.58m² to the control.

The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

It is noted that the Council's Manly Development Control Plan 2013 Amendment 11 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is less than minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 950m² and when calculated against

Vaughan Milligan Development Consulting Pty Ltd

this required lot size, the development prescribes a FSR of 0.199:1, which comfortably complies with this control.

3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing dwelling which is consistent with the stated Objectives of the R1 General Residential Zone, which are noted as:

- *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.*

As sought by the zone objectives, the proposal will provide for alterations and additions to an existing dwelling which are sensitive to the location and the topography of the locality.

The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum floor space ratio control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

Vaughan Milligan Development Consulting Pty Ltd

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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

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

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 11 & *Samadi v Council of the City of Sydney* [2014] NSWLEC 1199.

Paragraph 27 of the Samadi judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The site is located in the R1 General Residential Zone. The objectives of the R1 zone are noted as:

- *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.*

Vaughan Milligan Development Consulting Pty Ltd

Comments

It is considered that the proposed development will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing residential development within the locality.
- The proposed development respects the scale and form of other new development in the vicinity and therefore complements the locality.
- The setbacks maintain compatibility with the existing surrounding development.
- The proposal does not have any unreasonable impact on long distance views.

Accordingly, it is considered that the site may be developed with a variation to the prescribed maximum floor space control, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.4 are articulated at Clause 4.4(1):

- (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,*
 - (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.*

Comments

Whilst the proposal will present a minor variation to the floor space ratio control as a result of the extent of the existing dwelling, the proposal is considered to be in keeping with the objectives of Clause 4.4.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

The proposed alterations and additions to the existing dwelling are well modulated, with a low pitched contemporary roof form and articulated wall lines to reduce the overall bulk and scale, thereby minimising the visual impact of the development.

The proposed new works to the existing dwelling are subject to a maximum floor space ratio of

Vaughan Milligan Development Consulting Pty Ltd

0.4:1. Due to the extent of existing development on site, the proposed new works will present a floor area of 189.5m² or 0.45:1, and therefore presents a variation of 22.58m² to the control.

As discussed, it is noted that the Council's Manly Development Control Plan 2013 Amendment 11 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is undersized and is less than minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 950m² and when calculated against this required lot size, the development prescribes a FSR of 0.199, which comfortably complies with the FSR variation.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for additions and alterations to an existing dwelling, which are constrained by the extent of the existing building on site.

Council's controls in Clause 4.4 provide a maximum floor space ratio of 0.4:1.

It is considered that the proposal achieves the Objectives of Clause 4.4 and that the development is justified in this instance for the following reasons:

- The proposed works will maintain consistency with the general bulk and scale of residential development in the area and the character of the locality.
- The proposed alterations and additions to the existing dwelling are well modulated, with a low pitched contemporary roof form and articulated wall lines to reduce the overall bulk and scale, thereby minimising the visual impact of the development.
- The proposed bulk and the overall scale of the new works will maintain amenity and appropriate solar access for the subject site and neighbouring properties.

For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Council's controls in Clause 4.4 provide a maximum floor space ratio of 0.4:1 for the subject development.

Vaughan Milligan Development Consulting Pty Ltd

Due to the extent of existing development on site and when calculated, the proposal will provide a floor space ratio of 0.45:1, or a variation of 22.58m² to the control.

In this instance the required minimum lot size in the locality is 950m² and when calculated against this required lot size, the development prescribes a FSR of 0.199:1, which complies with the control.

The development is justified in this instance for the following reasons:

- Compliance with the floor space ratio control is constrained by the extent of the existing development on the site and the need to provide for improved family accommodation.
- The development will maintain a compatible scale relationship with existing residential development in the area. By presenting a well-modulated design with a modest roof form and increased perimeter screen planting, will not be overbearing when viewed from neighbouring properties.
- The extent of the proposed new works, whilst not compliant with Council's maximum floor space control, do not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum floor space ratio.

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

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of last year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

Vaughan Milligan Development Consulting Pty Ltd

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue

emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Accordingly, in regard to the proposed development at 92 Cutler Road, Seaforth, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The variation to the FSR control when assessed against the minimum lot size in the area of 950m² is minor.
- The development is constrained by the extent of the existing development on site.
- The variation to the floor space ratio control is inconsequential as it will not result in any unreasonable impact to the streetscape and the amenity of neighbouring properties.

The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard.

In the *Wehbe* judgment (*Wehbe v Warringah Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: It is considered that the purpose of the standard is relevant but the purpose is satisfied.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Vaughan Milligan Development Consulting Pty Ltd

Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment: Not applicable.

5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment: The development standard is applicable to and appropriate to the zone.

7.0 Conclusion

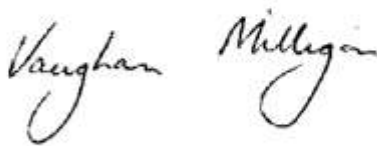
This development proposes a departure from the maximum floor space ratio development standard, with the proposed alterations and additions to the existing dwelling to provide a maximum floor space ratio of 0.45:1 or when assessed against the minimum lot size in the area of 950m², will be 0.199:1.

This variation occurs as a result of the extent of the existing dwelling on site.

This objection to the maximum floor space ratio specified in Clause 4.4 of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum floor space ratio control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN

ITEM 3.6 **DA2018/1761 - 24 AITKEN AVENUE, QUEENSCLIFF -
DEMOLITION WORKS AND CONSTRUCTION OF A
RESIDENTIAL FLAT BUILDING, AND STRATA SUBDIVISION**

REPORTING MANAGER Anna Williams
TRIM FILE REF 2019/329830
ATTACHMENTS 1 [↓](#) Assessment Report
 2 [↓](#) Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2018/1761 for demolition works and construction of a residential flat building, and strata subdivision on land at Lot CP SP 30021, 24 Aitken Avenue, Queenscliff, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1761
Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot CP SP 30021, 24 Aitken Avenue QUEENSCLIFF NSW 2096
Proposed Development:	Demolition Works and construction of a residential flat building, and strata subdivision
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under Existing Use Rights.
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	The Owners of Strata Plan 30021
Applicant:	Manly Developments 2016 Pty Ltd
Application lodged:	30/10/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	17/11/2018 to 01/12/2018
Advertised:	17/11/2018
Submissions Received:	8
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,908,959.21

Executive Summary

This application seeks consent for demolition of the existing residential flat building (RFB) containing three (3) apartments and construction of a new RFB containing four (4) apartments, basement carpark and strata subdivision.

The proposed development is defined as a residential flat building and is prohibited within the R2 Low Density Residential zone under the provisions of Warringah Local Environmental Plan 2011. The site benefits from existing use rights and assessed on its merits is found to be acceptable.

Public Exhibition of the of application resulted in eight (8) individual submissions, of which seven (7) raise concerns with the proposed development and one (1) submission is in support. The issues raised in the submissions predominantly relate to the redevelopment of an RFB on the site, scale of the development and



amenity impacts. The issues raised in the submissions are addressed in detail within the 'Public Notification' section of this report.

The application has been referred to the Development Determination Panel (DDP) as the development has a CIV of \$2.9 million and eight (8) submissions. It is recommended that the DDP approve the proposed development.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot CP SP 30021 , 24 Aitken Avenue QUEENSCLIFF NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north-eastern side of Aitken Avenue, Queenscliff.</p> <p>The site is regular in shape with a frontage of 13.005m along Aitken Avenue and an average depth of 40.44m. The site has a surveyed area of 525.8m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing three (3) storey residential flat building.</p> <p>The site has a cross fall from back to front of approximately</p>



15.3m which equates to 37.7%.

The site currently contains seven (7) trees greater than 5m in height. These include a Jacaranda, Cocos Palm and a number of Bangalow Palms all of which are proposed to be removed and replaced.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by 2-3 storey dwelling houses immediately adjoining on Aitken Avenue with a number of other larger residential flat buildings within close vicinity to the north and similar sized (3 apartments) residential flat buildings to the north-east fronting Queenscliff Road.

Map:



SITE HISTORY

A search of Council's records found the following relevant history for the subject site:

No record of the original building consent is available due to a fire which destroyed Council's records. Aerial photo records indicate that the building was built c1940-1943.

Council records did provide a rates card from 1949 which confirms the building was considered a residential flat building containing 3 flats.

On 20 August 1985, Warringah Council certified a strata subdivision of the site

Development Application No. DA1996/151 for the addition of rear decks established that the site benefited from existing use rights.

**Pre-Lodgement meeting (PLM2018/0055)**

A pre-lodgement meeting was held on 17 April 2018 to discuss the demolition and construction (under existing use rights) of a residential flat building. In principle the proposal was supported subject to the proposal addressing the following matters:

- Amend the basement design to provide the minimum number of parking spaces as required to reduce the extent of excavation (reduction of 3 spaces)
- Provide an increase in landscaping onsite including 6m within the rear setback, garden bed depths of 1.0m or greater for the roof terrace and all planting beds.
- Compliance with the 6m rear setback requirement
- Provide a compliant front setback (6.5m) to the face of Apartment 1 (5.0m proposed)
- Reduce the height non-compliance by reducing the size of Apartment 4 and reducing the balcony and roof overhang
- Ensure the driveway ramp, turning paths and bay sizes comply with the Australian Standards.

