

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

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

WEDNESDAY 3 JULY 2019

Beginning at 1.00pm for the purpose of considering and determining matters included in this agenda.

All

Peter Robinson Executive Manager Development Assessment



Panel Members

Peter Biscoe	Chair
Steve Kennedy	Urban Design Expert
Graham Brown	Town Planner
Peter Cotton	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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



Agenda for a Meeting of the Northern Beaches Local Planning Panel to be held on Wednesday 3 July 2019 in the Council Chambers, Civic Centre, Dee Why Commencing at 1.00pm

1.0 DECLARATIONS OF INTEREST

2.0	MINUTES OF PREVIOUS MEETING
2.1	Minutes of Northern Beaches Local Planning Panel held 26 June 2019
3.0	DEVELOPMENT APPLICATIONS
3.1	DA2019/0114 - 267 Condamine Street, Manly Vale - Demolition of the existing building and construction of a shop top housing development, comprising 27 dwellings, 4 retail tenancies and carparking
3.2	MOD2018/0683 - 559-563 Sydney Road & 42 Ethel Street, Seaforth - Modification of Development Consent 139/2015 granted for demolition of existing structures and construction of a mixed use development
3.3	DA2018/1755 - 15 Winsome Avenue, North Balgowlah - Subdivision of one lot into two lots and construct new drive114
3.4	DA2018/1930 - 118 Bower Street, Manly - Alterations and additions to the building and change of use to an attached dual occupancy169
3.5	MOD2019/0024 - 43 Booralie Road, Terrey Hills - Modification of Development Consent DA2016/0523 granted for demolition works, construction of a service station and signage
3.6	MOD2019/0029 - 46 Victoria Parade, Manly - Modification of Development Consent DA367/2010 granted for demolition works and construction of a residential flat building236



2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 26 JUNE 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 26 June 2019 were adopted by the Chairperson and have been posted on Council's website.



ITEM NO. 3.1 - 03 JULY 2019

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1

DA2019/0114 - 267 CONDAMINE STREET, MANLY VALE -DEMOLITION OF THE EXISTING BUILDING AND CONSTRUCTION OF A SHOP TOP HOUSING DEVELOPMENT, COMPRISING 27 DWELLINGS, 4 RETAIL TENANCIES AND CARPARKING

REPORTING OFFICER Matt Edmonds

TRIM FILE REF 2019/348844

ATTACHMENTS

1 Assessment Report

- 2 Site Plan and Elevations
- 3 SEPP 65 Report
- 4 Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and is 4 or more storeys in height.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0114 for demolition of the existing building and construction of a shop top housing development, comprising 27 dwellings, 4 retail tenancies and carparking at Lot A & Lot B DP 39108, 267 Condamine Street, Manly Vale subject to the conditions and for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0114
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot A DP 39108, 267 Condamine Street MANLY VALE NSW 2093 Lot B DP 39108, 267 Condamine Street MANLY VALE NSW 2093
Proposed Development:	Demolition of the existing building and construction of a shop top housing development, comprising 27 dwellings, 4 retail tenancies and carparking
Zoning:	Warringah LEP2011 - Land zoned B2 Local Centre Warringah LEP2011 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Manly Vale Developments No 3 Pty Ltd
Applicant:	Manly Vale Developments No 3 Pty Ltd

Application lodged:	11/02/2019	
Integrated Development:	No	
Designated Development:	No	
State Reporting Category:	Mixed	
Notified:	27/05/2019 to 10/06/2019	
Advertised:	23/02/2019	
Submissions Received:	1	
Recommendation:	Approval	

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of development application DA2019/0114 from Manly Vale Developments No 3 Pty Ltd for the demolition of existing buildings and the construction of a shop top housing development, comprising 27 apartments, 4 retail tenancies and car parking at 267 Condamine Street, Manly Vale.

The subject site is zoned B2 Local Centre under the provisions of *Warringah Local Environmental Plan* 2011 (WLEP 2011), and the proposed development is permissible with consent.



The public notification of the application resulted in two submissions in objection to the proposal on behalf of one adjoining property owner. The concerns raised in these submissions have been addressed in the assessment report, and overall, there were no matters raised that would warrant the refusal of the application in the public's interest.

The proposed development is a high quality architectural response to the context of the site, compatible with the height, bulk and scale of surrounding built form. The resultant development will provide a high level of amenity for future occupants, and will not result in any adverse impacts upon the character of the streetscape or the amenity of adjoining properties. As such, the proposal has been found to be consistent with the principles of *State Environmental Planning Policy No.* 65 - *Design Quality of Residential Apartment Development* (SEPP 65), and the relevant objectives of the *Apartment Design Guide*, WLEP 2011 and *Warringah Development Control Plan 2011* (WDCP 2011).

The proposal is reliant upon a variation to the maximum building height development standard prescribed by clause 4.3 of WLEP 2011, with a maximum variation of 33%. The applicant's written request to vary this standard satisfactorily addresses the matters required, and overall, the consent authority can be satisfied of the relevant matters of clause 4.6 of WLEP 2011.

The application seeks consent for a four-storey shop top housing development that is subject to the provisions of SEPP 65 and involves a variation to the building height development standard greater than 10%. As such, the application is referred to the Northern Beaches Local Planning Panel for determination in accordance with the direction issued by the Minister for Planning on 23 February 2018.

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 Local Environmental Plan 2011 - Zone B2 Local Centre Warringah Local Environmental Plan 2011 - 4.3 Height of buildings Warringah Development Control Plan - B2 Number of Storeys



Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks Warringah Development Control Plan - B7 Front Boundary Setbacks Warringah Development Control Plan - D2 Private Open Space Warringah Development Control Plan - D6 Access to Sunlight Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot A DP 39108, 267 Condamine Street MANLY VALE NSW 2093 Lot B DP 39108, 267 Condamine Street MANLY VALE NSW 2093
Detailed Site Description:	The site has a 28.397m wide frontage to Condamine Street, a 34.45m wide frontage to Kenneth Road, and a total area of 1075.3m ² . The site currently comprises a one and two storey commercial premises and a number of outbuildings, with vehicular access and perpendicular parking along the Kenneth Road frontage. The site experiences a fall of approximately 4m from the western side boundary down towards the Condamine Street frontage, with a slope of approximately 12%. The site is surrounded by a variety of different land uses and buildings of varied age and character, with a number of recent development approvals under construction or yet to be acted upon.
	Condamine Street is a seven lane classified road, with bus lanes and intermittent parking restrictions on both sides of the street. The Condamine Street road reserve immediately adjacent to the site comprises a narrow footpath, with no street trees or overhead infrastructure. Kenneth Road is a three lane local road, that lacks formal kerb and guttering for the majority of the frontage of the site. Traffic lights control the intersection of Condamine Street and Kenneth Road, with signalised pedestrian crossings on the western, northern and eastern sides of the intersection.

Map:





SITE HISTORY

On 14 August 2018, a prelodgement meeting was held between Council staff and the applicant to discuss a four storey shoptop housing development at the subject site, similar to that now proposed. The prelodgement minutes confirmed that Council would be supportive of the "substantial height and storey non-compliance", subject to refinements, including the reduction and centralisation of the area of the top floor. The proposed development is generally consistent with this advice.

On 25 September 2018, development application DA2018/1579 was lodged with Council.

On 23 November 2018, development application DA2018/1579 was withdrawn following concerns raised by Council in relation to:

- Building height non-compliance
- Front setback non-compliance
- Side setbacks
- Accessibility
- Works in the public road reserve
- ADG non-compliance

On 11 February 2019, the subject development application was lodged with Council.

On 18 April 2019, amendments were requested by Council to address concerns relating to:

- vehicular access, noting that RMS did not support the location of the driveway
- design of the retail frontage
- size of the upper floor
- ceiling heights at the ground floor
- solar access



On 14 May 2019, Council received amended plans to address concerns raised by Council. Most notably, the amended plans demonstrate the relocation of the access driveway, further to the west on Kenneth Road.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the demolition of all existing structures and the construction of a four storey shop top housing development over two levels of basement car parking. Specifically, the application comprises:

- 5 x Studio apartments
- 6 x 1 Bedroom apartments
- 16 x 2 Bedroom apartments
- 4 x Retail tenancies, ranging in size from 42m² to 105m²
- · 20 x Retail parking spaces, inclusive of 1 space for people with disabilities
- 6 x Residential visitor parking spaces, inclusive of 1 space for people with disabilities and a dedicated car wash bay
- · 31 x Residential parking spaces, inclusive of 6 spaces for people with disabilities
- 33 x Bicycle racks
- 1 x On-street loading bay in Kenneth Road

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	WDCP 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Planning agreement Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. 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. Clause 92 of the EP&A Regulation 2000 requires the
	<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.



Section 4.15 Matters for Consideration	Comments
	<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. <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 matter may be addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	 (i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the WDCP 2011 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:	



Name:	Address:	
Tomasy Pty Ltd	1073 Pittwater Road COLLAROY NSW 2097	

Two submissions were received on behalf of the owner of the adjoining properties at 265 Condamine Street and 1 Kenneth Road in objection to the proposed development; one in response to the notification of the original proposal in February 2019, and a second in response to the amended proposal in June 2019. In accordance with Council's notification policy prescribed by clause A.7 of WDCP 2011, all submissions received on behalf of the one property will be considered as one submission. The matters raised on behalf of the adjoining property owner are considered as follows:

Permissibly

<u>Comment:</u> The submissions raise concern that the proposed development is not consistent with the definition of shop top housing as defined by WLEP 2011, and as such, the development is prohibited on the subject site. Shop top housing is defined by WLEP 2011, as follows:

shop top housing means one or more dwellings located above ground floor retail premises or business premises.

The submission makes reference to the decision of the NSW LEC in *Hrsto v Canterbury City Council (No 2) [2014] NSW LEC 121*, which provides clarity on the definition of shop top housing development, as follows:

[33] ... a dwelling must be in the same building as the ground floor retail premises or business premises and on a floor of that building that is at a level higher than the top most part of the ground floor retail premises or business premises in order to be characterised as "shop top housing" as defined.

[34] Residential development that has a floor level that is lower than the top most part of ground floor retail premises or business premises could not be properly characterised as "shop top housing".

[35] The Respondent accepts that dwellings do not need to be directly or immediately above ground floor retail premises or business premises in order to be characterised as "shop top housing". If it was intended that "shop top housing" be limited to dwellings that are directly or immediately above ground floor retail premises or business premises it is expected that those words would have been included in the definition of the term 'shop top housing'.

[36] The Respondent contends that dwellings must be in the same building as the ground floor retail premises or business premises for the purposes of the term "shop top housing". However, the Respondent accepts that a broad interpretation of the word "above" in the definition should be given which would suggest that the dwellings need only be at a floor level that is higher than the top of the ground floor retail or business premises and do not need to be contained in an envelope on the higher floor level that would be intersected by a line drawn vertically from within the envelope of the ground floor retail or business premises.

The submission contends that, with a finished floor level (FFL) of 15.0m AHD, the western-most Level 1 residential apartments (Apartments 1, 2 and 3) are not at a level higher than the top most part of the ground floor retail premises at 15.5m AHD (being the FFL of the residential level above the eastern ground floor retail). The submission states that to achieve compliance with the shop top housing definition, the FFLs of the western-most apartments will need to be raised by 500mm.





This assertion is not supported for a number of reasons. Firstly, is not considered appropriate to identify the 'top most part of the ground floor retail premises' as the FFL of the residential level above. This incorrectly includes any common service cavities and structural elements as being solely related to the ground floor retail use. Secondly, as shown in Section C (DA-12 revision J), the western-most apartments are above the upper most level of Retail 4, with an internal ceiling height of 14.7m AHD (300mm below the FFL of the residential apartments above). Thirdly, Section C also clearly demonstrates the inclusion of a dropped ceiling within the eastern most retail spaces at 14.9m AHD, 100mm below the FFL of the western-most Level 1 apartments. This dropped ceiling is designed to accommodate a variety of services for various aspects of the development, and is not solely associated with the ground floor retail use. To avoid concerns that the ceiling cavity space will be solely associated with the ground floor retail space, conditions of consent are recommended to ensure the construction of the dropped ceiling at 14.9m AHD in Retail 1-3, and to identify the cavity as common property.

All residential apartments are on a floor of the proposed building that is at a level higher than the top most part of the ground floor retail premises, and as such, the proposal is consistent with the shop top housing definition and permissible with consent within the B2 Local Centre zone.

Building height

<u>Comment</u>: The submission raises objection to the height of the proposed development, in particular, the visual impact of the upper most floor as seen from Condamine Street. The submission seems to generally accept the four storey character of development throughout the Manly Vale B2 zone, but raises concerns that the upper most floor will be seen as a fifth storey as viewed from Condamine Street. The proposed upper level is setback 18m from the Condamine Street frontage, and will be generally screened from view by the lower level roof form and proposed roof planters. The upper level is also setback 10m from the Kenneth Road frontage, with a three-four storey dominant facade presenting to the street.

The applicant has provided a number of visual representations of the development as seen from a variety of view points along Condamine Street and Kenneth Road. From the majority of vantage points, the proposed upper floor is not readily visible. It is acknowledged that the upper most level will be visible from upslope along Kenneth Road, however, from this vantage point, the floor space will have the appearance of a fourth storey, consistent with the scale of other nearby and surrounding development. Overall, the upper most floor is not considered to be overly dominant or incompatible with the streetscape.

The reasonableness of the height of the development is discussed in further detail with respect to clauses 4.3 and 4.6 of WLEP 2011.

Height and Bulk Planning Principle

<u>Comment</u>: The submission received raises objection to the height and bulk of the proposed development, and in accordance with the Height and Bulk Planning Principle developed by the NSW LEC in the matter of *Veloshin v Randwick Council* [2017] NSWLEC 428, deems the height and bulk of the development to be unacceptable. As discussed in further detail with regard to clauses 4.3 and 4.6 of WLEP 2011 and clause D9 of WDCP 2011, the height and bulk of the proposal is considered to be acceptable in the context of the site.

Floor to ceiling heights

Comment: Non-compliance with the minimum floor to ceiling heights of retail spaces prescribed



by the ADG is highlighted in the submission received on behalf of the adjoining property owner. The submission suggests that strict compliance must be enforced, which would result in further increases to the non-compliant building height. As discussed with regard to Objective 4C pf the ADG, the ceiling heights of the proposed retail spaces are considered to be acceptable.

Number of storeys

<u>Comment:</u> The submission received also highlights non-compliance with the three storey limit prescribed by WDCP 2011. As acknowledged in the submission itself, the predominant character of development in the area is four storeys, and as discussed with regards to clause B2 of WDCP 2011, the four storey nature of the proposal is considered to be acceptable.

Overdevelopment

<u>Comment:</u> The submission concludes that the combined effect of all proposed areas of noncompliance results in the overdevelopment of the site. The proposal is a well-articulated and high-quality architectural response to the context of the site, that will be a positive contribution to the streetscape. The proposal is not considered result in a building that would be perceived as an overdevelopment of the site.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Approval, with conditions. The application proposes four (4) residential levels that are located above ground floor level retail tenancies, with two (2) levels of basement car parking located under. The building proposes twenty seven (27) sole occupancy units. Vehicular and pedestrian access is provided to the building from Kenneth Street. No objections subject to conditions to ensure compliance with the National Construction Code.
Landscape Officer	Approval, with conditions. The plans indicate internal courtyards and landscape works in the road reserve on Kenneth Road. No objections are raised to the works as indicated in the plans with regard to landscape issues, subject to conditions.
NECC (Development Engineering)	Approval, with conditions. Overland Flow: The Application relies upon an Overland Flow Study prepared by Barrenjoey Consulting Engineers, job number 180803, dated September 2018, previously submitted for DA2018/1579. Please ensure this document is linked to the current Application. External Works:



Internal Referral Body	Comments
	Civil works within Kenneth Road and Condamine Street shall be the subject of a Roads Act Approval.
	No objections are raised to the proposed development, subject to conditions.
NECC (Stormwater and Floodplain Engineering – Flood risk)	Approval, with conditions. The property at 267-269 Condamine St, Balgowlah is tagged as being within the Medium Flood Risk Precinct. However it is only a very tiny part of the property, less than 1m inside the property boundary in the south-east corner, which is affected. The flood affectation is from overland flow flowing south along Condamine St. The entrance to the basement car park is on Kenneth Rd, outside of the PMF extent, and there are no entrances into the building below the FPL. Based on the HECRAS anlalysis in the Flood Management Report by Barrenjoey Consulting Engineers, the basement entry driveway will crest above the overland flow travelling down Kenneth Rd.
	There are no flood related objections to the proposed development.
Strategic and Place Planning (Urban Design)	 Approval, no conditions. Original comments (28.03.2019): The proposal should reconsider the following: 1. The building height control of 11m has been breached in multiple areas by up to 2.6 m. The proposed breach comprises of an apartment with a big roof garden. The development will benefit from a communal room and open space located on the roof deck as recommended by the Apartment Design Guide (ADG). The proposed apartment should be made smaller to accommodate the communal room in order to not increase the building footprint on the roof. The proposed breach in building height is sympathetic to the surrounding developments which have similar taller built form that is well set backed from the main street facade. 2. The ceiling heights proposed in Retail 3 and 4 are below the 3.3m floor to ceiling height recommended in the ADG. 3. The vehicular ramp access to the basement divides up the retail area 3 and 4. It also creates two entry points to the residential lift lobbies which is not desirable. 4. The 1350mm wide strip between the retail frontages and footpath to Condamine Street should follow the same level and gradient as the public footpath to avoid trip hazard ie, there should not be a step-down as indicated in the Condamine street elevation and perspective view drawing.



Internal Referral Body	Comments	
	Amended comments (8.06.2019): The proposed revisions to the development satisfy the previously	
	raised Urban Design concerns as follows;	
	Revised Vehicular Access Point The revised location of the vehicle access point/driveway is supported in that the resultant entry foyer to the residential lobby is more clearly articulated and legible. The revisions to the Kenneth Road elevation and entry sequence is sufficiently resolved from a pedestrian amenity, wayfinding and circulation point of view.	
	 Entry Ramp Kenneth Road It is noted that the access ramp from the residential foyer entry 	
	point off Kenneth Road in front of retail unit 3 does not provide for a sufficient landing dimension at the bottom of the ramp to the perpendicular cross path of travel. The ramp should shift further to the east to provide for a minimum compliant landing to meet the cross path of travel at the residential entry foyer. Refer AS1428.1.	
	• WDCP 2011 - B5 Side Boundary Setback and B7 Front Boundary Setback The revised drawings and view analysis submitted demonstrate the upper storey will have little impact on surrounding views and street level views. The upper storey unit is sufficiently setback from the building line and as such can be supported.	
	• WDCP 2011 - D9 Building Bulk The revised treatment and amendments to the Condamine Street and Kenneth Road elevations has sufficiently addressed previous concerns of appropriate articulation and break-up of the built form, including the variation and expression of materials and colours and as such can be supported.	
	• WLEP 2011 - 4.3 Height of Buildings As discussed above the upper level apartments are sufficiently setback from the building line resulting in minimal visual impacts on the surrounding views. The height breach can be supported in the overall context of development in the locality.	
	Generally, the proposed revisions to the development have addressed the majority of concerns raised in previous Urban Design referrals and as such can be supported.	
Traffic Engineer	Approval, with conditions.	



Internal Referral Body	Comments			
	The amended development proposal involves the demolition of the existing building and construction of a new mixed use building comprising 4 small retail shops with a combined floor area of 274m2 and 27 residential apartments. 57 offstreet parking spaces are proposed including 6 visitor spaces, 20 retail spaces and 31 residential spaces. A total of 8 of the parking spaces are proposed for disabled use.			
	<u>Traffic:</u> The original comments on this proposal requested a revision of the traffic report to reflect that the development was a medium density development based on RMS criteria. This statement was incorrect as RMS defines any development with more than 20 dwellings as being high density. The anticipated traffic generation from the site of 23 vtph utilsing RMS traffic generatation rates for high density residential is therefore considered appropriate and results in only 1 trip more than the potential peak hour traffic generation from the existing site. The traffic generation is acceptable			
	Parking: The development requires 31 residential spaces, 6 visitor spaces and 17 retail spaces. The developer proposes 31 residential spaces, 6 visitor spaces and 20 retail spaces.			
	Given the proximity of the location to the Manly Vale B-Line bus stop the lower number of residential spaces when compared to the DCP requirements is considered reasonable and likely to encourage lower levels of car ownership and higher use of public transport by the residents. There is also a high demand for on street parking in the location and the higher level of retail parking when compared to the DCP requirements is not opposed.			
	There is some concern that the retail bike parking space is located within retail space 10 which reduces its effective length and will result in access to the bike parking spaces being blocked. The bike parking space should be relocated.			
	It is noted that there are 4 small car spaces within the carpark. These spaces are within acceptable size limits for small car spaces as outlined in AS2890.1 section2.4.1 (iii) and their provision is not opposed given that parking numbers exceed DCP requirements.			
	Car parking numbers are acceptable			
	Pedestrian: While the plans show that 2.5mx 2.0m pedestrian sight line triangles have been provided. These sight lines triangles are not provided at a location which is consistent with the requirements of AS2890.1 Fig 3.3 which stipulates that the sight line triangle is to be provided at the property boundary not the centre point of the footpath. The wall adjacent to the western boundary will need to be cut back to ensure			



Internal Referral Body	Comments
	that the 2.5m x 2.0m sight line triangle is available.
	Subject to compliance with a condition regarding pedestrian sight line triangles the proposal is acceptable
	Accessibility: It is noted that the amended plans have relocated the driveway to the western boundary of the site which is supported and consistent with RMS requirements.
	The driveway width is not dimensioned on any of the plans however i must be at least 5.5m in width to be consistent with AS2890.1 and to allow for passing of ingressing and egressing vehicles.
	Subject to compliance with a condition regarding driveway width the access arrangements are acceptable
	Servicing: It is noted that the RMS Traffic Generating Guidelines require that an on-site service bay be provided at a rate of 1 bay for each 50 units and 1 space per 400sqm of retail space. This equates to 0.54 spaces for residential and 0.69 spaces for the retail component. The applican proposes only a single loading zone bay of 10m in length which is to be created on street. While the Loading Bay should ideally be provided off-street the creation of an on-street Loading Zone is not opposed, provided that the design and all costs associated with its installation are undertaken at the developers costs. This Loading Zone being on-street would also be public parking and would therefore be available for use by adjacent commercial premises and require approval through the Local Traffic Committee prior to construction.
	In addition, it is also considered that at least one off-street space should also be set aside as a service bay for deliveries by vans and utilities etc. One of the retail spaces should therefore be signposted and marked as a Service Bay
	Subject to compliance with conditions reflecting the above the servicing arrangements are acceptable.
Waste Officer	Approval, with conditions.
	Residential & retail binrooms acceptable to Council. Bulky goods room door must open outwards rather than inwards.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Approval, no conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Approval, no conditions.
	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.



External Referral Body	Comments	
NSW Roads and Maritime Services (Traffic Generating Development)	Approval, with conditions.	

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 65 - Design Quality of Residential Apartment Development

The application seeks consent for a four storey shoptop housing development, comprising 27 dwellings, and as such, the provisions of SEPP 65 apply to this development.

Clause 28 of SEPP 65 requires a consent authority to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the design quality of the development when evaluated in accordance with the design quality principles identified in Schedule 1 of SEPP 65, and the ADG.

The proposal is considered to be consistent with the design quality principles of SEPP 65, as follows:

Principle 1: Context and Neighbourhood Character

<u>Comment:</u> The proposed development is located on one of the main roads through the Northern Beaches, at one of the busiest intersections in the locality. The site is surrounded by development of varying land use, scale, character and density. Nonetheless, the proposed development is compatible with the character of surrounding development within the B2 zone, and is consistent with the dominant form of development along Condamine Street; being four storey shoptop development.

The design of the front facades also individually respond to the context of the site, with a more solid and enclosed presentation to Condamine Street in response to traffic conditions and a



softer, more open presentation to Kenneth Street, noting the lower order classification of the street, leading into a residential area.

Principle 2: Built Form and Scale

<u>Comment</u>: The proposed four storey development steps up the slope of the site, and is consistent with the height and scale of surrounding development. The upper most floor is set well back from the street, and will be generally screened from view as seen from the public domain. The resultant three-four storey presentation is consistent with the scale of surrounding built form that is dominated by four storey shoptop housing developments. The scale of the proposal is appropriately minimised by virtue of articulation, modulation and varied materials, and overall, the form and scale of the development is considered to be an appropriate response for the site.

Principle 3: Density

<u>Comment:</u> There are no provisions within WLEP 2011 or WDCP 2011 that relate to the density anticipated on the subject site, and as such, the appropriateness of the density proposed is appraised based on the amenity of the development, the size/scale of the development and the impact of the development upon the surrounding environment.

The proposed development is an appropriate contextual fit for the site, with a density that is suitable within the B2 Local Centre zone and for a site that is in such close proximity to the main transport links on Condamine Street (namely the B1 bus stops on the northern side of the Kenneth Road/Condamine Street intersection). The proposed density does not attribute to excessive bulk and scale, nor does it compromise the amenity for future occupants of the development. As such, the proposed density is considered to be appropriate for the site.

Principle 4: Sustainability

<u>Comment:</u> The proposed development was supported by BASIX and NatHERS Certificates, which include recommendations to ensure that the building performs in accordance with industry standards. Furthermore, the majority of apartments achieve natural cross ventilation with adequate levels of natural daylight, such that the amenity and livability of apartments is high, without excessive reliance upon air-conditioning and artificial lighting.

Principle 5: Landscape

<u>Comment:</u> The site is located within a zone/area of Manly Vale that has no landscaped area requirements prescribed by WDCP 2011. Nonetheless, the proposal seeks to significantly improve the landscaped treatment of the Kenneth Road street frontage, and includes plantings on structures to soften the built form and provide a high level of amenity within the internal courtyards. The landscape solution is considered to be appropriate for the site.

Principle 6: Amenity

<u>Comment:</u> As detailed in the assessment against the ADG and WDCP 2011, the proposed development provides a reasonable level of amenity for future occupants of the development,



without unreasonably compromising the amenity of adjoining properties. Whilst there are some areas of technical non-compliance with regard to the design criteria and guidance prescribed by the ADG with regard to solar access, natural ventilation and dimensions, the design is considered to be an appropriate response for the context of the site and the majority of apartments are reasonably resolved with high internal amenity.

Principle 7: Safety

<u>Comment:</u> The proposed development is considered to maximise safety for future occupants and visitors of the development, with appropriate division/delineation between public and private spaces.

Principle 8: Housing Diversity and Social Interaction

<u>Comment:</u> The application proposes a mix of 5 x studio, 6 x 1 bedroom and 16 x 2 bedroom apartments, inclusive of 6 "Livable" apartments interspersed throughout the development. The proposal is considered to be an appropriate response for the Manly Vale housing market, providing an appropriate balance of different housing options for a variety of living need and household budgets.

Principle 9: Aesthetics

<u>Comment:</u> The composition of the proposal is well refined, with appropriate articulation and modulation to respond to the scale of adjoining development, without overwhelming the streetscape. The proposal also features varied materiality to break down the scale of the development, and respond to the context of each individual streetscape.

The following table is an assessment against the ADG as required by SEPP 65:

DC - Is the development consistent with the Design Criteria?

DG - Is the development consistent with the Design Guidance?

O - Is the development consistent with the Objective?