Development Application No. DA2018/1761

The applicant lodged amended plans for the basement on 2 April 2019 to address traffic and stormwater issues raised by Council. This assessment report is based on the plans as amended.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development includes demolition of the existing residential flat building and construction of a new residential flat building and strata subdivision. Specifically, the development includes:

Basement Level (RL7.560)

Parking for seven (7) vehicles including one (1) visitor space
Mechanical plant
OSD and rainwater tanks
Bulky goods/waste storage
Bicycle storage
Fire pump room
Bin storage (accessed from the street)
Lift access
Car turntable

Ground Level - Apartment 1 and 2 (RL11.160)Apartment 1

3 Bedrooms, Bedroom 1 with ensuite
Western courtyard (approx. 39m²)
Study
Laundry
Bathroom
Kitchen, living and dining
South facing balcony (approx. 19m²)
South-western non-trafficable roof garden
Planter box along frontage (1.2m deep)

Apartment 2

Bedroom 3 with ensuite and western courtyard (approx. 15m²)
Internal stair access to First Floor Level



First Floor Level

Apartment 2

Bedroom 1 with ensuite
Bedroom 2
Study
Bathroom
Laundry
Kitchen, living and dining
South facing balcony (approx. 21.3m² plus an additional 8.5m² for planter)

Apartment 3

Bedroom 3 with ensuite
Internal stair access to Second Floor Level

Second Floor Level (RL17.660)

Apartment 3

Bedroom 1 with ensuite
Bedroom 2
Study
Bathroom
Laundry
Kitchen, living and dining
South facing balcony (21.2m² plus an additional 8.4m² for planter)

Apartment 4

Bedroom 3 with ensuite
Internal stair access to Third Floor Level

Third Floor Level (RL20.19)

Apartment 4

Bedroom 1 and 2 with ensuite
Bathroom
Laundry
Kitchen, living and dining
South facing balcony (21.7m² plus a further 9.0m² of planter)

Roof Terrace (RL24.160)

Terrace (21.1m²)

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.
DA2018/1761	Page 5 of 72

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to the zone and the relevant considerations for this proposal are considered within this report.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the relevant</p>



Section 4.15 Matters for Consideration'	Comments
impacts on the natural and built environment and social and economic impacts in the locality	<p>sections within the existing use rights and Warringah Development Control Plan sections in this report.</p> <p>Given the form of development within the streetscape and the scale of surrounding development the proposed development under existing use rights is not considered to result in an unacceptable impact on the visual and scenic quality of the site, locality, streetscape and surrounding development. The proposed development presents a design with a high level of architectural merit and includes quality finishes. The minor impacts resulting from the proposal on balance are considered satisfactory.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the residential 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 residential 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. While the development is greater in scale and intensity than the immediately adjoining neighbouring properties, it is considered consistent with other developments in close proximity to the site. The development represents an improved quality of accommodation within the Queenscliff area.

EXISTING USE RIGHTS

Section 4.11 of the Environmental Planning and Assessment Act, 1979

Development for the purpose of a residential flat building is prohibited within the R2 – Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011.

Notwithstanding such a prohibition, if "Existing Use Rights" can be satisfactorily established for the land affected by the proposed development, then the consent authority may approve a development application. However, the proposal must meet the relevant requirements applying to existing uses under Sections 4.65 to 4.70 of the Environmental Planning and Assessment Act 1979, the Environmental Planning and Assessment Regulation 2000, and considering the impacts of the proposal through a merit assessment.

- Does the existing use satisfy the definition of "existing use" under the Environmental

DA2018/1761

Page 7 of 72



planning and Assessment Act, 1979 (the 'Act')?

Section 4.65 of the Act defines an existing use as meaning:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered.

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The applicant has provided evidence in the form of a Council historical records search which indicates that the existing residential flat building was built in 1949. At this time, the site would have been subject to the Local Government Act 1919 and is pre the Cumberland Planning Scheme Ordinance 1951. The site was strata subdivided on 20 February 1985 as three (3) units under Strata Plan No. 30021 when the Warringah Planning Scheme Ordinance 1963 was still in effect.

The existing use rights status of the subject property was further acknowledged by Council in the assessment of other more recent assessments and determinations, which are listed in the site history section of this report.

Based on the above history, Council can be satisfied that the site has continued to be used as an apartment building since at least 1949 to the present day without abandonment, and can be considered to have commenced as a lawful purpose prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

2. Was the use of the building / work / land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

A Residential Flat Building first became prohibited on the site under the former Warringah Local Environmental Plan 1985 when the site was zoned Residential 2A. However, when the former Warringah Local Environmental Plan 2000 was gazetted the site was unzoned and fell within the G8 Queenscliff Locality and the use was defined as "housing" which was a permissible use. Since then, the current Warringah Local Environmental Plan 2011 came into force on 9 December 2011 making the Residential Flat Building prohibited again.

DA2018/1761

Page 8 of 72



- What is "the land on which the existing use was carried out" for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: "that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose".

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question (a residential flat building) and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights. This Planning Principle states that the provisions of Environmental Planning Instruments (and DCP's) that derogate or detract from the benefit endowed on a site by existing use rights do not apply to the assessment of applications on sites where existing use rights apply. Thus, zone objectives and planning controls that limit the size of a proposal (i.e. floor space ratio, height, setbacks) have no application if existing use rights apply. This includes qualitative provisions as well as quantitative provisions.

The following four principles adopted by the court in this case will have general application in dealing with Development Applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

Planning Principle 1 makes it clear that, whilst an existing use rights development cannot be assessed against numerical controls governing bulk and scale, such controls still need to be taken into account in order to gain an informed understanding of the future context of the character of surrounding development.

The judgement indicates that care must be taken in this assessment to avoid any de facto application of these standards and that failure to comply with these standards cannot be a consideration in the assessment. The focus of the assessment therefore, is to draw a comparison between the bulk and scale of the development and the bulk and scale of development in the surrounding area and what is likely to occur in the vicinity in the future, based on the applicable planning controls.



Surrounding Development

The site is immediately adjoined to the east and west by one, two and three storey dwelling houses, and to the north by a variety of dwelling houses and residential flat buildings. The site is currently occupied by a three (3) storey walk-up apartment building containing three (3) units, top floor with a large balcony. The existing building is prominent in height within the streetscape but is dwarfed by the much larger residential flat buildings located to the north-west of the site on Queenscliff Road. On the opposite (southern) side of Aitken Avenue is Manly Lagoon Reserve.

Building Height

The maximum height control for the R2 Low Density Residential zone including the subject site is 8.5m, which is measured from the existing ground level. The maximum height of the existing building is approximately 11.7m at RL 28.230. The proposed development has a maximum height of RL25.025 which equates to approximately 12.3m, this is 3.205m lower than the maximum height RL28.230 of the existing building.

An assessment of the proposed building height is addressed within the report. Essentially, an increase in height above the existing height breach (RL28.230) would not be supported. The proposed development provides a building height overall lower than the existing height but over a greater footprint of the site.

Front Setback

The minimum front setback control that applies to the R2 Low Density Residential Zone, which includes the subject site is 6.5m. The existing building provides a setback of approximately 14m which is an anomaly within this streetscape.

Side Setback

The minimum side setback for the site is 900mm however, this control is intended for low density residential dwellings. The normal setback requirement for a residential flat building under WDCP 2011 is 4.5m.

The existing building provides side setbacks of 1.5m to the west and 1.4m to the east. The proposed building will provide 0.8m setback to the excavated basement level and approximately 3.0m to the western boundary and 2.9m to the eastern boundary.

When viewed from Aitken Avenue and the adjoining lagoon reserve, the height difference and scale of the existing building with the immediately adjoining buildings is discernible in its elevated position on the site.

The proposed development includes a new building with four (4) levels above the basement which aligns with the front boundary of the site and is closer at ground level to the side boundaries and adjoining properties which will make it more visually prominent when viewed from the street and lagoon reserve.

While the proposed height of the development cannot be 'hidden' by landscaping, the development incorporates planting areas at each level which will provide adequate softening of the hard form of the development.

While the development is larger than the adjoining dwelling houses, the design of the building is considered to sit sensitively within the setting and is not inconsistent with surrounding development to the north. Accordingly, the size and scale of the building beyond the building envelope and front setback is supported.

2. What is the relevance of the building in which the existing use takes place?



Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

There is no change of use proposed for the site, the new development will remain a residential flat building.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposal involves demolition and rebuild as a residential flat building. An analysis of the impacts is provided below:

Views

This issue is addressed with a more detailed analysis within Clause D7 - Views of WDCP 2011 within this report. In summary, the purported view loss is considered minor.

Overshadowing

This issue has been addressed under Clause D6 - Access to Sunlight of WDCP 2011 within this report. The site is a steeply sloping parcel with a south-facing aspect. While some additional overshadowing will result from the proposed development, the impact given these constraints is considered acceptable.

Privacy

This issue has been addressed under Clause D8 - Privacy of WDCP 2011 and subject to specific conditions relating to screening and planting the proposal is considered acceptable in terms of privacy.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

While the site by virtue of its location is oriented south, south-west, the design of the new apartments seeks to capture light and sunlight into the main living areas of each apartment. The internal amenity of the development is considered in detail in the SEPP 65 section of this report. In summary, the internal amenity is considered satisfactory with regard to solar access, natural ventilation and acoustic quality.

Conclusion

DA2018/1761

Page 11 of 72



The use has been approved under a previous EPI (Constructed while the Local Government Act 1919 was in force and strata subdivided while the Warringah Planning Scheme Ordinance in force) and therefore, is a lawful use. Subsequently, the use can be retained under the current EPI (WLEP 2011).

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 8 submission/s from:

Name:	Address:
Danielle Deegan	
Ms Dulcie Frances Chaseling	126 Queenscliff Road QUEENSCLIFF NSW 2096
Geoffrey Gordon Cumming	26 Aitken Avenue QUEENSCLIFF NSW 2096
Quant Shop Pty Ltd	30 Aitken Avenue QUEENSCLIFF NSW 2096
Mr David Anthony Brian Addington	32 Aitken Avenue QUEENSCLIFF NSW 2096
Mrs Andrea Turner David Turner	28 Aitken Avenue QUEENSCLIFF NSW 2096
Mrs Linde Arden Macpherson	38 Aitken Avenue QUEENSCLIFF NSW 2096
Kenneth George Hird	20 Aitken Avenue QUEENSCLIFF NSW 2096

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

- Sandstone excavation:**
Excess excavation (up to 16m)
Risk of Silicosis from dust and houses being covered
Destabilisation of foundations and damage to adjoining dwellings
Damage to existing sewer pipe
Construction traffic management -street access and truck movements.

Comment:

In relation to concerns of elevated risk of Silicosis from the excavation of the site, this activity is controlled by safework NSW which has industry standards and codes of practice for managing any risks or unacceptable exposure to dust from rock excavation. These industry requirements provide various methods for addressing potential dust emissions on the site during excavation and rock cutting. The applicant has in their supporting documentation identified a number of methods intended to be applied to suppress dust from the site. These include wet saw cutting, hosing and spraying of water on the excavation area and installation of mesh screening around the boundary of the site for further physical separation. In addition, the Geotechnical Report prepared by Geo-Environmental dated 17 October 2018, addresses the best methods for excavation on the site. Subject to the developments compliance with the recommendations of the Geotechnical Report, Safework NSW and industry requirements for these works, it is not

DA2018/1761

Page 12 of 72



considered that there should be any unacceptable level of risk in relation to Silicosis.

Concerns related to the risk of destabilisation of adjoining property foundations has been identified and addressed within the Geotechnical Report submitted with the application. This concern has been addressed through the imposition of a condition of consent requiring pre and post construction/excavation works dilapidation reports.

All works on site require the developer to locate any services on the site. While there are no sewer lines indicated on the survey plan or on Council's records, any sewerage infrastructure will be subject to Sydney Water requirements.