ADG reference	Subclause	Design Criteria	DC	DG	0	
Part 3 Siting the	Developme	nt				
3A Site analysis	3A-1	Design decisions based on site analysis.	-	Y	Y	
3B Orientation	3B-1	Layouts respond to the streetscape and optimise solar access.	-	Y	Y	
	3B-2	Overshadowing of neighbouring properties is minimised during mid winter.	-	Y	Y	
3C Public domain	3C-1	Transition between private and public places is achieved without compromising safety and security.	~	Y	Y	
interface	3C-2	Amenity of the public domain is retained and enhanced.	~	Y	Y	
3D Communal and public open	3D-1	Communal open space has a minimum area equal to 25% of the site.	N	Y	Y	
space		Development must achieve a minimum of 50% direct sunlight to the principal usable part of the communal	Y	Y	Y	



ADG reference	Subclause	Design Criteria	DC	DG	
		open space for a minimum of 2 hours between 9am and 3pm on 21 June (midwinter).			
	3D-2	Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	•	Y	
	3D-3	Communal open space is designed to maximise safety.		Y	
	3D-4	Public open space is responsive to the existing pattern and uses of the neighbourhood.		Y	
3E Deep soil zones	3E-1	At least 7% of the site are shall comprise deep soil zones.	N	Y	
3F Visual privacy	3F-1	A minimum setback of 6m is to be provided between habitable rooms and balconies and side or rear setbacks, and a minimum setback of 3m is to be provided is to be provided between non-habitable rooms and side and rear setbacks.	N	Y	
	3F-2	Building design elements increase privacy without compromising access to light and air and balance outlook from habitable rooms and private open space.	-	Y	
3G Pedestrian access and	3G-1	Entries and pedestrian access connects to and addresses the public domain.	÷	Y	
entries	3G-2	Access, entries and pathways are accessible and easy to identify.	2	Y	
	3G-3	Large sites provide pedestrian links for access to streets and connection to destinations.	~	Y	
3H Vehicle access	3H-1	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	-	Y	
3J Bicycle and car parking	3J-1	Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.		Y	
	3J-2	Parking and facilities are provided for other modes of transport.	~	Y	
	3J-3	Car park design and access is safe and secure.		Y	
	3J-4	Visual and environmental impacts of underground car parking are minimised.	-	Y	
	3J-5	Visual and environmental impacts of on-grade parking are minimised.	7	-	
	3J-6	Visual and environmental impacts of above ground enclosed car parking are minimised.	1	-	
Part 4 Designin	g the buildin	g			
Amenity					
4A Solar and daylight access	4A-1	Living rooms and private open space of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at midwinter.	N	Y	
		A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at	Y	Y	



ADG reference	Subclause	Design Criteria	DC	DG	0	
	4A-2	Daylight access is maximised where sunlight is limited.	-	Y	Y	
	4A-3	Design incorporates shading and glare control, particularly for warmer months.	-	Y	Y	
4B Natural	4B-1	All habitable rooms are naturally ventilated.	Y	Y	Y	
ventilation	4B-2	The layout and design of single aspect apartments maximises natural ventilation.	-	Y	Y	
	4B-3	At least 60% of all apartments are naturally cross ventilated.	Ν	Y	Y	
		Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	Y	Y	Y	
4C Ceiling heights	4C-1	As measured from the finished floor level, the minimum ceiling height for: - habitable rooms is 2.7m, - non-habitable rooms is 2.4m, and - ground floor non-resdiential uses is 3.3m.	N	Y	Y	
	4C-2	Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.	é	Y	Y	
	4C-3	Ceiling heights contribute to the flexibility of building use over the life of the building.	•	Y	Y	
4D Apartment size and layout	4D-1	Apartments are required to have the following minimum internal areas:	N	Y	Y	
		Apartment Type Min. internal area				
		Studio 35m ²				
		1 Bedroom 50m ²				
		2 Bedroom 70m ²				
		3 Bedroom 90m ²				
		The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.				
		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.	Y	Y	Y	
	4D-2	Habitable room depths are limited to a maximum of 2.5 x ceiling height.	Y	Y	Y	
		In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Y	Y	Y	
	4D-3	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobes).	Y	Y	Y	
		Bedrooms have a minimum dimension of 3m (excluding wardrobes).	Y	Y	Y	
		Living rooms or combined living/dining rooms have a minimum width of 3.6m for 1 bedroom apartments and 4m for 2 bedroom apartments.	Ŷ	Y	Y	
		The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow	Y	Y	Ŷ	



ATTACHMENT 1 Assessment Report ITEM NO. 3.1 - 3 JULY 2019

ADG reference	Subclause	Design Criteria			DC	DG	0
4E Private open space and balconies	4E-1	apartment layouts. All apartments are req as follows:	uired to have prir	nary balconies	Y	Y	Y
balcomes		Apartment Type	Min. area	Min. depth			
		Studio	4m ²				
		1 Bedroom	8m²	2m			
		2 Bedroom	10m ²	2m			
		3 Bedroom	12m ²	2.4m			
		For apartments at grou	und level or on a	podium or	Y	Y	Y
		similar structure, a privinstead of a balcony. It	ate open space i	is provided			
	45.0	15m ² and a minimum	depth of 3m ² .			v	v
	4E-2	Primary private open s appropriately located t residents.			-	Ŷ	Ŷ
	4E-3	Private open space an into and contributes to and detail of the building	the overall archit			Y	Y
	4E-4	Private open space an safety.	· · · · · · · · · · · · · · · · · · ·	n maximises	~	Y	Y
4F Common circulation and	4F-1	The maximum number circulation core on a si			Y	Y	Y
spaces	4F-2	Common circulation sp provide for social inter	paces promote sa	afety and	•	Y	Y
4G Storage	4G-1	In addition to storage i bedrooms, the followin	and the second		Y	Y	Y
		Apartment Type	M	n. area			
		Studio		4m ³			
		1 Bedroom		6m ³			
		2 Bedroom		8m ³			
		3 Bedroom		10m³			
		At least 50% is to be lo	ocated within the	apartment.			
	4G-2	Additional storage is c accessible and nomina			~	Y	Y
4H Acoustic privacy	4H-1	Noise transfer is minin buildings and building	nised through the		÷	Y	Y
	4H-2	Noise impacts are miti through layout and acc	gated within apar		-	Y	Y
4J Noise and pollution	4J-1	In noisy or hostile envi external noise and pol the careful siting and la	ronments the imp lution are minimis	pacts of sed through	•	Y	Y
	4J-2	Appropriate noise shie techniques for the buil choice of materials are transmission.	lding or attenuati ding design, cons	on struction and	-	Y	Y



	Subclause	Design Criteria	DC	DG	0
Configuration 4K Apartment Mix	4K-1	A range of apartment types and sizes is provided to cater for different household types now and into the future.	4	Y	Y
	4K-2	The apartment mix is distributed to suitable locations within the building.		Y	Y
4L Ground floor apartments	4L-1	Street frontage activity is maximised where ground floor apartments are located.	•	Y	Y
	4L-2	Design of ground floor apartments delivers amenity and safety for residents.	73	Y	Y
4M Facades	4M-1	Building facades provides visual interest along the street while respecting the character of the local area.	1	Y	Y
	4M-2	Building functions are expressed by the facade.	-	Y	Y
4N Roof design	4N-1	Roof treatments are integrated into the building design and positively respond to the street.		Y	Y
	4N-2	Opportunities to use roof space for residential accommodation and open space are maximised.	*	Y	Y
	4N-3	Roof design incorporates sustainability features.	-	Y	Y
40 Landscape	40-1	Landscape design is viable and sustainable.		Y	Y
design	40-2	Landscape design contributes to the streetscape and amenity.	-	Y	Y
4P Planting on	4P-1	Appropriate soil profiles are provided.	-	Y	Y
structures	4P-2	Plant growth is optimised with appropriate selection and maintenance.	-	Y	Y
	4P-3	Planting on structures contributes to the quality and amenity of communal and public open spaces.	4	Y	Y
4Q Universal design	4Q-1	Universal design features are included in apartment design to promote flexible housing for all community members.	9	Y	Y
	4Q-2	A variety of apartments with adaptable designs are provided.	-	Y	Y
	4Q-3	Apartment layouts are flexible and accommodate a range of lifestyle needs.	-	Y	Y
4R Adaptive reuse	4R-1	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	2	-	-
	4R-2	Adapted buildings provide residential amenity while not precluding future adaptive reuse.	1	-	÷.
4S Mixed Use	4S-1	Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	-	Y	Y
	4S-2	Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.	•	Y	Y
4T Awnings and signage	4T-1	Awnings are well located and complement and integrate with the building design.	1	Y	Y
	4T-2	Signage responds to the context and desired street character.	2	-	-
Performance					
4U Energy	4U-1	Development incorporates passive environmental	2	Y	Y



ADG reference	Subclause	Design Criteria	DC	DG	0	
efficiency		design.				
	4U-2	Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.	1	Y	Y	
	4U-3	Adequate natural ventilation minimises the need for mechanical cooling.		Y	Y	
4V Water	4V-1	Potable water use is minimised.	-	Y	Y	
management and	4V-2	Urban stormwater is treated on sit before being discharged to receiving waters.	2	Y	Y	
conservation	4U-3	Flood management systems are integrated into site design.	-	Y	Y	
4W Waste management	4W-1	Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	1	Y	Y	
	4W-2	Domestic waste is minimised by providing safe and convenient source separation and recycling.	2	Y	Y	
4X Building maintenance	4X-1	Building design detail provides protection from weathering.	~	Y	Y	
	4X-2	Systems and access enable ease of maintenance.	-	Y	Y	
	4X-3	Material selection reduces ongoing maintenance costs.	-	Y	Y	

Detailed Assessment

3D Communal and public open space

The proposed development is inconsistent with the requirement for an area of communal open space equal to 25% of the site area, with an area of only 17m² or 1.6% of the site area proposed. Despite non-compliance, the area proposed is sufficient to act as an extension to the areas of private open space proposed in conjunction with each apartment. The proposed area of communal open space is reasonably dimensioned to facilitate slightly larger gatherings of people, in an area with good solar access and district outlooks, away from the noise of the streets below. The comparably small area of communal open space is also seen to be justified noting the presence of a number of parks and reserves located within walking distance of the subject site.

The reduced area of communal open space is not considered to compromise the amenity of the development and is supportable, despite non-compliance with the ADG.

3E Deep soil zones

With no deep soil zones proposed, the development is inconsistent with the requirement for a minimum of 7% of the site area to comprise deep soil zones. However, as acknowledged by the ADG, this requirement may not be possible on some sites, including sites such as this within a local centre with a non-residential ground floor use, where the DCP does not require any landscaped areas. Nonetheless, the proposal comprises appropriate landscaping, including plantings on structures, and an appropriate stormwater solution can be achieved.

3F Visual privacy

With a setback of 3m from the western boundary, the western wall of the upper floor (Level 4),



which contains a window associated with a bedroom, is inconsistent with the 6m setback requirement for habitable rooms prescribed by Objective 3F-1 of the ADG. However, the entire glazed area is covered by a privacy screen, such that the 3m setback associated with non-habitable windows is considered to be appropriate in this instance. The setback of the western wall of the upper floor, which is predominantly blank is considered to be an appropriate response to the context of the site, minimising the visual impact of the upper floor and any impacts upon the adjoining site, should it be developed in a similar manner in the future.

4A Solar and daylight access

As currently proposed, the development is inconsistent with Objective 4A-1 of the ADG which requires living rooms and private open spaces of at least 70% of apartments in a building to receive a minimum of 2 hours of direct sunlight between 9am and 3pm in midwinter, with only 18 apartments (67%) receiving compliant levels of solar access. However, it is noted that compliance could be achieved with the incorporation of an additional skylight above the kitchen of Apartment 18, such that 19 apartments (70%) will achieve compliant levels of solar access.

The proposed development has been designed to maximise the number of apartments presenting to the north, and subject to a condition requiring the additional skylight, the proposal is considered to maximise solar access and daylight to the residential component of the development.

4B Natural ventilation

With 16 of 27 (59%) of the apartments proposed designed to achieve cross-ventilation, the proposed development falls just shy of the 60% minimum requirement prescribed by Objective 4B-1 of the ADG. However, Apartment 24 has been designed with an operable skylight to maximise air flow through the apartment. Whilst this is not the typical way in which natural ventilation is achieved, it will increase natural ventilation and amenity within the single aspect apartment. This design solution could also be adopted in relation to the skylight required in Apartment 18, ensuring that natural ventilation is maximised throughout the development.

4C Ceiling heights

The residential floors of the development have been designed with 2.7m high ceilings throughout all habitable spaces. However, two of the four ground floor retail spaces are inconsistent with the 3.3m minimum ceiling height prescribed by Objective 4C-1 of the ADG, as follows:

Retail 1: 3.4m ceiling height + 300mm cavity for services Retail 2: 3.3m ceiling height + 300mm cavity for services Retail 3: 3m ceiling height + 300mm cavity for services Retail 4: 3m ceiling height (no cavity for services)

Despite non-compliance in relation to the 3.3m minimum ceiling height in relation to Retail 3 and 4, the ceiling height of these spaces is considered to be adequate in light of the limited depth of the spaces and the extent of glazing proposed along the frontage of each space. Furthermore, the 300mm non-compliance is not considered to detrimentally affect the future use or flexibility of the spaces, particularly in relation to Retail 3 which also includes a 300mm cavity for services.

Whilst the provisions of the ADG override the relevant provisions of WDCP 2011 with respect to minimum ceiling heights, it is at least noted that the proposal achieves compliance with the 3m



minimum ceiling heights for ground floor retail spaces as prescribed by clause F1 of WDCP 2011.

4D Apartment size and layout

Apartments 6 (72m²), 15 (72m²) and 26 (73m²) are inconsistent with the 75m² minimum area requirement for 2 bedroom, 2 bathroom apartments as prescribed by Objective 4D-1 of the ADG. Despite these minor areas of non-compliance, the layouts of these apartments are well-resolved, resulting in functional, well organised apartments with a high standard of amenity.

4E Private open space and balconies

With an area of 9m², the private open space of Apartments 14 and 19 are inconsistent with the 10m² minimum prescribed by Objective 4E-1 of the ADG. Furthermore, with a minimum depth of 1.8m, the private open space of Apartment 23 is less than the 2m minimum depth prescribed by this design criteria. The areas of non-compliance are limited and do not unreasonably impact the usability or amenity of the areas proposed. As such, the areas of private open space are considered to achieve consistency with the intent of the objective, despite minor non-compliance with the design criteria prescribed.

The consent authority can be satisfied that the development has been considered in accordance with the requirements of clause 28 of SEPP 65, and that the proposal is generally consistent with the design principles of SEPP 65 and the objectives of the ADG.

SEPP (Infrastructure) 2007

The proposed development, which comprises parking for more than 50 motor vehicles, constitutes Traffic Generating Development, and a referral to RMS is required in accordance with clause 104 of this policy. The application was referred to the RMS who did not raise any objection to the proposal, subject to the imposition of the following conditions of consent:

- 1. The proposed changes to the frontage of Kenneth Road (including relocation of driveway and installation of loading bay) shall be reflected in the TCS plan of Condamine Street/Kenneth Road intersection and submitted to Roads and Maritime for review. The submitted design, drawn by a suitably qualified practitioner, shall be in accordance with Austroads Guide to Road Design in association with relevant Roads and Maritime supplements (available on www.rms.nsw.gov.au). The certified copies of the signal design and civil design plans shall be submitted to Roads and Maritime for consideration and approval prior to the release of a Construction Certificate and commencement of road works. Roads and Maritime fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works. The developer may be required to enter into a Works Authorisation Deed (WAD) for the abovementioned works.
- 2. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime. Documents should be submitted to Development.Sydney@rms.nsw.gov.au. If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least



seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

3. Detailed design plans and hydraulic calculations of any changes to the Roads and Maritime's stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works. Documents should be submitted to Development.Sydney@rms.nsw.gov.au. A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued.

Clause 101 of SEPP (Infrastructure) requires the consent authority to be satisfied of certain matters relating to development with a frontage to a classified road. The consent authority can be satisfied of these matters, noting that:

- Vehicular access is provided by the lower order street (Kenneth Road) and not Condamine Street,
- The safety, efficiency and ongoing operation of Condamine Street will not be adversely affected by the proposed development, and
- The application has been accompanied by an acoustic report and the proposal has been designed to incorporate measures to ameliorate potential traffic noise and vehicle emissions associated with the ongoing use of Condamine Street.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	Variation	Complies
Height of Buildings:	11m	14.6m	3.6m (33%)	No

Compliance Assessment

Clause	Compliance with Requirements	
2.7 Demolition requires consent	Yes	
4.3 Height of buildings	No (see detail under Clause 4.6 below)	
4.6 Exceptions to development standards	Yes	
6.2 Earthworks	Yes	
6.3 Flood planning	Yes	
6.4 Development on sloping land	Yes	

Detailed Assessment



Zone B2 Local Centre

The proposed development is considered to be consistent with the objectives of the B2 Local Centre zone, as follows:

To provide a range of retail, business, entertainment and community uses that serve the needs
of people who live in, work in and visit the local area.

<u>Comment</u>: The proposed development comprises four retail tenancies to enhance retail opportunities in the area and to help serve the needs of people who live in, work in and visit the Manly Vale Locality.

To encourage employment opportunities in accessible locations.

<u>Comment:</u> The subject site is located in a highly accessible area, located on one of the main roads servicing the Northern Beaches and located opposite the B1 Manly Vale bus stops. The proposed development comprises four retail tenancies which will enhance employment opportunities in the locality.

To maximise public transport patronage and encourage walking and cycling.

<u>Comment:</u> The proposed development is sited within 35m of the B1 Manly Vale Bus Stop, which is also serviced by a number of other local bus routes. The proposal is considered to be advantageously sited to maximise public transport patronage amongst future occupants of the development. The local centre features a number of restaurants, services and large supermarkets, all located within walking distance of the proposal. Council is also in the process of upgrading footpaths to provide shared pathways, to encourage cycling throughout the locality. The proposal comprises adequate bicycle parking to encourage the use of bicycles.

To provide an environment for pedestrians that is safe, comfortable and interesting.

<u>Comment:</u> The proposal incorporates awnings along the Condamine Street frontage, to provide weather protection to those walking along the footpath adjacent to the site. The application also proposes significant improvements to the Kenneth Road public road reserve, to facilitate a safe environment for pedestrians.

 To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.

<u>Comment:</u> The proposed development has been designed to align with the predominant height and setbacks of development along Condamine Street, stepping up the slope of Kenneth Road, with an upper floor that is recessive and compatible with the scale of surrounding built form. The proposed shop top housing development is well articulated, with a variety of setbacks and materials to visually reduce to apparent size of the development. The development is a highquality architectural response in the context of the site, which will positively contribute to the streetscape and the wider locality. Whilst landscaping is somewhat lacking along the Condamine Street frontage, this proposed outcome is consistent with the existing and intended streetscape of Condamine Street, with a softer landscaped treatment to Kenneth Road, being a lesser order street leading to a residential area.

To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity



of any adjoining or nearby residential land uses.

<u>Comment:</u> The proposed shop top housing development is anticipated within the zone, and will not create any conflict with existing or potential adjoining land uses. Whilst there are currently no adjoining residential land uses, the proposal has been designed to ensure that impacts upon the potential future development of the adjoining site for the purpose of shop top housing has not been compromised. Furthermore, the proposal will not result in any unreasonable impacts upon the amenity of nearby residential properties.

4.3 Height of buildings

and 4.6 Exceptions to development standards

With a maximum height of 14.55m, the proposed development is non-compliant with the 11m maximum building height prescribed by clause 4.3 of WLEP 2011. The maximum building height is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of WLEP 2011 can be applied.

Pursuant to clause 4.6(2) of WLEP 2011, consent may be granted for development even though the development contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the maximum building height is not expressly excluded and thus the clause can be applied in this instance.

Extent of the height breach

The height breach occurs in three distinct areas, as follows:

- 1. The eastern façade of Level 3 protrudes beyond the 11m height limit by between 800mm and 1.7m, to a maximum height of 12.7m,
- Level 4 protrudes beyond the 11m height limit by between 1.1m and 2.55m, to a maximum height of 13.55m, and
- The lift overrun above Level 4 protrudes up to 3.55m above the 11m height limit, to a maximum height of 14.55m.

Note: The applicant has confirmed that if necessary, an alternate low head height lift could be used, reducing the height non-compliance associated with the lift overrun by 850mm, to a maximum height of 13.7m. This would reduce the overall variation to a maximum of 2.7m or or 24.5%. However, with the exception of the reduction to the percentage variation, the reduction to the height of the lift overrun will not make any practical difference, as it is positioned centrally on the site and will generally be screened from view as seen from the street.

Has the Applicant's submission addressed the relevant criteria?

Pursuant to clause 4.6(4) of WLEP 2011, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of WLEP 2011. The application was supported by a detailed submission (**attached**) addressing the provisions of clause 4.6 of WLEP 2011. The submission is considered with regard to the criteria of clause 4.6(3) of WLEP 2011, as follows:



a. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,

<u>Comment</u>: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission has satisfactorily demonstrated that the proposed development will achieve consistency with the objectives of the building height development standard, and as such, strict compliance with the 11m height limit is considered to be unreasonable and unnecessary in the circumstances of this application.

b. That there are sufficient environmental planning grounds to justify contravening the development standard.

<u>Comment:</u> In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, "environmental planning grounds" were found to be grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act.

The applicant's submission provides that the areas of non-compliance are a result of:

- A desire to be consistent with the massing of development along the streetscape, noting that the majority of existing development has a four storey presentation to the street, including those properties fronting side streets (other than Condamine Street),
- A considered "contextually appropriate" design solution that redistributes floor space centrally at the upper floor, rather than building to the maximum height at the boundaries,
- A design that follows the slope of the land.

The submission also notes that the standard has been virtually abandoned throughout the Manly Vale B2 zoned area, noting that the majority of recent shoptop housing developments have been approved with variations to the height of buildings development standard, with four and five storey presentations to the street. Furthermore, the statement demonstrates that, despite non-compliance with the maximum height prescribed, the proposed development is of good design and amenity, the height of which is compatible with surrounding built form, consistent with objects 1.3(c) and (g) of the EP&A Act.

With this in mind, it is considered that the applicant's written request to vary the maximum building height development standard satisfactorily demonstrates that there are sufficient environmental planning grounds to justify contravention of the 11m maximum building height development standard.

Therefore, the consent authority can be satisfied that the applicant's written request has satisfactorily addressed the matters required by clause 4.6(3) of WLEP 2011.

Is the proposal in the public interest?

Under the provisions of clause 4.6(4)(a) of WLEP 2011, consent must not be granted to a proposal that contravenes a development standard unless that proposed development (as a whole) will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is to be carried out.



The proposal is considered to be consistent with the objectives of the building height development standard, as follows:

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

<u>Comment:</u> As discussed in the matter of *Project Venture Developments v Pittwater Council* [2005] *NSWLEC 191*, compatibility does not require sameness, but rather the capability of existing in harmony together. The proposed development has been designed to align with the street heights of adjoining and nearby built form, consistent with the predominant foour storey character of surrounding shop top housing development. The height and scale will not be visually jarring in the streetscape, and is considered to be compatible with surrounding and nearby development.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

<u>Comment:</u> The proposed development is well-articulated to minimise the visual impact of the proposal. The third and fourth floors are setback from both frontages, with the fourth floor also setback from side boundaries and generally screened from view as seen from the public domain. Furthermore, the development does not result in any unreasonable impact upon views, privacy or solar access of adjoining or nearby sites.

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

<u>Comment</u>: The site is located in a commercial centre, with a mix of retail, industrial and mixed use developments. Whilst not located within an area of coastal or bushland scenic quality, the proposed development will result in a significant improvement of the aesthetic appearance of the site.

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

<u>Comment:</u> As above, the proposed development has been designed to minimise the visual impact of the development by means of modulation of architectural form, varied materiality and landscaping. The proposal is a high quality architectural response for the site.

Furthermore, as discussed in further detail separately above, the proposal is considered to be consistent with the relevant objectives of the B2 Local Centre zone.

Therefore, the consent authority can be satisfied that the proposal is in the public's interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4)(b) of WLEP 2011, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Planning Circular PS 18-003 (dated 21 February 2018) issued by the NSW Department of Planning and Environment, the Secretary's concurrence may be assumed in this instance as the application is to be determined by the Northern Beaches Local Planning Panel.

Conclusion



Overall, the consent authority can be satisfied of the matters prescribed by clause 4.6 of WLEP 2011, and the proposal can be supported, despite contravention of the building height development standard.

Warringah Development Control Plan

Built Form Control	Requirement	Proposed	Variation	Complies
B2 Number of storeys	3 storeys	4 storeys	1 storey (33%)	No
B5 Side Boundary Setbacks	West = Merit	Levels G - 3 = Nil Level 4 = 3m	1	Yes
	South = Merit	Levels G - 3 = Nil Level 4 = 4.25m	4	Yes
B7 Front Boundary Setbacks	Levels G -1 = Nil	Level G - 1 = Nil	14 -	Yes
	Level 2 = 5m	Level 2 = Nil - 4.5m	0.5m - 5m (10% - 100%)	No
	Level 3 = 5m	Level 3 = 2.5m - 4.5m	0.5m - 2.5m (10% - 50%)	No
	Level 4 = 5m	Level 4 - 10.6m - 18.4m	÷.	Yes

Comp	liance	Assessi	ment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
A.7 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B2 Number of Storeys	No	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C3(A) Bicycle Parking and End of Trip 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
D2 Private Open Space	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

Detailed Assessment

B2 Number of Storeys

The application seeks consent for a four storey shop top housing development, inconsistent with the three storey maximum prescribed by this development control. However, the four storey nature of the proposal is consistent with a number of recent development approvals within the Manly Vale locality, and is reflective of the dominant height and scale of the Condamine Street B2 zoned area, particularly the recent developments constructed and under construction to the south of the site. Furthermore, despite non-compliance with this development control, the proposed development is consistent with the objectives of the number of storeys control, as follows:

To ensure development does not visually dominate its surrounds.

<u>Comment:</u> The proposed development, by virtue of its height and number of storeys, is consistent with the predominant height and number of storeys of surrounding development. The scale of the proposal is not excessive, and will be compatible with surrounding development. As such, the resultant development will not be visually dominant in its context.

 To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

<u>Comment:</u> The modulation and articulation of the development is complemented by the proposed use of a variety of materials and finishes, which act to reduce the apparent size and scale of the development as seen from adjoining properties and streets. Furthermore, the Kenneth Street facade is softened by landscaping both forward of the building and on elevated terraces/screens.

To provide equitable sharing of views to and from public and private properties.

Comment: The proposed development will not result in any unreasonable impacts upon views to



and from public and private properties.

 To ensure a reasonable level of amenity is provided and maintained to adjoining and nearby properties.

<u>Comment:</u> With respect to the fourth floor presenting to Condamine Street, the height is consistent with nearby development, and does not result in any unreasonable impacts upon the approved two storey (3 storey in height) Nick Scali showroom approved on the adjoining property. With respect to the fourth floor presenting to the west, the built form is setback from all boundaries and is screened from view as seen from the street, such that the additional floor will not negatively impact upon the amenity of the approved at-grade car park to the west of the property.

To provide sufficient scope for innovative roof pitch and variation in roof design.

<u>Comment:</u> Irrespective of whether the proposal was to be three storeys or four storeys, it is likely that the design of the roof would be the same. The roof forms have been designed to step down the slope of the site, which also assists to break down the massing of the roof form.

To complement the height of buildings control in the LEP with a number of storeys control.

<u>Comment</u>: Some elements of the four storey development exceed the height limit prescribed by clause 4.3 of WLEP 2011. However, despite non-compliance with the prescribed height limit, the proposed development is consistent and compatible with the height of surrounding development, and the objectives of the building height development standard.

As such, the proposed development is considered to be an acceptable design response for the context of the site, and is supportable on merit.

B6 Merit Assessment of Side Boundary Setbacks

The Side Boundary Setbacks Map of WDCP 2011 identifies that the side boundary setbacks are to be determined on merit, and under the provisions of this development control, the merits of the proposed setbacks is to have regard to the existing streetscape, amenity of surrounding properties and setbacks of neighbouring development. The application proposes nil setbacks across all levels, excluding the top floor (Level 4), which is setback at a minimum of 4.25m from the southern side setback and a minimum of 3m from western side boundary.

With regard to the existing streetscape, it is evident that the majority of existing and recently approved structures are constructed to nil setbacks, with a solid, consistent presentation to the public domain. In this regard, the proposed development is considered to be compatible with the prevailing streetscape character of the B2 zone. Further, the nil setbacks do not compromise the amenity or development potential of the adjoining property, particularly noting that the site has a recent development consent for a non-residential development with nil setbacks to the south and an at-grade car park to the north. Even if the adjoining site was to be developed for residential development in the future, it is highly likely that the adjoining site will also be developed with nil setbacks to common side boundaries. Overall, the setbacks of the proposed shop top housing development are considered to be acceptable on merit.

B7 Front Boundary Setbacks

The Front Boundary Setback Map of WDCP 2011 prescribes a nil setback for the ground and first floor, with a 5m setback for Levels 2 and above. Both Level 2 and Level 3 are inconsistent with this minimum



requirement, with setbacks ranging from nil to 4.5m on Level 2 and setbacks ranging from 2.5m to 4.5m on the third floor.

Rather than adopting a nil setback at both the ground and first floor, and one consistent 5m setback at the upper levels, the proposed shoptop housing development has been designed with varied setbacks across all levels, with well articulated facades that actively break down the scale and horizontal massing of the building. This is particularly relevant in relation to the Kenneth Road facade, which has a comparably fine-grain composition that steps up the slope of the site.

Despite non-compliance on Levels 2 and 3, the minimum setbacks to Condamine Street are consistent with that of adjoining development, which present with a consistent nil setback for the first three levels (or an equivalent 3 storey height in relation to the approved Nick Scali showroom at 265 Condamine Street). The setbacks to Kenneth Road, which can reasonably be considered as a secondary street frontage, are also considered to be acceptable, as the massing of the building is reasonably resolved.

With this in mind, variations to the minimum setback requirements for Levels 2 and 3 are considered to be warranted in the circumstances of the site, particularly noting that the proposal is otherwise consistent with the objectives of the front building setback development control, as follows:

To create a sense of openness.

<u>Comment</u>: Both the Condamine Street and Kenneth Road facades are well articulated, with defined breaks to reduce the scale of the development. The resultant development will not overwhelm the streetscape, and a sense of openness, comparable to that of adjoining and nearby development, will be achieved.

To maintain the visual continuity and pattern of buildings and landscape elements.

<u>Comment:</u> A number of recent development approvals have established a precedent of built form along Condamine Street, with a nil setback carried across the first three levels. The minimum setbacks proposed are consistent with the pattern of existing buildings and will maintain a visual continuity of built form along both streetscapes.

To protect and enhance the visual quality of streetscapes and public spaces.

<u>Comment:</u> The proposed development is considered to positively contribute to the streetscape, with a high quality architectural response for the site.

To achieve reasonable view sharing.

<u>Comment:</u> The proposed setbacks will not result in any unreasonable impacts upon views currently enjoyed from surrounding properties.

D2 Private Open Space

Clause D2 of WDCP 2011 requires a total area of 10m² with minimum dimensions of 2.5m for each dwelling within a shoptop housing development. However, these requirements are inconsistent with the minimum requirements of the Apartment Design Guide, and in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the Apartment Design Guide in relation to private open space and balconies have no effect.