The applicant has provided a Construction Traffic Management Plan with the application which outlines truck movements during each phase of the construction timetable. This plan will form part of any consent. The issues raised relating to excavation and construction on the site are not sustained and do not warrant refusal of the application.

- **Loss of income**

Comment:

The proposed development is to be undertaken within the boundaries of the site. Concerns relating to the noise associated with the excavation and construction phases of the development are an issue which is regulated by the approved construction hours on the consent. Construction related noise during the approved construction hours is not considered unacceptable. This issue does not hold determining weight.

- **Loss of winter sun access**

Comment:

Overshadowing of the two adjoining properties, Nos 22 and 26 Aitken Avenue has been raised as a concern. Impacts on overshadowing during the winter equinox are as follows:

No. 22 Aitken Avenue

Shadow montages of the property at No. 22 were provided. This property is to the south-west of the subject site and is currently overshadowed by the existing building. The new development will result in some minor additional overshadowing to the rear north-eastern corner of the dwelling and some increased overshadowing to the eastern facade which is currently partly impacted by shadow. The changes to the shadow impact affects two windows at first floor level however it also results in a minor reduction of shadows at 9am to the south-eastern corner of the first floor balcony. The pre and post development shadow impacts on this property do not change further after 10am.

No. 26 Aitken Avenue

This property is on the south-eastern side of the development site. There is no change to the shadow impacts on this site until midday where this is some minor additional overshadowing to the western side of the ground floor roof terrace. By 3pm, the shadow impact is at its worst falling across the roof and front of this dwelling.

The west facing first floor window in this dwelling receives greater sunlight exposure between 11am and 12 midday and is in shadow for the rest of the day. The other impact on sunlight access occurs from 1pm when the sunlight access reaching both ground and first floor south facing terraces are impacted. The west facing sliding doors recessed under the roof line do not receive any sunlight from 2pm to 4pm.



Figure 1 - Shadow impacts 11am to 1pm on No. 26 Aitken Avenue - top existing, bottom line proposed (source: Breakspeare Architects Shadow Diagrams)



Figure 2 - Shadow impacts 2pm to 4pm on No. 26 Aitken Avenue - top existing, bottom line proposed (source: Breakspeare Architects Shadow Diagrams)

On balance, the extent of impact on the adjoining properties given their orientation to the south and the steep topography is considered minor and acceptable. While the south facing areas on both properties will receive varying impacts on their sunlight access, these spaces are not considered the primary private open space within either dwelling as each property contains spaces at the rear of the dwelling for this purpose. These areas are valued for their outlook across to the lagoon given their orientation. The overshadowing impacts from the proposed development is not considered to result in unreasonable loss of amenity to the adjoining properties.

- Traffic and Parking:**

The additional parking spaces within the development will move parking for the residents onto the site but will provide more available parking for people from Queenscliff Road.

Increased traffic and visitor parking

Loss of car access during construction

Comment:

The proposed basement parking area provides compliant parking to service four (4) apartments on the site with a total of seven (7) parking spaces including a visitor space. The current site provides no on-site parking and will result in the loss of one (1) on street parking space to allow for a new driveway crossing. The subject site has no control over who uses the on-street parking within Aitken Avenue.

DA2018/1761

Page 14 of 72



The application was supported by a Traffic and Parking Assessment prepared by Colston Budd Rogers and Kafes Pty Ltd and is considered acceptable in terms of traffic and parking generation.

The construction period for this development should not create unacceptable access for the surrounding developments. The Construction Traffic Management Plan in conjunction with conditions of consent should adequately address this concern. This issue does not warrant refusal of the application.

- **Building Design:**

Proposed building will be incongruous in Aitken Avenue.

Not in keeping with the character

Comment:

The proposed development seeks to replace an existing three storey apartment building with a four storey apartment building under existing use rights. The proposed contemporary design incorporates large terraces projecting toward the street which is reflective of a number of properties within Aitken Avenue with similar features. The surrounding area does not provide a consistent character of development exhibiting a range of architectural styles and ages in addition to a range of dwelling types from single dwellings, dual occupancy and multi unit apartment complexes. The proposed built form while larger in size than the immediately adjoining properties is designed to reflect the more contemporary styles appearing throughout Queenscliff. The development provides a superior level of Architectural detailing and design and offers an improved level of lifestyle for the future occupants. This issue does not warrant further amendment or refusal of the application.

- **Precedent:**

Approval of this application will bring other developers into the street to build more units.

Comment:

The subject site is an anomaly within Aitken Avenue as it contains an existing residential flat building with existing use rights. The development of this site under this provision will not create a precedent for similar development as residential flat buildings are prohibited within the R2 low density residential zone. As there are no other residential flat buildings within Aitken Avenue, there is unlikely to be any other claim which can demonstrate existing use rights, therefore this proposal will not set any precedent in this regard.

- **Size of the development:**

Proposal is much larger than other properties on Aitken Avenue.

Proposed 4 x 3 bedroom units (currently 3 x 2 bedroom units)

Comment:

The increase in the number and size of the apartments on the site has been addressed with the Existing Use Rights section of this report. This issue does not hold determining weight.

- **Compliance with LEP:**

Proposal not compliant with WLEP and WDCP in terms of light, views, landscaped open space and privacy.

Loss of landscaped front setback (use of roof planting)

Building Height

Wall Heights

Side boundary envelope and setbacks

Front and rear setbacks

Comment:

As explained within the existing use rights section of this report, the NSW Land and



Environment Court adopted a Planning Principle in the judgement by Senior Commissioner Roseth in *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71. This Planning Principle states that the provisions of Environmental Planning Instruments (and DCP's) that derogate or detract from the benefit endowed on a site by existing use rights do not apply to the assessment of applications on sites where existing use rights apply. Thus, zone objectives and planning controls that limit the size of a proposal (i.e. floor space ratio, height, setbacks) have no application if existing use rights apply. This includes qualitative provisions as well as quantitative provisions. The application has therefore been considered on its merits and not against the requirements of WLEP or WDCP. This issue does not hold determining weight.

- **Amenity:**

Loss of quiet enjoyment due to excessive noise during construction and more outdoor living areas.

Visually dominating

View loss

Privacy loss

Comment:

These issues have been addressed within the assessment report. The proposed development is not considered to result in unacceptable amenity impacts.

- **Submission in support:**

Resident for over 50 years verifying the subject site has been continuously used as 3 flats for that period of time.

Comment:

This submission is noted and verifies the applicants existing use rights position.

- Existing use rights not clearly established


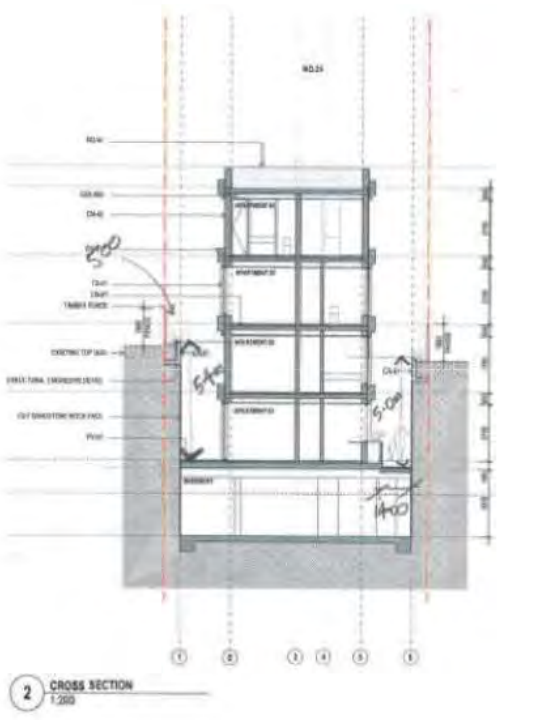
Comment:

The documentation submitted with the application has been reviewed and assessed as sufficient. This issue does not hold determining weight.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application proposes demolition of existing buildings, construction of a new residential development and strata subdivision.</p> <p>The development generally comprises four (4) units over five (5) storeys, inclusive of a basement level and the building classification relevant to the proposed use is Class 2 and 7a with Type A construction applicable.</p> <p>There are concerns that the proposal does not meet a number of areas contained within the Building Code of Australia (BCA) relating to Fire Safety. However, a report has been provided by the applicant that identifies a number of areas of non-compliance and indicates design intent to modify the design or demonstrate compliance with the Performance Requirements of the BCA. The design as proposed may be capable of complying with the BCA without recourse to a</p>
DA2018/1761	Page 16 of 72

Internal Referral Body	Comments
	<p>Modification, and will be subject to Construction Certificate documentation that provides appropriate details to demonstrate compliance.</p> <p>Whilst these performance based solutions are yet to be designed and developed, it would appear that the solutions should not impact on the current design so as to necessitate recourse to a Modified Consent. Therefore no objections subject to conditions.</p>
Landscape Officer	<p>It is noted that this application requires resolution of planning issues relating to existing use rights, the site being in the R2 Zone Low density residential.</p> <p>As such, it is difficult to assess against the planning controls as a residential flat building is very different in nature to a residential dwelling.</p> <p>The following comments are made in relation to the proposal as submitted for your consideration.</p> <p>If however, the proposal is to be approved, conditions have been included.</p> <ul style="list-style-type: none"> The cross sections provided indicate that considerable wall heights are proposed along the boundaries as the building extends further into the site. Two narrow planters are proposed along the boundary, above the finished ground level. <p>These planters are only 500mm wide and provide little by way of amenity to either the occupants or the adjoining residences and it is unclear how these are to be maintained given the height above ground and narrowness of the planters.</p> <ul style="list-style-type: none"> The resultant spaces at the finished ground level are well below surrounding ground level, resulting in poor amenity and little opportunity for plant establishment in the resultant deep canyon like spaces. The entrance lobby of the building is located deep within the site along the eastern boundary, requiring residents and guests to access through these spaces. A planter is indicated across the front of the site over the basement. The sections indicate a depth of planter of only 300mm, which is not considered adequate to sustain planting of any substance. The planters located within the balcony overhang requires a soil depth of at least 600mm.