D6 Access to Sunlight

Clause D6 of WDCP 2011 requires at least 50% of the required area of private open space for each dwelling to receive 3 hours of direct sunlight between 9am and 3pm in midwinter. However, this requirement is inconsistent with the minimum requirements of the Apartment Design Guide, and in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the Apartment Design Guide in relation to solar access have no effect.

D9 Building Bulk

The proposed development is consistent with the provisions of this development control, as follows:

- Despite the lack of a prescribed minimum setback in relation to the subject site, the side setbacks of the development are increased at the upper level.
- Large continuous wall planes have been avoided in the proposed development, with a high degree of articulation and modulation on both front facades.
- The height and bulk of the development has been designed to step down the slope of the site, and in doing so, the height and scale of the development has been designed to appropriately relate and respond to topography and site conditions.
- The development has been designed to address the street. The treatment of the Condamine Street facade has a heavier appearance and the extent of openings are comparably reduced in response to the volume and noise of traffic travelling along the road. The treatment of the Kenneth Road facade is markedly different, with lighter architectural elements, greater openings to the north and softer landscaping.
- The proposal comprises a variety of colours and materials to break down the scale of the proposal.
- Landscaping is introduced along the Kenneth Street frontage, and in planters at upper levels, to soften the appearance of the proposed built form.
- The proposal is well articulated to reduce the perceived scale of the development.

Furthermore, in consideration of the Height and Bulk Planning Principle, the built form of the development is considered to be acceptable in the context of the site, as follows:

 Are the impacts consistent with impacts that may be reasonably expected under the controls? (For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For non-complying proposals the question cannot be answered unless the difference between the impacts of a complying and a noncomplying development is quantified.)

<u>Comment:</u> The proposed development does not result in any unreasonable impacts upon adjoining properties or the surrounding environment. Whilst the upper portion of the eastern facade and the upper most floor extend beyond the maximum height plane, the four storey height and scale of the development is consistent with that seen in the immediate context of the site. In relation to the Condamine Street facade, strict compliance with the height standard would reduce the proposal to three storeys, which would be inconsistent with the scale and alignment of adjoining and nearby (recently approved) development. In relation to the upper most floor, the built form is well setback from the front boundaries and will not be readily visible from the public domain. Despite non-compliance with the building height development standard and the number of storeys development control, the proposed development has been found to be consistent with the objectives of these standards/controls and as such, the impact of the proposal can be said to be consistent with that expected by the controls.



 How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?

<u>Comment</u>: As above, the proposal has been found to achieve consistency with the objectives of the height and number of storeys controls prescribed in relation to the subject site. Furthermore, the proposal is entirely consistent with the building bulk development controls prescribed by this clause D9 of WDCP 2011.

 Does the area have a predominant existing character and are the planning controls likely to maintain it? Does the proposal fit into the existing character of the area?

<u>Comment</u>: As emphasised in the documentation provided to support the application, existing shop top housing developments within the locality have a predominant four storey presentation to the public domain. Whilst inconsistent with Council's height and number of storey controls for the area, this is the outcome that has been consistently accepted and approved by Council in this specific context. The proposed development is considered to be compatible with the existing character of the area.

Does the proposal look appropriate in its context?

<u>Comment:</u> Yes, the proposal complements the existing and anticipated streetscape and is considered to be an appropriate design solution for the comer, sloping site. The design has been supported by Council's Urban Design team.

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 \$ 9,299,945		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 88,349
Section 7.12 Planning and Administration	0.05%	\$ 4,650
Total	1%	\$ 92,999



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 DA2019/0114 for Demolition of the existing building and construction of a shop top housing development, comprising 27 dwellings, 4 retail tenancies and carparking on land at Lot A DP 39108, 267 Condamine Street, MANLY VALE, Lot B DP 39108, 267 Condamine Street, MANLY VALE, 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

Drawing No.	Dated	Prepared By
Site Analysis & Site Plan DA-01, revision H	5 June 2019	Gartner Trovato Architects
Basement B2 Plan DA-02, revision H	14 May 2019	Gartner Trovato Architects
Basement B1 Plan DA-03, revision H	14 May 2019	Gartner Trovato Architects
Ground Floor Plan DA-04, revision H	14 May 2019	Gartner Trovato Architects
Level 1 Plan DA-05, revision H	14 May 2019	Gartner Trovato Architects
Level 2 Plan DA-06, revision H	14 May 2019	Gartner Trovato Architects
Level 3 Plan DA-07, revision J	16 May 2019	Gartner Trovato Architects
Level 4 Plan DA-08, revision H	14 May 2019	Gartner Trovato Architects
North & East Elevations DA-09, revision J	5 June 2019	Gartner Trovato Architects
South & West Elevations DA-10, revision H	14 May 2019	Gartner Trovato Architects
Sections A & C DA-12, revision J	5 June 2019	Gartner Trovato Architects
Sections 1 & 2 DA-13, revision H	14 May 2019	Gartner Trovato Architects
Sections 3 & 4 DA-14, revision H	14 May 2019	Gartner Trovato Architects
Schedule of Colours and Finishes DA-19, revision G	6 February 2019	Gartner Trovato Architects
Plant Species Schedule DA-20, revision G	6 February	Gartner Trovato



	2019	Architects	
Engineering Plans			
Drawing No.	Dated	Prepared By	
Stormwater Management Plan SW1 DA-A	6 June 2019	Barrenjoey Consulting Engineers Pty Ltd	
Stormwater Management Plan SW2 DA-A	6 June 2019 Barrenjoey Consultir Engineers Pty Ltd		
Reports / Documentation – All recomme within:	endations and	d requirements contained	
Report No. / Page No. / Section No.	Dated	Prepared By	
Flood & Overland Flow Study	February 2019	Barrenjoey Consulting Engineers Pty Ltd	
Flood & Overland Flow Study	September 2018	Barrenjoey Consulting Engineers Pty Ltd	
Waste Management Plan prepared for Manly Vale Developments No.3 Pty Ltd	9 February 2019	Antony Westwood (Gartner Trovato Architects)	
BASIX Certificate 963230M_02	7 February 2019	Gartner Trovato Architects	
NatHERS Certificate 0003593060	6 February 2019	NatHERS & BASIX Solutions	
Geotechnical Risk Management Report, Issue 1	6 February 2019	Crozier Geotechnical Consultants	
BCA Report	8 February 2019	BCA Logic Pty Ltd	
Acoustic Report	4 February 2019	Wilkinson Murray Pty Ltd	
Access Report	8 February 2019	BCA Logic Pty Ltd	
Stage 1 Preliminary Site Investigation	5 February 2019	Alliance Geotechnical Pty Ltd	

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with the following requirements of the NSW RMS, as specified in their referral response letter to Council dated 7 June 2019:

(a) The proposed changes to the frontage of Kenneth Road (including relocation of driveway and installation of loading bay) shall be reflected in the TCS plan of Condamine Street/Kenneth Road intersection and submitted to Roads and Maritime for review. The



submitted design, drawn by a suitably qualified practitioner, shall be in accordance with Austroads Guide to Road Design in association with relevant Roads and Maritime supplements (available on www.rms.nsw.gov.au). The certified copies of the signal design and civil design plans shall be submitted to Roads and Maritime for consideration and approval prior to the release of a Construction Certificate and commencement of road works. Roads and Maritime fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works. The developer may be required to enter into a Works Authorisation Deed (WAD) for the abovementioned works.

- (b) The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime. Documents should be submitted to Development.Sydney@rms.nsw.gov.au. If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.
- (c) Detailed design plans and hydraulic calculations of any changes to the Roads and Maritime's stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works. Documents should be submitted to Development.Sydney@rms.nsw.gov.au. A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued.

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of the NSW RMS.

3. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- An operable skylight, with a minimum surface area of 2m², is to be incorporated in the ceiling/roof above the kitchen of Apartment 18,
- Fixed ceilings are to be incorporated within Retail Tenancies 1-3, to facilitate a 300mm cavity space below the Level 1 slab. The ceilings of these retail spaces must be designed and maintained below RL 15.0m AHD, being the minimum floor level of Level 1 residential apartments.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure that the amenity of the proposal is optimised and consistency with the shop top housing definition, as prescribed by WLEP 2011.

4. 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
 - 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:
 - 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



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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

6. 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



T

Contribution based on a total development cost of \$ 9,299,945.00		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 88,349.48
Section 7.12 Planning and Administration	0.05%	\$ 4,649.97
Total	1%	\$ 92,999.45

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

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

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

7. Security Bond

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

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

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

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

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

8. Construction, Excavation and Associated Works Bond (Road)

The applicant is to lodge a Bond with Council as security against any damage or failure to completion of the construction of civil infrastructure works within Kenneth Road and Condamine Street as part of this consent.

The bond shall be valued at 120% the cost of civil infrastructure works. The cost of works shall be determined in consultation with Council by submission of written quote(s) from a suitably qualified, licensed and insured contractor independent from the Applicant.



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.

9. Construction, Excavation and Associated Works Bond (Drainage)

The applicant is to lodge a Bond of \$40,000 as security against any damage or 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.

Construction, Excavation and Associated Works Bond (Failure to Remove Waste)
 A bond of \$10,000 as security against damage to Council's road(s) fronting the site caused by
 the transport and disposal of materials and equipment to and from the site.

Reason: Protection of Council's Infrastructure

 Construction, Excavation and Associated Works Bond (Maintenance for civil works) The developer/applicant must lodge with Council a Maintenance Bond for the construction of civil infrastructure works within Kenneth Road and Condamine Street.

The bond is valued at 10% the cost of civil infrastructure works. The value of the bond shall be determined in consultation with Council.

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

12. 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
- (d) Certification shall be provided by a structural engineer that the planters are designed



structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

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

13. Landscape Maintenance Plan

A Landscape Maintenance Plan is to be prepared and submitted to the certifying authority that outlines the technique and frequency of maintenance tasks during the establishment of the landscaping on the subject site. The Landscape Maintenance Plan is to be implemented for a period 24 months immediately following the completion of landscape and hardscape works on site. The Landscape Maintenance Plan is to incorporate maintenance and care of hardscape elements (e.g. paving, retaining walls), weeding, watering, mowing, consideration of other endemic species where plantings do not respond to the conditions as expected and a procedure for the replacement of failed plantings.

Reason: To ensure the establishment of proposed landscaping.

14. Structures Located Adjacent to Council Pipeline or Council Easement

All structures are to be located clear of any Council pipeline or easement. The Applicant is to ensure footings of any new development within this development consent adjacent to an easement or pipeline are to be designed in accordance with Northern Beaches Council's Warringah Water Management Policy PL850. Details and certification prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

15. Basement Carpark Ramp Crest

The Applicant is to ensure the basement carpark ramp provides a crest a minimum 300mm above the 100-year ARI water surface level adjoining the property. Access levels across the road reserve are to comply with AS2890.1. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the construction certificate.

Reason: To ensure suitable vehicular access to private property.

16. 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.



17. Submission of Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for Infrastructure works within the publci road reserve. 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 civil infrastructure works within Kenneth Road and Condamine Street 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:

Kenneth Road

- (a) Half road construction to match into existing road layout west of the subject site and to match into road centreline.
- (b) Provision of a layback and vehicular crossing 5.5 metres wide. Removal of any redundant vehicular crossings and laybacks.
- (c) Provision of a minimum 1.5m wide footpath and upgrade of any associated pram ramps.
- (d) Provision of a loading bay and any associated signage, subject to the approval of the Local Traffic Committee.
- (e) Provision of any streetscape works in accordance with Council's Warringah Public Space Design Guidelines, including any paving, street furniture etc.

Condamine Street

- (a) Provision of a minimum 1.5m wide footpath and upgrade of any associated pram ramps.
- (b) Provision of any streetscape works in accordance with Council's Warringah Public Space Design Guidelines, including any paving, street furniture etc.
- (c) Concurrence shall be obtained from the RMS.

Note: All works shall be undertaken in accordance with the requirements detailed by the RMS in the letter, reference SYD19/00278/04, dated 7 June 2019.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees 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.

18. 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 referenced in Condition 1 of this consent. 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.

The drainage plans must address the following:



(a) Appropriate provision shall be made to safely direct emergency overflows towards Condamine Street.

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.

19. 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.

20. 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 the nearest road stormwater drainage line being within Condamine Street 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:

- (a) Australian/New Zealand Standard AS/NZS 3500.3 2003 Plumbing and drainage -Stormwater drainage
- (b) 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.

21. Shoring of Adjoining Property

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining(s) with engineering drawings of the proposed shoring works for their consideration and approval.

An application to Council for approval under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Councils road reserve. Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

22. 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.

23. Pre-Construction 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, stormwater assets etc). In relation to stormwater infrastructure, the report must be prepared in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

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

24. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- An operable skylight, with a minimum surface area of 2m², is to be incorporated in the ceiling/roof above the kitchen of Apartment 18,
- Fixed ceilings are to be incorporated within Retail Tenancies 1-3, to facilitate a 300mm cavity space below the Level 1 slab. The ceilings of these retail spaces must be designed and maintained below RL 15.0m AHD, being the minimum floor level of Level 1 residential apartments.

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



issue of the construction certificate.

Reason: To ensure that the amenity of the proposal is optimised and consistency with the shop top housing definition, as prescribed by WLEP 2011.

25. 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.

26. Reports Certification

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the reports referenced in Condition 1 of this consent have been incorporated into the design of the development.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure compliance with recommendations of approved reports.

27. 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
- 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.

28. Bicycle Parking

Bicycle parking spaces are to be located in locations where they can not be obstructed by parked vehicles. A Bicycle parking space denoted "retail bike(1)" shall be relocated in compliance with the above. Revised plans to be submitted to the Certifying Authority showing the revised location for this bicycle parking space.

Reason: Accessibility of bicycle parking.

29. Geotechnical Recommendations

The recommendations of the approved Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction certificate detail plans. Detailed plans demonstrating consistency in this regard are to be submitted to the certifying authority.

Reason: To minimise the risk of development on a landslip affected site.



30. Utility Services

Prior to the issue of the construction certificate, written evidence is to be submitted to the certifying authority from all relevant utility suppliers that satisfactory arrangements have been made for the approved development to be connected to all required services.

All services for the proposed development are to be located underground. The location of any trenching for underground services is to take into account future/proposed landscaping. Details demonstrating compliance with this requirement are to be submitted to the certifying authority prior to the issuance of the construction certificate.

Reason: To ensure that service have been provided as required by this Consent.

31. External Finishes

The development is to be in accordance with the Schedule of Colours and Finishes referenced in Condition 1 of this consent. Details demonstrating compliance are to be submitted to the certifying authority prior to the issuance of the construction certificate.

Reason: To ensure that the visual impact is appropriately minimised.

32. Livable Housing

Prior to the issuance of the construction certificate, a suitably qualified accessibility consultant is to provide written certification to the certifying authority to confirm that all 6 "livable" apartments (and access thereto) have been designed to meet the Silver Level requirements of the Livable Housing Design Guidelines.