Internal Referral Body	Comments
	 



Internal Referral Body	Comments
	<p style="text-align: center;">① LONGITUDINAL SECTION 1:200</p>
NECC (Bushland and Biodiversity)	The proposal has been assessed against Warringah DCP E4. An Indicative Planting list is provided. Cupaniopsis (Tuckeroo) are on Council's exempt list and the planting of this species is not supported. A condition will be imposed to replace these with locally native species. Biodiversity raises no further issues with the proposal.
NECC (Coast and Catchments)	The proposed development is supported without condition and has been assessed to comply with SEPP Coastal Management. 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.
NECC (Development Engineering)	<p>Reference is made to Development Engineering Referral Response dated 01/02/19 and additional information provided by the Applicant.</p> <p><u>Stormwater:</u></p> <p>Sub-surface seepage flows from the excavation/basement area are required to be directly connected to Council's road drainage system through a kerb inlet pit. This will require stormwater drainage works within Aitken Avenue, and shall be appropriately conditioned.</p> <p>No objections are raised to the proposed development, subject to conditions.</p>
NECC (Riparian Lands and Creeks)	No objection to the proposal and is approved subject to conditions. The proposed development does lie within the mapped waterways and riparian land boundary and a waterways impact statement would be required. However given the distance from Manly Lagoon (45m) and the 35m of turf and riparian vegetation between the southern curb

Internal Referral Body	Comments
	<p>and gutter boundary of Aitken Ave, Council is willing to wave this requirement. The applicant had provided a Sediment and Erosion Control Plan but the details of the methodology are still to be developed as mentioned in the plan. The applicant will need to provide this detail to Council prior to commencement of works. The applicant must also develop a sediment and erosion control maintenance plan and this will need to be complied with over the course of the build and landscaping phases.</p>
Strategic and Place Planning (Urban Design)	<p>Please find Urban Design Comments</p> <p>The proposed development application is generally supported.</p> <p>APPLICATION OF CONTROLS</p> <p>General Comments</p> <p>The proposed development demonstrates an increase in overall floor areas to the top three level apartments which have been extended southward with 1.5 – 7 metres of length to the top three level apartments. The increased projections of the balconies have the sense of creating additional bulk to the overall form and mass of the built form. The result of these changes to the floor area have resulted in a breach of the height control. Refer also height of buildings control comments below.</p> <p>1. Built Form Controls</p> <p>WLEP 2011</p> <p><i>Aims of the WLEP in relation to residential development, are to:</i></p> <ul style="list-style-type: none"> <i>i. protect and enhance the residential use and amenity of existing residential environments, and</i> <i>ii. promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, . . .</i> <p>4.3 Height of Buildings</p> <p><i>(1) The objectives of this clause are as follows:</i></p> <ul style="list-style-type: none"> <i>(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</i> <i>(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,</i> <i>(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,</i> <i>(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.</i> <p><i>(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</i></p> <p>RESPONSE</p> <p>We note the upper level accommodation and rooftop terrace has been deleted with landscape area represented on the drawings. The extended/increased floor plate of this upper level, given the requirement to form the roof slab of the apartment below has resulted</p>

Internal Referral Body	Comments
	<p>in the following effects.</p> <p>As mentioned above the increase in floor area of the upper level apartments has the resultant effect of breaching the building height control by virtue of the balconies pushing further out to the south and the nature of the topography across the site falling quite dramatically across the site. As such the height control is breached.</p> <p>As previously discussed in the pre-lodgement meeting the roof typology is markedly different, from a hip to parapet type roof. The increased bulk at this upper level exacerbated by the increased floor plates at upper levels and the reduced front setback, not so much from the ground level car park entry but by the increased bulk and scale toward the front of the site, still presents as an over development which will have impacts relevant to the surrounding sites and expected future development. See comments below regarding reduction of floor plates at upper levels.</p> <p>WDCP 2011</p> <p><i>B1 – Wall Height</i></p> <p><i>Objectives</i></p> <ul style="list-style-type: none"> • To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes. • To ensure development is generally beneath the existing tree canopy level. • To provide a reasonable sharing of views to and from public and private properties. • To minimise the impact of development on adjoining or nearby properties. • To ensure that development responds to site topography and to discourage excavation of the natural landform. • To provide sufficient scope for innovative roof pitch and variation in roof design. <p><i>1 Requirements</i></p> <p>1. Walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).</p> <p><i>2 Exceptions</i></p> <p>This control may be varied on sites with slopes greater than 20% within the building footprint (measured at the base of the external walls), provided the building:</p> <ul style="list-style-type: none"> • does not exceed the 8.5 metre height development standard; • is designed and located to minimise bulk and scale; and • has a minimal visual impact when viewed from the downslope sides of the land. <p>RESPONSE</p> <p>Non compliance with the wall height control of 7.2m is noted, along with the consideration of the nature of the sloping site. Measures to address minimisation of bulk and scale, visual impacts and sharing of views from adjoining properties should be demonstrated. A reduction</p>

DA2018/1761

Page 21 of 72

Internal Referral Body	Comments
	<p>in the increase of the upper level floor plates could address the increased bulk at the upper levels.</p> <p><i>B7 – Front Boundary Setback Requirements</i></p> <p>1. Development is to maintain a minimum setback to road frontages.</p> <p>2. The front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences.</p> <p>RESPONSE</p> <p>Noting the alignment of the ground level with the existing street building lines the general arrangement and planning across the site is supported.</p> <p>It is however noted that there are service doors that open outward onto the public pedestrian path and exceed the boundary line. It is recommended the building line be pulled back so as doors open onto entirely within the boundary line. Citing the existing building lines/garages as the precedent it is noted that these are vertical roller doors and do not encroach on the public area.</p> <p><i>B9 – Rear Boundary Setbacks Objectives</i></p> <ul style="list-style-type: none"> • To ensure opportunities for deep soil landscape areas are maintained. • To create a sense of openness in rear yards. • To preserve the amenity of adjacent land, particularly relating to privacy between buildings. • To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements. • To provide opportunities to maintain privacy between dwellings. <p><i>Requirements</i></p> <p>1. Development is to maintain a minimum setback to rear boundaries.</p> <p>2. The rear setback area is to be landscaped and free of any above or below ground</p> <p>RESPONSE</p> <p>In consideration of the rooftop apartment being removed in the proposed development the subsequent reduction in bulk as viewed from the northern part of the site with a reduced setback of 5.2m can be supported.</p>
Traffic Engineer	<p>The proposal is for the demolition of the existing apartment building and construction of a residential flat building with four apartments. Vehicular access would be provided from Aitken Avenue.</p> <p>Traffic:</p> <p>The site is anticipated to generate approximately 4 vehicles in the peak. This is considered negligible on the road network.</p> <p>Car Park Layout:</p>



Internal Referral Body	Comments
	<p>The previous comments have been addressed. However the submitted vertical clearance swept path has identified that the height clearance is not fully compliant. They will be required to amend the plans showing 2.2m clearance along the full length of the driveway ramp.</p> <p><u>Previous Comments</u></p> <p>Car Park Layout: The layout appears compliant. Clearances from walls and obstructions are in accordance with AS2890.1:2004. The turntable addresses the ability for vehicles to enter and exit in a forward direction.</p> <p>Concerns are raised regarding the 1:5.7 grade transition. Grade Transitions are to be 1:8 for at least 2.0m. This section is not compliant. The applicant has not demonstrated that vehicles will be able to drive along this section without scraping or bottoming.</p> <p>Based on the non-compliance and lack of supporting evidence, the Traffic Team cannot support the application in its current form.</p> <p>Parking: Parking has been provided in accordance with the DCP requirements. However the applicant is requesting that all basement parking spaces are to be for residents. This is not acceptable. The visitor space must be provided onsite. As such, 6 spaces will be allocated to the residents and 1 spaces is to be allocated as the visitor space.</p> <p>Planning Comment: The Applicant on 5 June 2019, provided further amendments to the driveway access. Drawing 1 - B99 Vertical Clearance Check dated 21 March 2019 demonstrates the vertical clearance for the swept path complying with the 2.2m requirement. The application is considered acceptable.</p>
Waste Officer	The application was reviewed by Council's Waste Officer who raised no objection subject to conditions.

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.
Aboriginal Heritage Office	<p>The application was referred to the Aboriginal Heritage Office who provided the following comments:</p> <p><i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i></p>



External Referral Body	Comments
	<p><i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i></p> <p><i>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted.</i></p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:



- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a four (4) storey residential flat 'housing' development plus basement car parking for the provisions of four(4) self-contained apartments.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:

The subject site is located within an established area consisting of various period and styles of architecture. Development forms range from single dwelling houses up to 2 -3 storeys and residential



flat buildings. The site is located within a cul-de-sac with no through access and is opposite Manly Lagoon and Aitken Reserve to the south.

The proposed development has been designed to maximise the outlook across Manly Lagoon providing private outdoor open space for each apartment facing Aitken Avenue, a detail which has been incorporated into most if not all properties along Aitken Avenue.

While the scale of the development is greater than the existing building, the built form integrates with the character established by the neighbouring properties with garage and terraces constructed to the front boundary. This location contains a variety of development including residential flat buildings of 3, 4, 7, 15, 18 and 38 apartments (nos. 118 and 112, 130, 108, 132 and 106 Queenscliff Road) all within the same R2 low density residential area.

The proposed development satisfies this principle.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment:

The built form, height and scale of the development is considered to provide a consistency and connection to the varying forms of development surrounding the site. The facade of the development addressing the Aitken Avenue streetscape provides a strong horizontal articulation with deep balconies to provide visual connections with the adjoining residential dwelling forms and a terraced form receding from the street to minimise the impact at street level.

The proposed garage entrance at the front boundary provides a podium form which is representative of numerous properties within this streetscape and is in part a result of the topography of these sites.

The location of the bulk of the development provides a more gentle terracing up the site with greater setbacks to the side building facades than the existing setbacks. (Refer Figure 1, 2 and 3). The design maximises the south-westerly orientation of the site enabling sought after sun and light penetration into the internal living spaces and terraces providing a desirable outlook to the adjoining lagoon reserve.