Reason: To provide livable housing options.

33. Residential Apartment Development

Prior to the issuance of the construction certificate, a statement by the qualified designer is to be submitted to the certifying authority to verify that the plans and specifications of the development achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles.

Reason: Legislative requirement.

34. Car Wash Bay

The car wash bay is to incorporate a tap/hose for use by residents. The car wash bay is to be graded to drain to the sewerage system. The perimeter of the wash bay is to be suitably bunded to prevent stormwater entering the sewer. Details demonstrating compliance are to be submitted to the certifying authority prior to the issuance of the construction certificate.

Reason: To provide a usable area for car washing.

35. Driveway Width

In accordance with AS 2890.1- 2004 (Parking Facilities, Part 1: Off-street car parking), the driveway shall be a minimum of 5.5 metres in width between the kerb alignment and the basement carpark. Driveway design plans confirming the above shall be submitted to the principal certifying authority to confirm the above.

Reason: Compliance with standards.



36. Pedestrian Sight Distance at Property Boundary

A pedestrian sight line 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 where the driveway intersects with the property boundary. Revised plans for the driveway to be submitted to the Certifying Authority to verify that this will be achieved.

Reason: To ensure pedestrian safety.

37. Waste and Recycling Requirements

Details demonstrating compliance with Warringah Development Control Plan – Part C9 Waste Management, including the required Warringah 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 Warringah Development Control Plan – Part C9 Waste Management, 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

38. Public Liability Insurance - Works on Public Land

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

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

39. Construction Traffic Management Plan

A Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Certifying Authority prior to commencement of works.

The CTMP must address following:

- (a) The proposed phases of construction works on the site, and the expected duration of each construction phase;
- (b) 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;
- (c) Make provision for all construction materials to be stored on site, at all times;
- (d) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- (e) The proposed method of access to and egress from the site for construction vehicles, including access routes and truck rates 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;

- (f) 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;
- (g) Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- (h) 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 or plans prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- (j) 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.
- (k) 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.
- (I) 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.
- (m) 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;
- (n) 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.
- (o) 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;
- (p) Proposed protection for Council and adjoining properties;
- (q) The location and operation of any on site crane;;

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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK



40. 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.

41. Demolition Works - Asbestos

If asbestos is found to be on site, 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.

42. 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.

43. Notification of Inspections

The Applicant shall notify Council's Development Engineering and Certification team is to be given 48-hour notice when the works reach the following stages:

- a) Installation of Silt and Sediment control devices
- b) Prior to backfilling of pipelines
- c) Prior to pouring of stormwater gully pits



- d) Prior to pouring of kerb and gutter
- e) Subgrade level / basecourse level / subbase
- f) All layers of the road formation are to be proof rolled to Council's satisfaction
- g) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with AUSPEC 1 Council's design and specification standards.

44. Implementation of Construction Traffic Management Plan

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

Reason: To ensure the developer/builder in adheres to the Construction Traffic Management procedures.

45. Waste/Recycling Requirements (Waste Plan Submitted)

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan referenced in Condition 1 of this consent.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

46. Waste/Recycling Requirements (Materials)

During demolition and/or construction the following materials are to be separated for recycling – timber – bricks – tiles – plasterboard – metal – concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.

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

47. Landscape Certification

Prior to the issuance of the occupation certificate, a qualified landscape architect/designer is to



certify that the landscaping works have been completed in accordance with the approved plans referenced in Condition 1 of this consent, as amended by any conditions of consent.

Furthermore, evidence is to be provided to confirm the engagement of a suitably qualified landscape architect who will be responsible for the implementation of the Landscape Maintenance Plan for a minimum period of 2 years. The landscape architect is to confirm that they will undertake to:

- (a) visit the site immediately following completion of the landscaping and hardscape works on site; and
- (b) visit the site on a three (3) monthly basis for a period of 2 years to ensure implementation of the Landscape Maintenance Plan.

Reason: To ensure the approved landscaped solution is provided and appropriately established and maintained.

48. 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.

49. Certification of Structures Located Adjacent to Council Pipeline or Council Easement

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Warringah Water Management Policy PL850 and the approved Construction Certificate plans. Civil Engineer demonstrating compliance is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure.

50. 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.

51. 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.

52. Reports Certification

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the reports referenced in Condition 1 of this consent have been completed.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure compliance with recommendations of approved reports

53. Post-Construction Dilapidation Survey



The applicant is to engage a suitably qualified person to prepare a post-dilapidation report of the condition of adjoining public and private properties and public infrastructure (including roads, gutter, footpaths, stormwater assets etc) following the completion of works. Any noted damage is to be rectified by the applicant, to the satisfaction of Council, prior to the release of the security bond. The post construction dilapidation report must be submitted to the Council for review and the certifying authority prior to the issue of the occupation certificate.

Reason: To ensure all assets are left in a serviceable state or repaired to ensure ongoing serviceability of the asset.

54. Certification of Civil Works and Works as Executed Data on Council Land

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits.

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

55. 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 the occupation certificate.

Reason: To prevent pollution of the environment and to protect the amenity of the area.

56. 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.



57. 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.

58. 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.

59. Livable Housing

Prior to the issuance of the occupation certificate, a suitably qualified accessibility consultant is to provide written certification to the certifying authority to confirm that all 6 "livable" apartments (and access thereto) have been constructed in accordance with the Silver Level requirements of the Livable Housing Design Guidelines.

Reason: To provide livable housing options.

60. Plan of Management

Prior to the issuance of the occupation certificate, a Plan of Management is to be produced for the management of the site and submitted to the certifying authority, identifying:

- (a) Consistency with all 'on-going' conditions of consent over the life of the development,
- (b) Outlining all required maintenance responsibilities for private infrastructure, including water management infrastructure and landscaping, and
- (c) Space management strategies including activity coordination, site cleanliness, rapid repair of vandalism and graffiti, and the maintenance of lighting and landscaping.



The Plan of Management is to be adopted in the by-laws of any future Strata subdivision of the development.

Reason: To ensure the on-going management of the site over the life of the development.

61. Indented Parking Bay and Associated Signage & Linemarking

Plans for the proposed on-street indented Loading Zone and associated signage and linemarking shall be prepared by a suitably qualified person and submitted for consideration and approval by Council's Traffic Committee. The works are to be constructed at the full cost to the developer in accordance with the approved plans. Evidence of the completion of works is to be provided to the certifying authority prior ro the issuance of the occupation certificate.

Reason: To ensure approval under the Roads Act.

62. Waste and Recycling Facilities Certificate of Compliance

The proposal shall be constructed in accordance with Warringah Development Control Plan – Part C9 Waste Management

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure waste and recycling facilities are provided.

63. 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)

64. 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 any occupation certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

65. 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 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.



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

66. Landscape Maintenance

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. 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 Plans.

Reason: To maintain local environmental amenity.

67. Commercial Waste and Recycling Storage

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed.

68. Parking

All parking spaces are to be maintained free of obstruction and used solely for the parking of vehicles. The development is to maintain the following spaces for the life of the development:

- (a) 31 dedicated car spaces for the 27 residential apartments, with at 1 space for each studio, one and two bedroom apartments and 2 spaces for each three bedroom apartments,
- (b) 19 dedicated car spaces for the retail component of the development, clearly marked "retail",
- (c) 6 dedicated car spaces for residential visitors, including 1 parking space for people with disabilities compliant with the provisions of AS2890.6,
- (d) 1 dedicated car space for small delivery vehicles, clearly marked "deliveries".

The 19 dedicated spaces for the retail component of the development and the 1 dedicated delivery space must be accessible at all times during trading hours of the associated retail tenancies.

Reason: To ensure that off-street parking is maintained for the life of the development.

69. Livable Housing

6 apartments are to be maintained in accordance with the Silver Level Livable Housing Design Guidelines.

Reason: To provide livable housing.

70. Consistency with the Plan of Management

The proposed development is to be maintained in accordance with the Plan of Management required by this consent.

Reason: To ensure that the site is maintained in accordance with the standards required by this consent.

71. Common Property

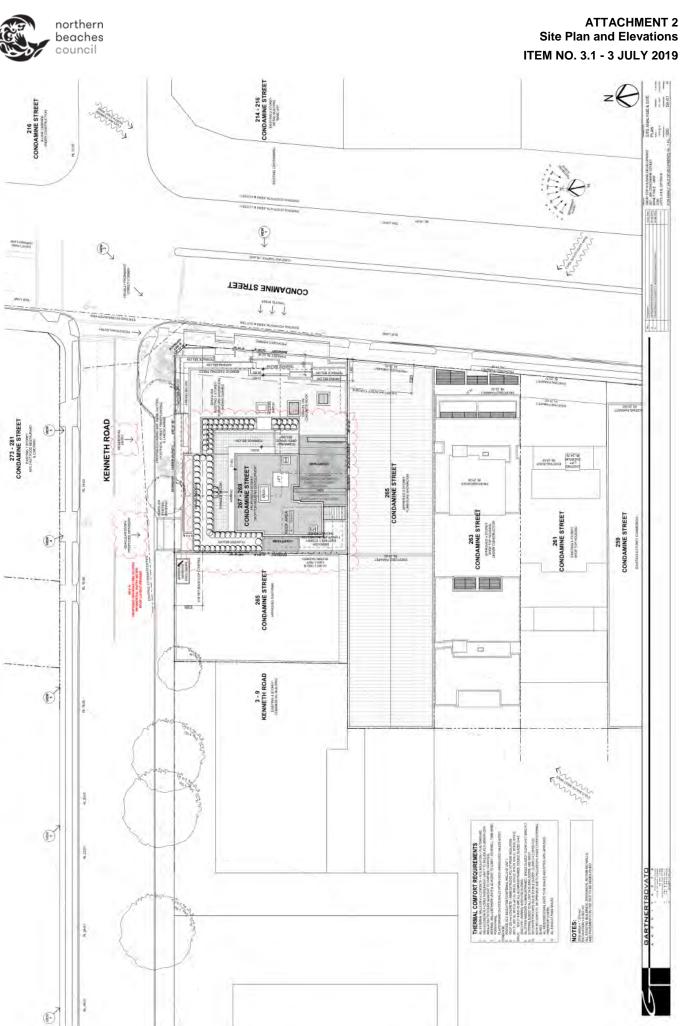
The 300mm cavity space between the ceilings of Retail Tenancies 1-3 and the Level 1 slab is to



be common property. The ceilings of these retail spaces must be constructed and maintained below RL 15.0m AHD, being the minimum floor level of Level 1 residential apartments.

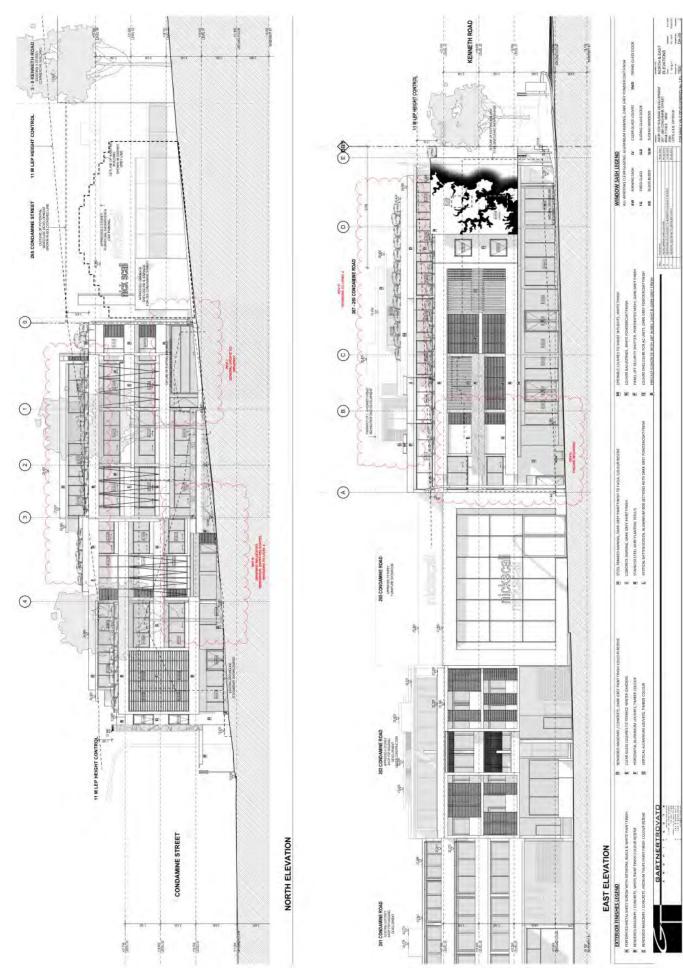
Reason: To ensure consistency with the definition of shop top housing, as prescribed by WLEP 2011.

Site Plan and Elevations





ATTACHMENT 2 Site Plan and Elevations ITEM NO. 3.1 - 3 JULY 2019





ATTACHMENT 2 Site Plan and Elevations ITEM NO. 3.1 - 3 JULY 2019

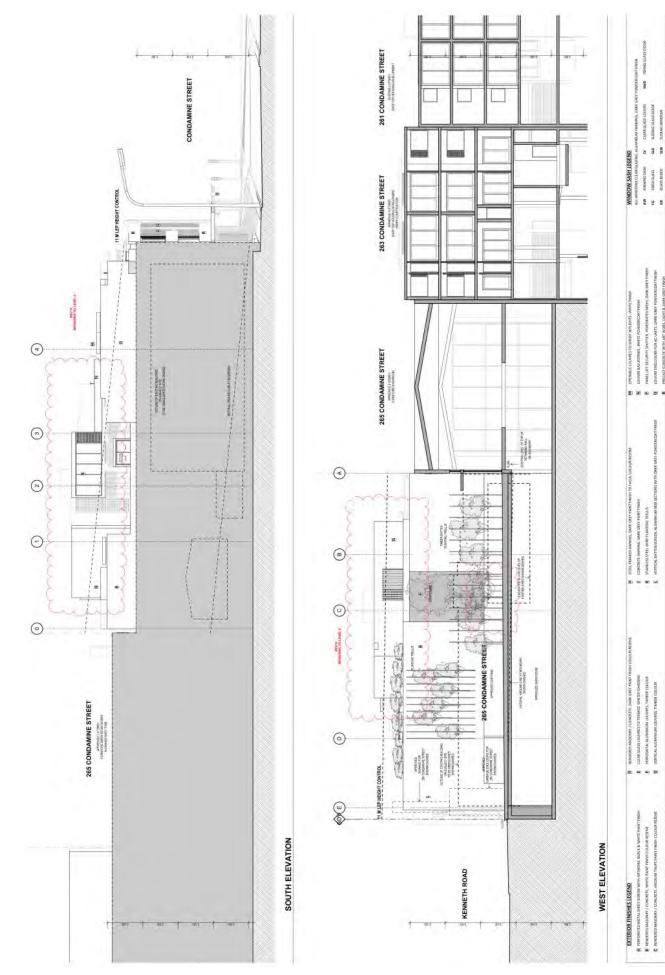
The second secon

SOUTH & WEST SOUTH & WEST BLEVATIONS FLEVATIONS FLEVATIONS

TRACTOR CONTRACTOR

4 z

TNERTROVATO







P +612 9979 4411 F +612 9979 4422 E gta@g-1.com.au

DEMOLITION OF EXISTING FURNITURE SHOWROOM & CONSTRUCTION OF NEW SHOP-TOP HOUSING DEVELOPMENT

STATE ENVIRONMENTAL PLANNING POLICY NO. 65

@

267 - 269 CONDAMINE STREET MANLY VALE NSW 2093

PREPARED FOR: CITE GROUP

PROJECT No. DATE FEBR

FEBRUARY 2019

ISSUE

В

1820



1.0 INTRODUCTION

The location of the proposal is 267 - 269 Condamine Street Manly Vale NSW.