Figure 1 - South Elevation

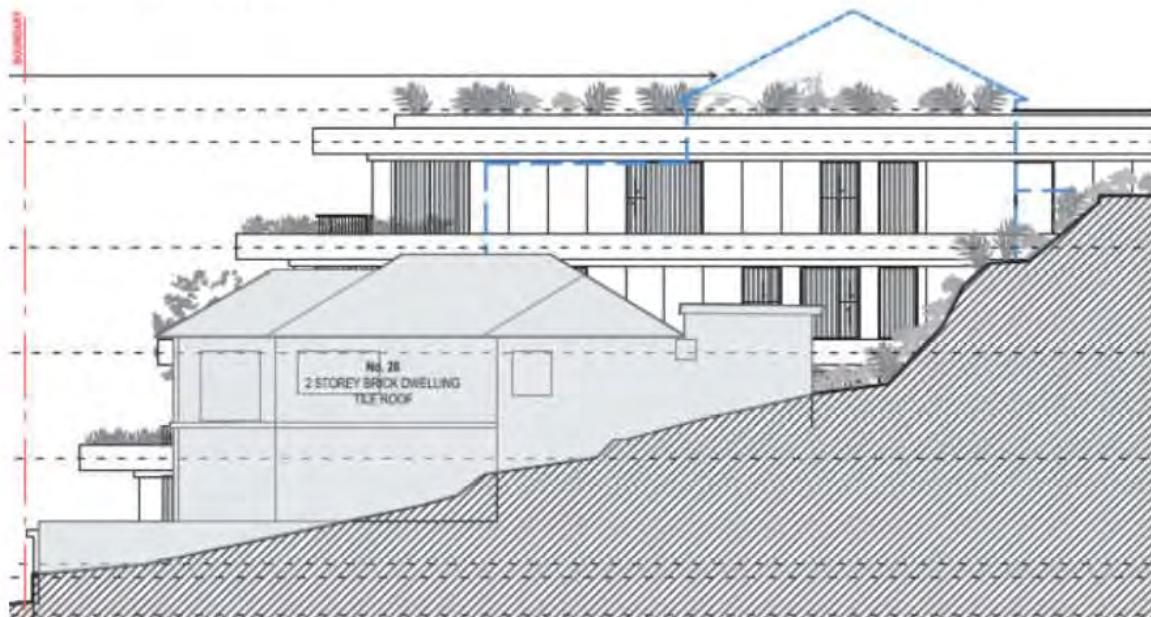


Figure 2 - East Elevation



Figure 3 - West Elevation (Figure 1, 2 and 3 - source: Breakspear Architects DA Plans)

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:

While WLEP 2011 does not provide a density development standard for the R2 Low Density Residential Zone, the development with four (4) apartments on a site measuring 525.8m² results in density of 1 dwelling per 131.5m², slightly less than the existing situation with three (3) apartments providing a density of 1 dwelling/175.3m².

The proposed density is not considered to be contrary to the future or existing regional context, the availability of infrastructure, public transport, community facilities or environmental quality. The subject site benefits from existing use rights and seeks to increase the density by one (1) apartment to four (4). This increase is considered consistent with the densities within the suburb of Queenscliff. The development satisfies this Principle.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment:

The environmental performance of the development is guided by the provisions of State Environmental
DA2018/1761 Page 28 of 72



Planning Policy (Building Sustainability Index: BASIX) 2004. In this regard, a BASIX certificate has been submitted for the proposed development which demonstrates the building meets the NSW Government requirements for sustainability. The development meets the water and energy performance targets and achieves a pass for thermal comfort.

The development satisfies this Principle.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment:

Due to the steep topography of the site, provision of suitable parking requires excavation from the street level. The proposed development has focused the primary landscaped areas away from the adjoining side neighbours through the use of generous planters at each terrace level and providing a level area at the rear of the site which connects to a common area roof terrace and non-trafficable planted roof area. These areas are not considered to unnecessarily create adverse impacts on the neighboring properties and maintains a green corridor and setback through the rear of the site which is not dissimilar to the existing setbacks to the current terrace area.

The individual landscaped terrace areas and the communal landscaped area at the highest rear of the site provides secure and well functioning spaces which will present a softened impact through the planting areas within the built form.

The proposed development is considered to satisfy this Principle.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment:

The primary emphasis of this design principle is to create a pleasant living environment for future occupants, both within the individual dwellings and the overall development. In this regard, the development demonstrates that the stepped design of the front of the development and configuration of the apartment layouts are capable of achieving satisfactory levels of amenity in terms of natural ventilation, access to sunlight, views and outlooks for individual dwellings in accordance with the requirements of the Residential Flat Design Code (discussed later in this report).

The general location, shape and configuration while restricted by the orientation of the site provides for



appropriate levels of amenity for future residents, in terms of cross ventilation, storage areas and the provision of individual areas of private open space. Accordingly, the proposal is considered capable of achieving sufficient sustainability provisions for a development of this type. Therefore, the proposal is considered to satisfy the objectives of this principle.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

The proposed development is considered to provide improved levels of security beyond what is currently available to the existing development with secured basement parking and secured entry to each apartment. In addition, each apartment provides balconies which overlook the street providing improved passive surveillance to the street and the adjoining reserve and well lit, defined paths accessing the communal lobby.

The proposal is considered to adequately achieve safety and security for future occupants of the development, providing good casual surveillance of both public and private domains. The proposal satisfies this Principle.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:

The proposed development includes one (1) additional apartment on the site providing four (4) x three (3) bedroom apartments in total. The proposed finishes and features of the development are considered to be consistent with the quality and size of development in this area providing improved design and amenity in close proximity to Manly Beach, public transport and numerous community facilities. The development is considered to satisfy this Principle.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

DA2018/1761

Page 30 of 72



The development application was accompanied by a photo-montage of the proposed development and a schedule of colours and finishes to demonstrate the aesthetics of the design. The development, as proposed, will provide an upgraded in the quality of the building to achieve a more contemporary appearance.

The overall aesthetic appearance of the development, particularly as viewed from Aitken Avenue is a terraced design intended to appear 'embedded in the landscape'. The design provides horizontal articulation and use of light natural finishes providing texture and warmth further softened by planter beds at each level integrating vegetation into the overall appearance. The architecture is considered to be consistent with the requirement of this design principle.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Complies The proposed development is considered consistent with development in the surrounding area.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Complies The site orientates to the south western boundary with a south facing slope. The building width in the east/west direction is minimised with 3m boundary setbacks to maximise solar access to all apartments and minimise overshadowing to neighbouring properties.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Complies
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts	Site area = 525.8m ² 25% = 131.45m ² Communal open space = 92.41m ² There is no communal open space provided on

	<p>of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)</p>	<p>the site is due to the small lot size. The proposal provides large balconies with Apartment 4 having access to the open space area located at the rear of the development which is also the highest part of the site.</p> <p>The site benefits from its proximity to the reserve adjoining Manly Lagoon which is on the opposite side of Aitken Avenue and provides an extensive open space area with recreation facilities offering a supplement to the balcony areas and opens space on the site which are restricted due to topography and orientation.</p>												
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<p>The deep soil zone on this site which is less than 650m² is located with the communal open space area within the rear setback of the site. The deep soil area is approximately 24m² in area.</p> <p>While the site provides approximately 4.5% as deep soil, the ADG provides the following:</p> <p><i>"Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structures".</i></p> <p>The stormwater management on the site has been assessed by Council's Development Engineers as acceptable.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													

DA2018/1761

Page 32 of 72

		<p>The design includes numerous planters located at each level to provide additional planting areas for the development. These planters have been detailed to provide a depth of 1.0m which is considered suitable to sustain adequate plant growth.</p> <p>The proposal is acceptable in this regard.</p>												
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>The following setbacks are proposed to the three (3) adjoining residential properties:</p> <p>Rear - North (124 Queenscliff Rd) - 14m Side - East (26 Aitken Ave) - 3.9m Side - West (22 Aitken Ave) - 5m</p> <p>In order to comply with the building separation requirements, the new development would be required to be setback to such a degree that the site could not be developed in an orderly manner that would be consistent with the streetscape.</p> <p>The development has been designed to step each apartment away from the street which has moved each balcony area within the development back accordingly. As a result, the only balcony that fully aligns with the neighbour at No.22 is Apartment 3.</p> <p>This apartment has a balcony at RL17.660 which is 1.17m higher than the adjacent balcony at RL16.49. The setback to</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

DA2018/1761

Page 33 of 72

		<p>the neighbour is approximately 5.0m and the balcony contains a 1.8m long screen extending from the face of the building. It is recommended that this screen be extended for a length of 2.5m to provide additional protection.</p> <p>The proposal is considered acceptable.</p>
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Complies</p> <p>The pedestrian entry is located on the eastern side of the site and is accessible from the front boundary.</p> <p>This entry is considered to meet the requirements of the ADG.</p>
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Complies</p> <p>The vehicle access point to the basement carpark is located on the opposite side of the site to the pedestrian access. The driveway access has been reviewed by Council's Traffic Engineer and is considered satisfactory in terms of safety.</p> <p>The appearance of the basement entry provides an improved aesthetic response within the streetscape.</p>
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for</p>	<p>Complies</p> <p>The proposed development provides adequate provision for bicycle and car parking in accordance with the requirements of WDCP 2011.</p>

	<p>residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. 	<p>Complies</p> <p>The ADG compliance report provided by the Architect of the development identifies that 75% of the apartments meet the requirement for a minimum of 2 hours direct sunlight between 9am and 3pm to living rooms and private open space. All apartments receive at least 1 hour of sunlight access.</p> <p>It is noted that each apartment balcony includes an operable awning which are used to shade the summer sun and vertical timber screens are proposed to the east and west facades.</p>
	<ul style="list-style-type: none"> A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter. 	N/A
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. 	<p>Complies</p> <p>There are no single aspect apartments and each apartment provides openings to three sides of the apartment and all habitable spaces.</p> <p>It is noted that the site is a south facing sloping site and is therefore</p>

		constrained in terms of providing a northern orientation. The development satisfies the objectives of the part.												
	<ul style="list-style-type: none">Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Each apartment measures 6.4m in width from east to west.												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p>Complies</p> <p>All habitable rooms within the development contain full height windows.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Complies</p> <p>All apartments are three (3) bedrooms and exceed the minimum internal areas required by the ADG.</p> <p>Complies</p>		
Apartment type	Minimum internal area													
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													

	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	2.5 x 2.7m = 6.75m. No habitable room depths exceed 6.75m.															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	The maximum room depth is no greater than 6.75m															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).																
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	All bedrooms provide at least 3.0m in dimension.															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments 	The internal width of the combined living /dining area is 6.75m.															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	The internal width of the apartments is 6.4m.															
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr> </thead> <tbody> <tr> <td>Studio apartments</td><td>4m²</td><td>-</td></tr> <tr> <td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr> <tr> <td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr> <tr> <td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>Complies</p> <p>The primary balcony for each apartment provide an area measuring approximately 23m².</p> <p>Apartment 1 provides a courtyard along the western side of the development accessed from each of the bedrooms in addition to the main balcony accessed off the primary living spaces.</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>The development provides access to a single apartment at each level of the lift core.</p> <p>N/A</p>															
Storage	In addition to storage in kitchens, bathrooms and	Complies															

DA2018/1761

Page 37 of 72

	bedrooms, the following storage is provided:	Each apartment is larger than the minimum floor area required under the ADG and therefore contains additional space within each footprint for storage. Apartments 1, 2 and 3 contain an additional room available for storage or a study nook. Each apartment contains a space within the basement garage for bulky goods/bike storage.										
	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	
Dwelling Type	Storage size volume											
Studio apartments	4m ²											
1 bedroom apartments	6m ²											
2 bedroom apartments	8m ²											
3+ bedroom apartments	10m ²											
	At least 50% of the required storage is to be located within the apartment.											
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Complies										
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Complies The development site is located toward the end of a no through road opposite a lagoon and reserve. The building design has focused active living areas at the front of the apartments facing the street.										
Configuration												
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Complies The development is for only four (4) apartments, each being three (3) bedrooms. Apartments 1, 2 and 3 include an additional small space suitable for a study. The apartment mix is considered suitable for this location.										
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Complies The ground floor apartments are on an elevated podium approximately 1.6m above street level and are considered to provide adequate amenity and safety.										
Facades	Ensure that building facades provide visual interest along the street and neighbouring	Complies The proposed building										

DA2018/1761

Page 38 of 72

	buildings while respecting the character of the local area.	facade incorporates horizontal cantilevered and planted balconies at each level terracing back up the site to reduce the perceived bulk and scale of the building. The materials palette includes off form concrete structural elements, natural hardwood timber screening and compressed fibre cement cladding with generous planter beds providing articulation to the facade and a complimentary reflection of the natural space opposite the site within the lagoon reserve.																				
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Complies The proposed roof is to incorporate a deep soil roof garden.																				
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Complies																				
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes: <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small</td><td>6-8m</td><td>9m³</td><td>800mm</td><td>3.5m x</td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small	6-8m	9m ³	800mm	3.5m x	Complies The proposed roof planter and the planters at each level balcony provide a minimum of 1.0m soil depth suitable for supporting medium sized vegetation commensurate with the scale of planting referenced in the drawings and photomontages.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																		
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																		
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent																		
Small	6-8m	9m ³	800mm	3.5m x																		

	<table><tr><td>trees</td><td>high, up to 4m crown spread at maturity</td><td></td><td></td><td>3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	trees	high, up to 4m crown spread at maturity			3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		
trees	high, up to 4m crown spread at maturity			3.5m or equivalent																		
Shrubs			500-600mm																			
Ground Cover			300-450mm																			
Turf			200mm																			
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	Complies The plans submitted with the application identify Apartment 2 (DA203-A) as universally designed Liveable Housing Unit.																				
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	N/A																				
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	N/A																				
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	N/A																				
Performance																						
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Complies The applicant has submitted a set of plans containing the Assessor certification with a NatHers rating of 6.0 stars and ABSA accreditation.																				
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Complies The application has been reviewed by Council's Development Engineers who have raised no objections subject to conditions in relation to stormwater and drainage.																				



Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Complies The plans provide adequate waste and recycling storage areas accessed from street level. This area has been endorsed by Council's Waste Services.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Complies The construction and facade materials selected for the development are of an adequate durability to ensure the longevity of the building provided reasonable building maintenance occurs for the duration of the buildings life.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment:

The proposal satisfies the design criteria above and is recommended for approval subject to conditions.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

DA2018/1761

Page 41 of 72



- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 4.15(2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

Adequate regard has been given to the matters raised under subclause (2) and the application is recommended for approval subject to conditions.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 964998M dated 26 October 2018). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	35	35

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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



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	% Variation	Complies
Height of Buildings:	8.5m	12.25m	44.7	No

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Existing Building	Proposed	% Variation*	Complies
B1 Wall height	7.2m	10m	10.9m (east) 9.9m (west)	3.7m (50%) 2.7m (37.5%)	No
B3 Side Boundary Envelope	East - 5m	2.8m - 3.3m	Up to 4.61m	N/A	No
	West - 5m	1.0m - 2.85m	Up to 4.15m	N/A	No
B5 Side Boundary Setbacks	0.9m	1.5m	0.8m to basement 3.0m to building	0.1m (11%)	No
	0.9m	1.4m	0.8m to basement 3.0m to building	0.1m (11%)	
B7 Front Boundary Setbacks	6.5m	14m	Basement - Nil Ground - Nil to planter 5.32m to face of building First Floor - 1.7m to planter 7.72m to face of building	N/A	No

DA2018/1761

Page 43 of 72



			Second Floor - 4.1m to planter 10.1m to face of building Third Floor - 6.5m to planter 12.5m to face of building Roof - 8.9m		
B9 Rear Boundary Setbacks	6m	4.9m	5.26m	0.71m (8.5%)	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	245m ² (46%)	19% excluding roof and planters 52% including roof and planters	N/A	No

Part B Built Form Controls

The Land and Environment Court Planning Principle established in the judgement by Senior Commissioner Roseth in *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71, confirms that the provisions of Environmental Planning Instruments (and DCP's) that derogate or detract from the benefit endowed on a site by existing use rights do not apply to the assessment of applications on sites where existing use rights apply. Therefore, zone objectives and planning controls that limit the size of a proposal (i.e. floor space ratio, height, setbacks) have no application if existing use rights apply.

This includes qualitative provisions as well as quantitative provisions. In view of the above, the built form controls as contained in the WDCP compliance table are not relevant to the assessment of the Application and is, therefore, only included as a record to identify how the proposed development measures up against the applicable controls that would otherwise relate to the subject site, if existing use rights did not apply to this site. In this regard, no further assessment is provided in this report regarding the non-compliances as identified in the Built Form Controls table above. Instead, this report includes a merit based assessment having regard to the matters for consideration set out under Section 4.15 of the EPA Act.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	No
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
D7 Views	Yes	Yes
D8 Privacy		
D9 Building Bulk	Yes	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D6 Access to Sunlight

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 that reasonable access to sunlight is maintained.*

Comment:

Based on the shadow analysis submitted with the application, the extent of overshadowing impact on the adjoining properties is considered minor and reasonable in the circumstances.

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

Comment:

The proposed development has excavated into the site in order to minimise any additional height or bulk of the development as it extends down the site to the south. The overall building form while extending for more of the site is lower than the existing building height resulting in some minor improvements to overshadowing in some places on the adjoining properties.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

Comment:

The existing and proposed shadow analysis provided by the Applicant demonstrates that due to the steep south facing topography of the site and its adjoining properties, the extent of impact from the development is predominantly in the afternoon where the first floor west facing



windows at the front of the dwelling lose the small amount of sunlight currently available from midday.

- *To promote passive solar design and the use of solar energy.*

Comment:

The proposed development has maximised where possible the principles of passive solar design offering multi aspect apartments oriented towards the views of the lagoon and reserve with full height glazing to habitable rooms.

- *To minimise the need for artificial lighting.*

Comment:

The internal design of the apartments seek to use internal reflective light off light coloured internal finishes.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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.

D7 Views

Merit consideration

Following notification of the application, submissions were received from two (2) properties raising concerns of view loss from the proposal. The impact of the development on the properties at No. 126 Queenscliff Road and No. 22 Aitken Avenue is considered against the underlying Objectives of the Control as follows:

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

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:



126 Queenscliff Road

This property adjoins the north-west (rear) corner of the subject site. The site currently enjoys views from the rear, first floor balconies across the top of the subject site and the adjoining property at No. 22 Aitken Avenue. The view includes a section of Manly Lagoon and Reserve and district views.



Photograph 1 - Existing view across the subject site (source: Breakspear Architects)

22 Aitken Avenue

This property is adjacent to the subject site to the south-west and currently has views from the front first floor terrace and living area to the south across Manly Lagoon and Reserve.

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

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

Comment to Principle 2:

Both properties have views from terraces (rear at No. 126 Queenscliff Road and front at No. 22 Aitken Avenue). Views are available from a sitting and standing positions.

3. Extent of impact

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

DA2018/1761

Page 47 of 72



sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating".

Comment to Principle 3:

126 Queenscliff Road

The view impact from the property at No. 126 Queenscliff Road is arguably reduced with the proposed development. While the building is moving slightly further west, the finished height of the new works is approximately 3.2m lower than the existing ridge line. Accordingly, the extent of impact in this instance is considered reduced and on balance negligible.



Photograph 2 - View from 126 Queenscliff Road with proposed building (source: Breakspear Architects)

22 Aitken Avenue

This property currently contains a large entertaining deck on the front southern facade of the house adjoining the living, dining and kitchen. This deck is at RL16.49 and is approximately 1.5m from the side boundary with the subject site and approximately 5.1m from the front boundary. It is noted that this deck was originally approved with a privacy screen along the entire eastern end which was later removed through a modification.

The proposed development includes a terrace at first floor level (RL14.410) and a roof over hang at RL 17.31 that provides a setback of approximately 4.1m. The roof terrace will provide a minor interruption into the view lines from this deck to the east. The view impact from the eastern side of the deck will be a reduction from a 180 degree view of the lagoon to approximate 168 degree view. The overall impact of the development on this property is considered minor to negligible.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more



planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

Given the site benefits from 'existing use rights' the assessment of the proposed development against the numerical planning controls for this zone conflicts with the the Planning Principle which states *"the provisions of Environmental Planning Instruments (and DCP's) that derogate or detract from the benefit endowed on a site by existing use rights do not apply to the assessment of applications on sites where existing use rights apply."*

The application has been assessed on its merits and the proposed form is not considered to result in anything other than a minor to negligible impact on the eastern periphery of the existing view corridor from No. 22 Aitken Avenue. Accordingly, the overall impact on views of surrounding properties is considered negligible.

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

Comment:

The proposed design is considered to provide a high level of architectural integrity and improved quality of materials and finishes. The design is considered acceptable in terms of this requirement.

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

Comment:

There are no trees impact by this development for the retention of views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with 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.

D8 Privacy

Merit consideration

The submissions received following notification of the proposed development raised concerns with privacy impacts resulting from windows, courtyards and balconies along the western side of the development. Accordingly, The development is considered against the underlying Objectives of the Control as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

Concerns relating to the potential for noise impacts from the Ground Floor Level side courtyards is considered unfounded. This area adjoins bedrooms and not high traffic living spaces. Its



shape and size is not conducive for use to entertain. This space is not considered a likely source of noise impacts.+

The building design includes the use of timber screens to all windows located on the eastern and western elevations. These screens are considered to adequately protect sight lines to and from bedrooms located in these positions. The same screening detail is incorporated along the edge of the trafficable balcony areas. The only location in where this is considered to be an area of potential overlooking is at Apartment 3 on the western elevation. While the development provides a separation of approximately 4.5m balcony to balcony, the finished level of this apartment is approximately 1.17m above the finished level of the balcony at No. 22 Aitken Avenue. The screen element appears to end short of the full depth of the balcony which is considered to result in potential for overlooking from this unit across to the balcony at No. 22. It is recommended that this screen be extended to the southern end of the trafficable balcony section and be a fixed structure.