The site is designated on Warringah Council Maps as B2 zoning, Local Centre.

The proposal is consistent with the zoning and Desired Future character of the area.

This application seeks development consent for:

- The demolition of existing 1 and 2 storey furniture show room buildings.
- I> The construction of a new four (4) storey development with ground level retail and 3-4 floors of residential apartments containing:
 - ▷ Four (4) retail units at ground level
 - Twenty seven (27) residential units above ground floor
 - > Thirty one (31) car parking spaces for residential units
 - ▷ Six (6) car parking spaces for residential visitors
 - Seventeen (17) car parking spaces for retail
 - > Car parking in a secure car park with two basement levels with dual lane access via Kenneth Street.

The project has been designed by Gartner Trovato Architects and is illustrated in the architectural drawing submission, drawings DA00 - DA20.

2.0 SEPP 65 ANALYSIS

SEPP 65 - Design Quality of Residential Flat Development

The proposal being for a four-storey residential flat building is subject to assessment under State Environmental PlanningPolicy No 65—Design Quality of Residential Apartment Development.

In accordance with this SEPP, the following design verification is provided.

I, Sean Gartner am a **qualified designer**, being a registered Architect by the Board of Architects in NSW (Registration No. 6072) and do hereby verify the following:

- (a) that I designed the residential flat development, and
- (b) that the design quality principles set out in Schedule 1 of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development are achieved for the residential flat development.



As further required by the SEPP, the following detailed responses are provided:



(a) an explanation of the design in terms of the design quality principles set out in Schedule 1 of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development,

1-Context and neighbourhood character The context of the immediate locality is shop-top housing and retail uses along Condamine Street, with a mixture of apartment buildings, detached dwelling houses, golf courses and bushland in the surrounding area.

In the surrounding area, the site is within the following lands and uses:

- Local shops and bus stop in immediate vicinity
- 1.2 km to Andrew "Boy" Charlton Pool
- 1.2 km to Manly Dam
- 1.9 km to Manly Beach
- 2 km to Warringah Mall

Aerial View of the Manly Vale context. The site is located roughly in the centre of the image.



The proposal is consistent with the uses in the surrounding development. The design responds to the LEP by proposing a high-quality shop-top housing development in the Manly Vale local centre.

2-Built form The built form of the proposal has proportion and separation that respond to the surrounds. The result is an interesting streetscape, with facades that provide views and amenity to the building.

The built form responds to the context of the sites zoning for Shop-Top housing. The design is well articulated to mediate between the proposed development at 265 Condamine Street, and the existing 4 storey commercial development at 3 - 9 Kenneth Road. Refer to the streetscapes below.





Image above showing the relationship of the proposed development with that of 265 Condamine Street.



Image above showing the relationship of the proposed development with the existing commercial development at 3-9 Kenneth Road.

The built form clearly defines the public (retail) and private (residential) parts of the building, by the different character and presentation on the facade, and contributes to the character of both Condamine Street and Kenneth Road.





Image above showing the view from corner of Condamine Street and Kenneth Road. The contemporary design of the facade responds to the desired future character of the zone.

The scale of the proposal is appropriate to the predominant building form, presenting 3 storeys to Condamine Street and Kenneth Road to relate to the neighbouring 3 storey shop-top housing buildings. A fourth storey is proposed that is well set-back from the main street facades. This same building form has been adopted by the approved developments at 261 and 263 Condamine Street. Refer to streetscape image below.







The aerial image above shows how the building bulk and scale relates to the adjoining properties.

The bulk and scale of the proposal is minimised by the high degree of articulation and depth of the facade design, the set-backs to the upper floors and the stepping of the building to reflect the site topography. The bulk and scale is considered appropriate for the desired and future character of the area.

3-Density

The proposed density of the building is in response to the social dimension of the precinct and the environmental quality of the development.

The total floor space of the proposed development is related to compliance with the setback and height controls, combined with complying solar access and cross ventilation.

The density is in response to the market demand for "entry level" small two bedroom apartments in the area. The density is appropriate for the location of the site, directly fronting the major route connecting the Northern Beaches with the Sydney CBD.

The density of 27 apartments and 4 retail shops is appropriate for the established character of higher density housing located in the local centre of Manly Vale.

4-Sustainability The development proposed and the existing buildings on site are not suited for any re-use of existing structures, and as such, the design seeks to maximise the use of new building technology to minimise resources used in the construction and ongoing use. Some of these methods include

- Large landscaped internal courtyard to provide light and air into the centre of the building for ventilation and cooling.
- · Passive solar design with large eaves and balcony overhangs to control summer sun
- BASIX certificate specifications of low water use taps and fittings
- · Low energy light fittings for minimisation of power consumption
- Large areas of glazing to maximise natural light and minimise the need for artificial lighting in daylight hours

ATTACHMENT 3 SEPP 65 Report ITEM NO. 3.1 - 3 JULY 2019



5-Landscape

An internal courtyard is proposed to provide daylight, natural ventilation and a landscaped outlook from the apartments. Landscaping is provided in dense plantings in the internal courtyards to provide softening and screening between the units. The landscaping features Kentia Palms, Tree Ferns, Purple Hydrangeas and Philodendrons.



Image above showing a view of the internal courtyard from Unit 9 (Level 2).

6-Amenity The design creates apartments of excellent amenity. The room sizes are generous, with excess amounts of natural light, ventilation, outlook and views from the upper units that take advantage of the site's locality and orientation.

The design of the internal and external living areas provides a clear flow and connection between the two to allow them to act as one, and maximise the amenity of the areas. Open plan kitchens within the main living area add to the quality and size of living spaces.

Visual and acoustic privacy is exceptional within the development and outdoor balcony spaces are generally much larger than standard, to provide a good amenity for outdoor entertainment. Winter gardens are provided to the units facing Condamine Street to increase the acoustic insulation of the balcony and apartment interior.

Refer to image below showing Unit 08 interior and winter garden.





7-Safety

Safety and Security are well thought out. The definitions of public and private space are clear in the delineation of facade elements.

The balconies provide excellent overlooking of the public domain from private spaces to further enhance safety and security.

Secure access is provided to the pedestrian and vehicular entrances. Video intercoms and lighting are provided at entry points.

Retail and residential entrances are clearly defined and secured.

8-Housing diversity and social interaction The design has researched local estate agents to understand the demand for the apartment size and types in this location. The greatest demand is for first home buyers entering into the market, and young renters. The type of apartments this demographic is seeking, is low cost and therefore smaller sized apartments that are aimed to sell at values between \$800,000 - \$900,000. Accordingly the proposal accommodates 1 and 2 bedroom apartments, with a variety in the sizes of units and the provision of studies.

Social interaction is encouraged through the proposed retail shops, the residential entrance and landscaped curtilage around the building, and through the provision of the roof top communal open space.



Image above showing the retail shops and residential entrance with landscaping



ATTACHMENT 3 SEPP 65 Report ITEM NO. 3.1 - 3 JULY 2019

9-Aesthetics

The aesthetics of the proposal respond to the site's environment and the social dimension. The prominent corner site demands high quality finishes and contemporary design.

The proposal presents an attractive, dynamic and vibrant facade with the range of colour, building shape and modulation for a detailed and interesting building. The corner is articulated with a perforated metal screen clad wall that features interpretative artwork of the local area. The balconies are framed with white painted concrete that relates to the form and scale of the façade of the proposed furniture show room on the adjacent site. On the Kenneth Road façade the balcony motif steps up the hill to reduce the bulk and scale of the proposal and to relate the design to the topography.



View of the proposal from the corner of Condamine Street and Kenneth Road.

Balconies are screened with a variety of clear glass and aluminium louvres and planting trellises, depending on their proximity to Condamine Street and their exposure to the north façade. The large balconies join seamlessly to the internal living areas as a direct response to the demand for an outdoors lifestyle on the northern beaches of Sydney. The building is well suited to its environment.

The internal courtyard provides daylight and ventilation to the apartments, as well as a landscaped outlook and screen plantings for privacy.



(b) drawings of the proposed development in the context of surrounding development, including the streetscape,

The streetscape is represented in perspective and the 3D electronic model / movie.

(c) development compliance with building heights, building height planes, setbacks and building envelope controls (if applicable) marked on plans, sections and elevations,

The LEP requirements are referenced on drawings, and are generally complied with.

- (d) drawings of the proposed landscape area, including species selected and materials to be used, presented in the context of the proposed building or buildings, and the surrounding development and its context, A landscape architectural plan is provided.
- (e) if the proposed development is within an area in which the built form is changing, statements of the existing and likely future contexts,

The development responds to both the existing and future character.

- (f) photomontages of the proposed development in the context of surrounding development, Montages of the proposed development in relation to the existing surrounds are modeled in 3-dimensional computer perspectives from surveyor's measurements.
- (g) a sample board of the proposed materials and colours of the facade, A Schedule of Colours and Materials is included as part of the application.
- (h) detailed sections of proposed facades,

Detailed perspectives representing the proposal are included in the architectural drawings.

(i) if appropriate, a model that includes the context.

A movie derived from a 3D digital model of the development is provided exhibiting a high degree of resolution and showing the proposal in its context.



Suite 1 No 9 Narabang Way Behose NSW 2085 • ecr. 121 577 768 1 (02) 9985 2535 • 1 (02) 99863050 • WWW.bbfplanners.com.al. BostonBlythFleming

13th June 2019

The General Manager Northern Beaches Council PO Box 82 Manly NSW 1655

Attention: Rebecca Englund – Principal Planner

Dear Ms Englund,

Development Application DA2019/0114 Supplementary Statement of Environmental Effects Amended Clause 4.6 variation request – Height of buildings Proposed Shop Top Housing Development 267 – 269 Condamine Street, Manly Vale

Reference is made to the revised plans issue H and J, dated 14th May and 5th June 2019, prepared by Gartner Trovato Architects which were previously submitted to Council in response to a number of concerns raised during initial assessment of the application. This amended clause 4.6 variation request has been prepared having regard to the amended plans as detailed above.

Pursuant to the height of buildings map, the site has a maximum building height limit of 11 metres.

The objectives of this control 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.



Building height is defined as follows:

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

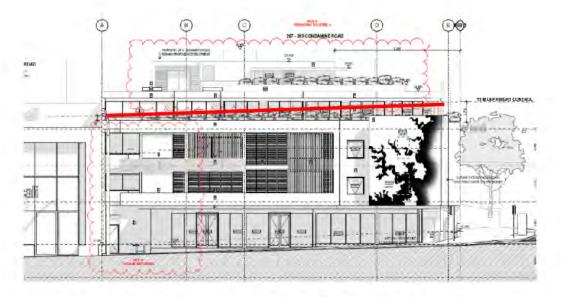
The proposed development has a variable upper parapet height of between 11.6 and 13.57 metres representing a building height non-compliance of between 600mm (5.45%) and 2.55 metres (23.18%). The centrally located lift overrun has a maximum height above ground level (existing) measured to its eastern edge of 14.55m representing a building height non-compliance of 3.55 metres or 32%. The extent of non-compliance is depicted in the plan extracts at Figures 1, 2 and 3 below and over page

Should Council consider the height of the lift overrun to be excessive, a low head height lift could, and significant cost, be introduced with no objection raised to a condition of consent requiring the lift overrun to be lowered by 850mm to a maximum RL of 27.60. This would reduce the extent of lift overrun non-compliance to 2.7 metres or 24.5%.



Figure 1 – Plan extract showing extent of 11 metre building height breach





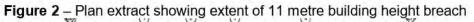




Figure 3 – Plan extract showing extent of 11 metre building height breach in section

Clause 4.6 of WLEP 2011 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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



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

This Clause applies to the Clause 4.3 Height of Buildings Development Standard. Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

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

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

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



Clause 4.6 Claim for Variation

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 and Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

Zone and Zone Objectives

The Warringah Local Environmental Plan (LEP) 2011 applies to the subject site and this development proposal. The subject site is located within the B2 Local Centre zone. Shop top housing is permissible in the zone with consent. The stated objectives of the B2 zone are as follows:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area;
- To encourage employment opportunities in accessible locations;
- To provide an environment for pedestrians that is safe, comfortable and interesting;
- To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment;
- To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.

Shop top housing is defined as one or more dwellings located above ground floor retail premises or business premises.

The development incorporates dwellings located above ground floor retail premises. Accordingly, the proposed design accords with the Land and Environment Court Judgement Sheahan J within Hrsto v Canterbury Council given that the proposed residential units sit entirely above the ceiling height of the ground floor retail tenancies.

The proposed development meets the relevant zone objectives given the provision of ground floor retail tenancies and the appropriate concentration of residential densities within an established Local Centre zone. The height and scale of the development is responsive to context, compatible with that of adjoining development and will not result in unacceptable or jarring residential amenity, streetscape or broader urban design impacts.

It has been determined that the proposal will not give rise to adverse residential amenity or land use conflicts with the future development of No. 265 Condamine Street, for either commercial or shop top housing land uses anticipated, through



the provision of a highly articulated and modulated façade presentation to this property with opportunity for a combined internalised residential light well/ courtyard should a shop top housing form of development be proposed in the future. The proposal does not create any conflict between land uses on adjoining properties or the amenity of residential uses within adjoining zones.

The subject property is ideally suited to increased residential densities given its immediate proximity to the Manly Vale B-Line bus stop with the building design and streetscape enhancement works providing an environment for pedestrians that is safe, comfortable and interesting.

The consent authority can be satisfied that the proposal is consistent with the zone objectives as outlined. Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

Building Height Objectives

Having regard to the objectives of the height standard as previously identified strict compliance has been found to be both unreasonable and unnecessary for the following reasons:

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

Comment: Development within the site's visual catchment, and within the 11 metre height precinct, is eclectic in nature and currently in transition with a number of older one and two storey commercial and mixed use buildings being replaced with more contemporary 4/ 5 level stepped storey shop top housing building forms. A predominant 4 storey building presentation has been established by recently approved and constructed shop top housing development along Condamine Street including the buildings having frontage to secondary streets including Kenneth Road and King Street.