The balcony areas for each apartment are located at the southern frontage of the building with a setback of 3.0m to the boundary in order to maximise the available view amenity from this aspect. This detail is repeated by almost every property within Aitken Avenue and is a detail which could be incorporated into a single dwelling up to 0.9m from the side boundaries. Subject to this specific condition the proposed development is considered to provide appropriate visual and acoustic privacy.

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

Comment:

The proposed development provide maximum amenity to all apartments despite its steep, south facing constraints.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposed development will provide secure vehicle and pedestrian access into the site.

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

DA2018/1761

Page 50 of 72



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

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 2,908,959		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 27,635
Section 7.12 Planning and Administration	0.05%	\$ 1,454
Total	1%	\$ 29,090

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1761 for Demolition Works and construction of a residential flat building, and strata subdivision on land at Lot CP SP 30021,



24 Aitken Avenue, QUEENSCLIFF, 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
DA001 - Location Plan - Rev D	25.10.2018	Breakspear Architects
DA103 - Demolition Plan - Rev D	25.10.2018	Breakspear Architects
DA104 - Excavation and Fill Plan - Rev D	25.10.2018	Breakspear Architects
DA200 - Roof terrace Plan - Rev D	25.10.2018	Breakspear Architects
DA201 - Third Floor Plan - Rev E	25.10.2018	Breakspear Architects
DA202 - Second Floor Plan - Rev E	25.10.2018	Breakspear Architects
DA203 - First Floor Plan - Rev E	25.10.2018	Breakspear Architects
DA204 - Ground Floor Plan - Rev F	28.03.2019	Breakspear Architects
DA205 - Basement Plan - Rev F	28.03.2019	Breakspear Architects
DA300 - West Elevation - Rev D	25.10.2018	Breakspear Architects
DA301 - East Elevation - Rev D	25.10.2018	Breakspear Architects
DA302 - North/South Elevation - Rev E	25.10.2018	Breakspear Architects
DA303 - Massing Comparison Elevations (East/West) - Rev E	25.10.2018	Breakspear Architects
DA304 - Massing Comparison Elevations (South/North) - Rev D	25.10.2018	Breakspear Architects
DA400 - Cross Sections 1 and 2 - Rev E	25.10.2018	Breakspear Architects
DA401 - Longitudinal Section - Rev F	28.03.2018	Breakspear Architects
DA902 - Driveway Crossover - Rev B	28.03.2018	Breakspear Architects
DA500 - Schedule of Colours and Materials - Rev D	25.10.2018	Breakspear Architects

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Traffic Report	October 2018	Colston Budd Rogers & Kafes Pty Ltd
Construction Traffic Management Plan	19 October 2018	AAA Traffic Control Pty Ltd
Geotechnical Investigation Report	17 October 2018	Geo-environmental Engineering

DA2018/1761

Page 52 of 72



BCA Assessment Report	24 October 2018	City Plan Services
Accessibility Assessment Report	4 October 2018	City Plan Services
Arboricultural Impact Assessment	25 October 2018	Complete Arborcare

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:

Landscape Plans		
Drawing No.	Dated	Prepared By
L100 - Landscape Concept Plan - Rev E	17 October 2018	Spirit Level Designs Pty Ltd

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

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

2. Prescribed Conditions

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

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



that Act,

- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative Requirement

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of



any Authorised Officer.

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

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008



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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches Council Contributions Plan 2018

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

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 2,908,959.21		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 27,635.11
Section 7.12 Planning and Administration	0.05%	\$ 1,454.48
Total	1%	\$ 29,089.59

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.

DA2018/1761

Page 56 of 72



5. **Security Bond**

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

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

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

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

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

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

The applicant is to lodge a Bond of \$350,000 as security against failure to complete the construction of Stormwater drainage works as part of this consent. Details demonstrating payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

The developer/applicant must lodge with Council a Maintenance Bond of \$29,000 for the construction of stormwater drainage within Aitken Avenue. The Maintenance Bond will only be refunded on completion of the six-month Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing practical completion.

Reason: Protection of Council's infrastructure.

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

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

- a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.
- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.



- c) The following soil depths are required in order to be counted as landscaping:
- 300mm for lawn
 - 600mm for shrubs
 - 1metre for trees

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

9. **Pump-Out System Design for Stormwater Disposal**

The design of the pump-out system for stormwater disposal will be permitted for drainage of hard surfaces areas such as driveways and basement pavement areas only, and must be designed in accordance with AS/NZS 3500. The Applicant is to provide engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site.

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

The Applicant is to submit an application for approval for Infrastructure works on Councils roadway. Engineering plans for the new development works within the road reserve within this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the design of stormwater drainage within Aitken Avenue which shall be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer.

The design must include the following information:

- i. Construction of a stormwater pipeline to connect to existing Council road drainage to the west of the subject site.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

11. **On-site Stormwater Detention**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Warringah Water Management Policy PL850, and generally in accordance with the concept drainage plans



prepared by Insync Services, job number 20180047, drawing number SW-000, SW-001, SW-100, SW-101, SW-102, SW-103, SW-104, SW-105, SW-106, issue 3 and SW-107, issue 1, dated 26/03/19. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

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

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

12. **Structural Adequacy and Excavation Work**

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

- a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

13. **Sub-Soil Seepage**

The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit, directly to Council's road drainage system within Aitken Avenue and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.)

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



Reason: To ensure appropriate drainage and stormwater management on site to protect amenity of residents.

14. Shoring of Adjoining Property

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining(s) with engineering drawings of the proposed shoring works for their consideration and approval.

An application to Council for approval under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

15. Vehicle Crossings Application

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

16. Traffic Management and Control

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

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

17. Planter and Garden Bed soil depth

All constructed planter boxes and garden beds, excluding the balcony overhangs are to provide a minimum of 1.0m soil depth. The balcony overhangs must provide a minimum of 600mm soil depth. Details to be provided to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure adequate soil depth is provide to support sufficient scale planting.

18. Pre-commencement Dilapidation Report

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

DA2018/1761

Page 60 of 72



private properties.

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

19. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:-

- Site Boundaries and contours;
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

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

Reason: To mitigate environmental impact resulting from site disturbance (DACNEC22)

20. **Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended to delete the Cupaniopsis (Tuckeroo) and replace these with locally native canopy trees of minimum mature height of 8m. The amended Landscape Plan is to be certified by a qualified landscape architect, arborist or ecologist prior to the issue of the Construction Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls. (DACNECPCC2)

21. **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.

22. **Privacy Screen to be extended to Apartment 03**

The privacy screen on the western side of the balcony of Apartment 03 is to be extended for the full length of the deck finishing at the southern edge of the trafficable balcony section. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that are consistent with the approved colours and materials and that complement the design of the approved development.

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

DA2018/1761

Page 61 of 72



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

23. **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.

24. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Council Waste Management Guidelines, including the required Northern Beaches Council Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with Northern Beaches Council Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided. (DACWTC01)

25. **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

26. **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.

DA2018/1761

Page 62 of 72



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

27. Tree protection

- (a) Existing trees which must be retained
 - i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
 - ii) Trees located on adjoining land
- (b) Tree protection
 - i) No tree roots greater than 25mm diameter are to be cut from protected trees
 - ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
 - iii) All tree protection 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.

28. Installation and Maintenance of Sediment and Erosion Control

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

29. Road Reserve

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

Reason: Public Safety.

30. Civil Works Supervision

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.



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

31. **Traffic Control During Road Works**

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

Reason: Public Safety

32. **Vehicle Crossings**

The Applicant is to construct a normal standard vehicle crossing 3.6 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

33. **Noise and Vibration**

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

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

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

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

Reason: To ensure private and public safety

35. **Site Fencing**

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

Reason: To ensure public safety.

36. **Site Management Sign**

A clearly legible Site Management Sign is to be erected and maintained throughout the course

DA2018/1761

Page 64 of 72



of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:

- The builder's name, builder's telephone contact number both during work hours and after hours
- That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
- That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections.
- During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
- That no skip bins or materials are to be stored on Council's Road Reserve.
- That the contact number for Northern Beaches Council for permits is 9970 1111.

Reason: To ensure that contractors on site are aware of council permits that need to be obtained and contact for the builder/foreman.

37. **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.

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

- a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.
- b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

39. **Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection. (DACAHE01)

40. **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.

41. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

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

42. **Landscape Certification**

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Principal Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the approved Landscape Drawing and a maintenance program has been established.

Reason: This is to ensure the landscaping is planted in accordance with the drawing and maintained appropriately.

43. **Stormwater Disposal**

The Applicant shall submit a certificate from a suitably qualified person that the stormwater drainage works have been constructed/installed in accordance with all relevant Australian Standards and Codes. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

44. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.



A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

45. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater detention structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for on-site storm water detention is to be submitted.

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

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard.

46. **Post-Construction Dilapidation Report**

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties

Reason: To ensure security against possible damage to Council and private property.

47. **Required Planting**

a) Trees, shrubs and groundcovers shall be planted in accordance with the approved Landscape Plan.

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



Reason: To maintain environmental amenity.

48. **Certification of Drainage Works and Works as Executed Data**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits.

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

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

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

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

Reason: To ensure bushland management. (DACPLF01)

50. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area. (DACPLF03)

51. **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.

52. **Undergrounding of Telecommunications Services**

Arrangements are to be made for the provision of underground telecommunications services to the building.

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

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

53. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which



references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

54. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with Northern Beaches Council Waste Management Guidelines

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 waste and recycling facilities are provided. (DACWTF01)

55. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

56. **Positive Covenant for Waste Services**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

57. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land. (DACWTF04)



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

58. **Landscape maintenance**

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity.

59. **No Planting Environmental Weeds**

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

Reason: Weed management.

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

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

Reason: To protect Aboriginal Heritage.

61. **Dead or Injured Wildlife**

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

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

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

62. **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

63. **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

64. **Stormwater Drainage and Utility Services Plan**

A plan of subdivision identifying the location of water, gas, telephone, electricity and stormwater



drainage in relation to boundaries and/or relevant easements, prepared by a registered surveyor is to be submitted to Council. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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

65. **Sydney Water Compliance Certification**

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

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

66. **On-Site Stormwater Detention Compliance Certification**

Prior to issue of a subdivision certificate the on-site stormwater detention (OSD) system must be certified by a consulting engineer and include a "works as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

Reason: To ensure stormwater disposal is constructed to standard specifications AUSPEC

67. **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

68. **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

69. **Title Encumbrances**

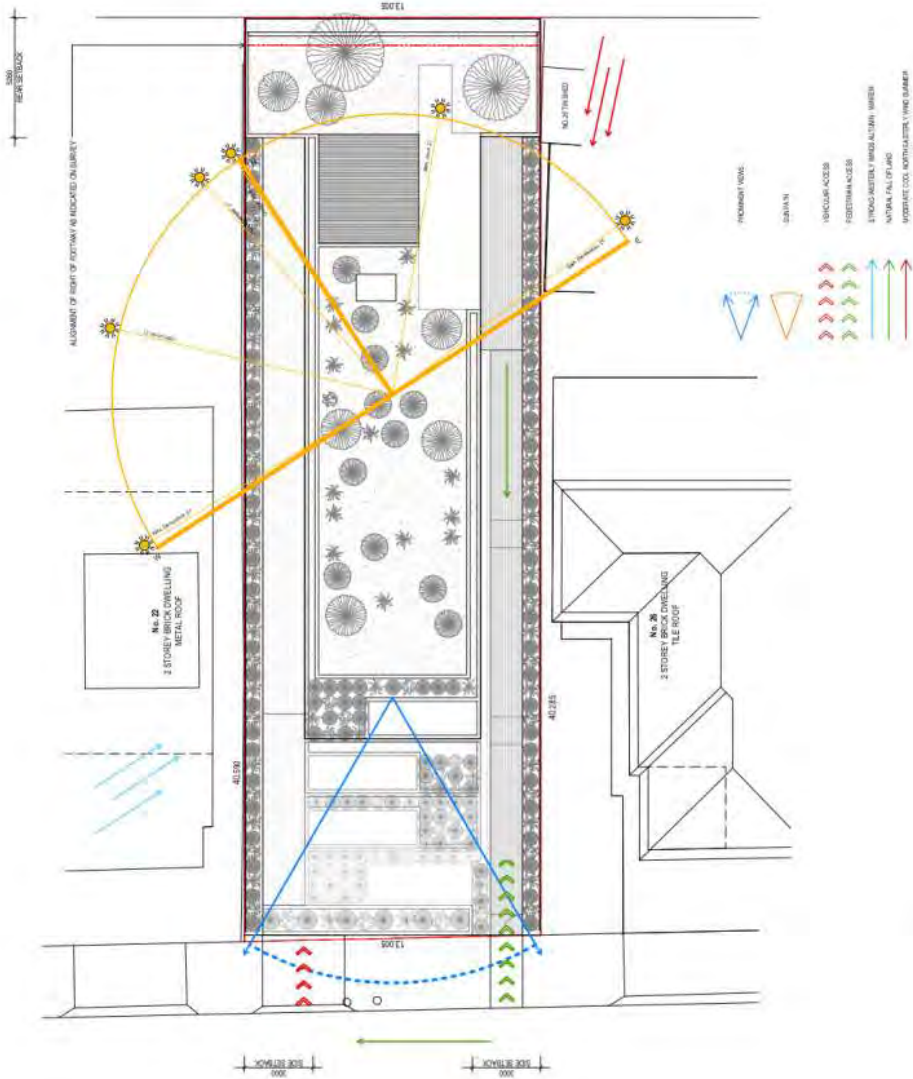
All easements, rights of carriageway, positive covenants and restrictions as to user as indicated on the plans and required by this consent are to be created on the title naming Northern Beaches Council as the sole authority empowered to release or modify. Details demonstrating compliance are to be submitted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

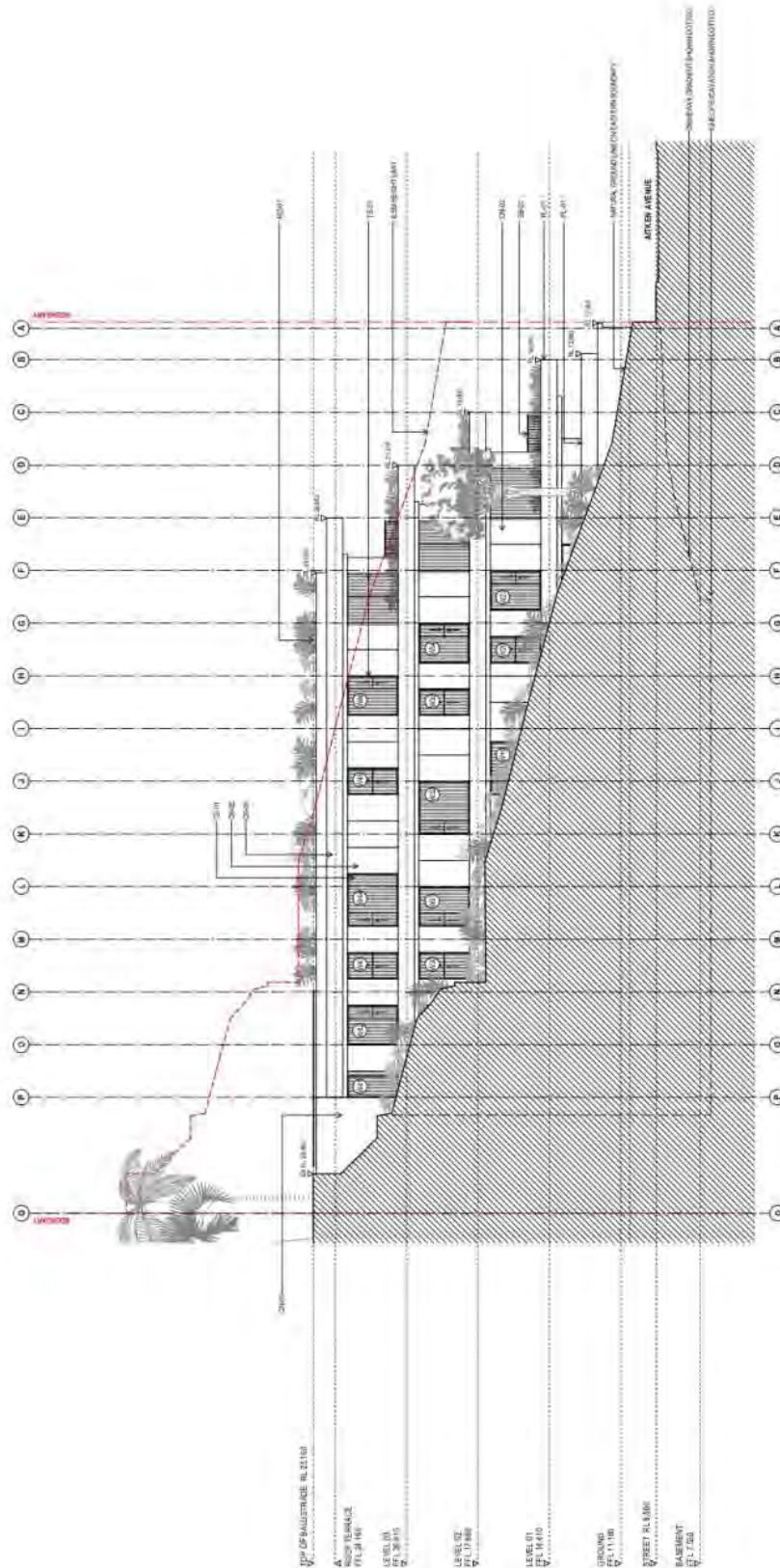


Reason: To ensure proper management of land



1 SITE AND CONTEXT ANALYSIS PLAN 1:200		2 LOCATION PLAN 1:200		NOT FOR CONSTRUCTION	
PROJECT NO: 1801 PROJECT NAME: 24 AITKEN AVE APARTMENTS, QUEENSCLIFF PROJECT NUMBER: 1801 PROJECT DATE: 18/01/2019 PROJECT DRAWN: CA PROJECT CHECKED: TB PROJECT SCALE: A3 PROJECT SHEET NUMBER: 001 PROJECT SHEET TOTAL: D	PROJECT NO: 1801 PROJECT NAME: 24 AITKEN AVE APARTMENTS, QUEENSCLIFF PROJECT NUMBER: 1801 PROJECT DATE: 18/01/2019 PROJECT DRAWN: CA PROJECT CHECKED: TB PROJECT SCALE: A3 PROJECT SHEET NUMBER: 001 PROJECT SHEET TOTAL: D	PROJECT NO: 1801 PROJECT NAME: 24 AITKEN AVE APARTMENTS, QUEENSCLIFF PROJECT NUMBER: 1801 PROJECT DATE: 18/01/2019 PROJECT DRAWN: CA PROJECT CHECKED: TB PROJECT SCALE: A3 PROJECT SHEET NUMBER: 001 PROJECT SHEET TOTAL: D	PROJECT NO: 1801 PROJECT NAME: 24 AITKEN AVE APARTMENTS, QUEENSCLIFF PROJECT NUMBER: 1801 PROJECT DATE: 18/01/2019 PROJECT DRAWN: CA PROJECT CHECKED: TB PROJECT SCALE: A3 PROJECT SHEET NUMBER: 001 PROJECT SHEET TOTAL: D	PROJECT NO: 1801 PROJECT NAME: 24 AITKEN AVE APARTMENTS, QUEENSCLIFF PROJECT NUMBER: 1801 PROJECT DATE: 18/01/2019 PROJECT DRAWN: CA PROJECT CHECKED: TB PROJECT SCALE: A3 PROJECT SHEET NUMBER: 001 PROJECT SHEET TOTAL: D	PROJECT NO: 1801 PROJECT NAME: 24 AITKEN AVE APARTMENTS, QUEENSCLIFF PROJECT NUMBER: 1801 PROJECT DATE: 18/01/2019 PROJECT DRAWN: CA PROJECT CHECKED: TB PROJECT SCALE: A3 PROJECT SHEET NUMBER: 001 PROJECT SHEET TOTAL: D





1 WEST ELEVATION
1:200

No change to the use of the site is proposed, and all proposed works are in accordance with the relevant planning instrument. The site is not deemed to be a sensitive area. The project is not deemed to be a sensitive area. The project is not deemed to be a sensitive area.

NOT FOR CONSTRUCTION		SHEET TITLE	
		WEST ELEVATION	
		24 AITKEN AVE APARTMENTS, QUEENSCLIFF	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	
		PROJECT NAME: 1801	
		PROJECT NO: 1801	



The 3 cases occurred in the 3 compartments with 2 patients in the postoperative periods and 1 during the postoperative period. The 3 patients were all female (100%). The 2 patients in the postoperative period were 1 patient in the postoperative period and 1 patient in the postoperative period.

NOT FOR CONSTRUCTION

[illegible]

[illegible]