We note that the 4th Level building element maintains an appropriate setback to Condamine Street such that it will be recessive in a streetscape context consistent with that of other recently approved and constructed 4 storey shop top housing development both within this street block and more broadly along this section of Condamine Street between Burnt Bridge Creek and King Street. The topography of Kenneth Road rises relatively steeply and facilitates the provision of 2 additional upper level apartments which like the Condamine Street frontage represents a 4th storey relative to adjacent street levels. That said, these upper level apartments maintain significant setbacks from all boundaries of the property with such setbacks extensively landscaped through the provision of integrated planter boxes.



Such setback and landscape characteristics ensure that this upper level will not be readily discernible as viewed from Condamine Street or Kenneth Road nor will it contribute to any measurable extent to the perceived bulk and sale of the development as viewed form the neighboring properties or in a broader streetscape context. This built form/ streetscape outcome is demonstrated in Figure 4 below.



Figure 4 – Perspective view from Kenneth Road demonstrating that due to available sight lines the upper level apartments are not readily discernible in a streetscape context.

The building and design are entirely appropriate for this prominent corner site as it reinforces the building as a strong, robust and defining element within the street block it being noted that a majority of properties have now been approved/ constructed with a 4 storey building form to Condamine Street. In this regard, we have formed the considered opinion that the height, bulk and scale of the development including its 4 storey stepped form are entirely consistent with the height and scale of surrounding and nearby development.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably concluded that the development is compatible with surrounding and nearby development and accordingly the proposal is consistent with this objective.

7



(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment: Having undertaken a detailed site and context analysis and identified available view lines over the site we have formed the considered opinion that the height of the development, and in particular the non-compliant height components, will not give rise to any visual, view, privacy or solar access impacts with appropriate spatial separation maintained to adjoining properties. The proposal is consistent with this objective.

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment: The non-compliant building height elements will not be readily discernible as viewed from the street or coastal foreshore area. The proposal is consistent with this objective.

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

Comment: The non-compliant building height will not be visually prominent as viewed from the street or any public area. Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, in particular the non-compliant portions of the building, offensive, jarring or unsympathetic in a streetscape context.

We have also formed the considered opinion that the proposal will maintain appropriate amenity in terms of solar access and privacy and will not give rise to any adverse public or private view affectation. In this regard, the development satisfies the objectives of the height of buildings standard and accordingly strict compliance is unreasonable and unnecessary under the circumstances. It can also be argued that the 11 metre height standard has been effectively abandoned along this particular section of Condamine Street in favour of a consistent and cohesive streetscape and urban design outcome.

In our opinion, there are sufficient environmental planning grounds to justify the variation it being noted that the building has been pulled away from the western boundary of the property with the lower level apartments (Level 03) sitting approximately 2.2 metres below the 11 metre height standard. An alternate outcome would be to delete the upper level apartment and raise all floor levels in this location by 2.2 metres to the achieve a significantly larger ground floor retail tenancy. This outcome would result in a higher building in the streetscape, and as presenting to the adjoining properties, with significantly greater basement parking excavation and retail parking demand/ traffic generation than is currently proposed.



The proposal provides for the contextually appropriate distribution of floor space on this particular site with a better urban design outcome achieved through the variation to the building height standard sought.

The additional height proposed will ensure that the development maintains a complimentary and compatible streetscape height and form consistent with the heights and form of recently approved and constructed shop top housing development along this section of Condamine Street. The proposal will provide for a complimentary and compatible building presentation to that of recently approved and constructed shop top housing development within the site's visual catchment. The sloping nature of the site facilitates a 4 level stepped building form.

The building is of exception design quality and represents the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

In accordance with Clause 4.6(5) the contravention of the development standard does not raise any matter of significance for State or Regional environmental planning with the public benefit maintained by Council's adoption of an application specific merit based assessment as it relates to building height within the 11 metre height precinct in which the site is located.

Conclusions

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

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

9



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

Please not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

Boston Blyth Fleming

1

Greg Boston B Urb & Reg Plan (UNE) MPIA Director

10



ITEM NO. 3.2 - 03 JULY 2019

ITEM 3.2	MOD2018/0683 - 559-563 SYDNEY ROAD & 42 ETHEL STREET, SEAFORTH - MODIFICATION OF DEVELOPMENT CONSENT 139/2015 GRANTED FOR DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A MIXED USE DEVELOPMENT	
REPORTING OFFICER	Matt Edmonds	
TRIM FILE REF	2019/348953	
ATTACHMENTS	1 Assessment Report	
	2 Site Plan and Elevations	

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a modification of a determination made by a local planning panel.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. MOD2018/0683 for Modification of Development Consent 139/2015 granted for Demolition of existing structures and construction of a mixed use development at Lot D DP 390953 & Lot 101 DP 738317 & Lot 11 DP 597990, 559-563 Sydney Road & 42 Ethel Street, Seaforth subject to the conditions and for the reasons set out in the Assessment Report.



APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:

Mod2018/0683

Responsible Officer:	Penny Wood	
Land to be developed (Address):	Lot 101 DP 738317, 563 Sydney Road SEAFORTH NSW 2092 Lot 11 DP 597990, 42 Ethel Street SEAFORTH NSW 2092 Lot D DP 390953, 559 Sydney Road SEAFORTH NSW 2092	
Proposed Development:	Modification of Development Consent 139/2015 granted for Demolition of existing structures and construction of a mixed use development.	
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre Manly LEP2013 - Land zoned B2 Local Centre Manly LEP2013 - Land zoned B2 Local Centre	
Development Permissible:	Yes	
Existing Use Rights:	No	
Consent Authority:	Northern Beaches Council	
Delegation Level:	NBLPP	
Land and Environment Court Action:	No	
Owner:	Tonsan Pty Ltd	
Applicant:	Figgis & Jefferson Tepa Pty Ltd	

Application lodged:	14/12/2018	
Integrated Development:	No	
Designated Development:	No	
State Reporting Category:	Residential - Other	
Notified:	21/12/2018 to 25/01/2019	
Advertised:	Not Advertised	
Submissions Received:	1	
Recommendation:	Approval	

EXECUTIVE SUMMARY

The report is submitted to the Local Planning Panel for consideration of an application to modify an approval for a for a Shop Top Housing Development in respect of 24.23m² of gross floor area to the residential component of the approved building and to correct an error in Condition ANS18.

The modification application also seeks changes to the facade of the building along the Sydney Road frontage, the Ethel Street frontage, the shared laneway (eastern elevation) and the north eastern elevation. These changes include replacement of the approved terracotta tiling to the facade with light



grey ACP cladding. The design changes will have an acceptable impact on the appearance of the building when viewed from a public space.

The modification application seeks the amendment of Condition ANS18 to rectify an error in relation to the storage area specification for the apartments.

The modification application does not comply with Clause 4.4 Floor Space Ratio (FSR) standard of 2.1:1 of the Manly Local Environmental Plan (MLEP) 2013, in relation to the increase in the gross floor area by 24.23m². This is a result of minor configurations to the residential component of the building at level 2, level 3 and level 4. The minor increase in GFA will not alter the approved building envelope of the development and therefore not be a readily discernible change when viewed from the streetscape.

The modification application also does not comply with Clause 6.16 Gross Floor Area in Zone B2 of the MLEP 2013, requiring a minimum 25% of the gross floor area of the building to be used as commercial premises. The modification application proposes a shortfall of 35.5sqm which is considered a minor variation (4.6%) to this development standard and not unreasonable.

The assessment report concludes that the proposed modifications are reasonable within the context of the site and the variations are to the development standards be supported. 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 - 4.4 Floor space ratio Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards Manly Local Environmental Plan 2013 - 6.16 Gross floor area in Zone B2

SITE DESCRIPTION

Property Description:

Lot 101 DP 738317, 563 Sydney Road SEAFORTH NSW



	2092 Lot 11 DP 597990 , 42 Ethel Street SEAFORTH NSW 2092 Lot D DP 390953 , 559 Sydney Road SEAFORTH NSW 2092
Detailed Site Description:	The subject property is commonly known as 559-563 Sydney Road & 42 Ethel Street, Seaforth and legally known as Lot D DP 390953, lot 1 DP 738317 and Lot 11 DP 597990. The site is located in the Seaforth Shopping Centre.
	The site is located on the southern side of Sydney Road, between Manly Road and Ethel Street. The property is irregular in shape and has a frontage of 20.96m to Sydney Road and 41.47m to Ethel Street and an overall site area of 1,118.6m2. The property currently contains a two storey retail/commercial development fronting Sydney Road with a central arcade connecting Sydney Road through to Ethel Street. A single storey brick dwelling is currently located at 42 Ethel Street.
	The site has a fall of approximately 3.5m from its south- eastern corner adjacent to Ethel Street to its north-western corner adjacent to Sydney Road and 2.5m between its Sydney Road and Ethel Street frontages. This represents an average grade of some 1 in 12 and 1 in 14, respectively.
	The site has frontage to a service laneway located along the eastern side boundary of 42 Ethel Street which services the Balgowlah RSL Club sited on 30-38 Ethel Street and existing retail/commercial development sited on properties at 545-555 Sydney Road.
	The surrounding area includes predominantly mixed use development with retail and commercial on ground and residential units above.
	The land immediately to the east of the site comprises the property known as 555 Sydney Road which contains a two (2) storey building comprising 2 shops at the ground floor level and 4 dwellings on the first floor level. The land further to east and on the opposite side of the service laneway comprises the properties known as 30-38 Ethel Street and 551-553 Sydney Road. These properties contain: • the one (1)/part two (2) storey Balgowlah RSL Club on 30- 38 Ethel Street;
	 a two (2) storey building comprising a pharmacy at the ground floor level and
	a residence at the first floor level on 551 Sydney Road; and • a two (2) storey building comprising a real estate agency at the ground floor
	level and 2 dwellings on its first floor level on 553 Sydney Road.
	The land immediately to the west of the site comprises the



ATTACHMENT 1 Assessment Report ITEM NO. 3.2 - 3 JULY 2019

property known as 565 Sydney Road. This property contains a one (1)/part two (2) storey retail/commercial building that provides car parking, accessed off Ethel Street, on part of its rooftop level.

The land to the north, on the opposite side of Sydney Road, comprises the properties known as 544-548 Sydney Road and Seaforth Plaza. The site contains a three (3) storey contemporary mixed-use development on 544-546 Sydney Road which accommodates a restaurant and a real estate agency at the ground floor level and apartments at its upper floor levels; a single storey liquor store on 548 Sydney Road; and the single storey sandstone building accommodating the Balgowlah/Seaforth Library in Seaforth Plaza. The Library building is listed as a "heritage item" under Manly Local Environmental Plan 2013.

The land to the south, on the opposite side of Ethel Street, comprises the properties known as 41-51 Ethel Street. These properties contain two (2) and three (3) storey contemporary and older-styled residential flat buildings on 41-47 Ethel Street and a contemporary three (3) storey mixed-use building on 51 Ethel Street accommodating a hairdressing salon and a craft shop at the ground floor level and apartments at its upper levels.



SITE HISTORY

On 19 June 2015 development application 139/2015 was lodged with Council, seeking consent for the demolition of the existing buildings on the land and the construction of a 4-level building containing a 3-level basement with 41 car parking spaces, a retail/commercial arcade with 10 tenancies, 21 residential units and landscaping on the land.



On 19 November 2015, DA139/2015 was approved by the Manly Independent Assessment Panel (MIAP)

On 19 May 2016, 139/15 Part 2 was refused by the Manly Independent Assessment Panel (MIAP). The modification application proposed the deletion of Conditoin No. ANS02 in relation to the deletion of the fourth floor, reconfiguration of a unit on the third floor and addition of three (3) units on the fourth floor at 559 - 563 Sydney Road and 42 Ethel Street, Seaforth.

On 16 March 2017 139/2015 Part 3 was approved by the Northern Beaches Independent Planning Panel (NBIPP). The modification proposed the deletion of the apartment on the 4th floor level which to enable the design to be split into two (2) smaller elements and further setback from the eastern boundary, a reduction in the overall building height by removal of stairway structures and parepets, a change to the facade of the Ethel Street elevation and changes to and the demonstration of vehicular access.

PROPOSED DEVELOPMENT IN DETAIL

The modification application has been lodged seeking to modify Condition ANS18 of Development Consent No. 139/2015 on 19 November 2015 as modified on 16 March 2017

Condition ANS18 was imposed on 139/2015 Part 3 and approved by the Manly Independent Assessment Panel as follows:

Amended plans are to be provided whichshow compliance with the following:

"In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:

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.

The applicant has requested that the condition be amended as per the recommended condition to amend an error with the storage size, so as to reference cubic metres rather than square metres. The amended condition is as follows:

"In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:

Dwelling Type	Storage size volume	
Studio	4 <i>m</i> ₃	
1 bedroom apartments	6 <i>m</i> ₃	
2 bedroom apartments	8m3	



3+ bedroom apartments	10m3	
-----------------------	------	--

At least 50% of the required storage is to be located within the apartment"

The modification application proposes the following works:

Second Floor

- Bedroom 2 and bedroom 3 and the en-suite in the master bedroom of Unit 11 are to be extended to abut the boundary at the rear of 42 Ethel Street. This will result in increasing the gross floor area by 8.45sqm.
- The planter boxes between bedroom 2 and bedroom 3 and the master bedroom and living room
 of unit 11 are to be extended to abut the boundary at the rear of 42 Ethel Street.
- The wall on the eastern boundary between Unit 6 and Unit 9 is to be removed.

Third Floor

- The balcony in Unit 12 is to be contained into the master bedroom, increasing the gross floor area by a total of 3.94sqm.
- The roof over unit 4, unit 5 and unit 6 on the second floor is to be utilised as balconies for unit 12 and unit 13 on the third floor with glass balustrades.
- A wall is proposed to provide separation between the proposed balconies associated with Unit 12 and Unit 13.
- The storeroom, bedroom 1 and the en-suite of the master bedroom and the living room in Unit 18 as to be extended to abut the boundary at the rear of 42 Ethel Street, increasing the GFA by a total of 11.84sqm.
- The wall on the eastern boundary between Unit 13 and Unit 16 is to be removed.

Fourth Floor

- The planter box between the master bedroom and the living room in Unit 21 to be extended to abut the service laneway at the rear of 42 Ethel Street.
- The wall on the eastern boundary between Unit 19 and Unit 20 is to be removed.

Finishes

 Finishes approved as terra cotta tiling are to be replaced by aluminium composite panel cladding in light grey.

FSR

 Increase the gross floor area by 24.23sqm resulting in a total gross floor area of 2917.67m² (excluding arcade) and an FSR of 2.61:1.

The proposed amendment to Condition ANS18 and the proposed works have been assessed against the applicable planning requirements for the site including the relevant provisions of Manly LEP 2013



and MDCP 2013 and is compliant and consistent with the relevant provisions. The proposal was notified for a period of 14 days with one (1) submission received which is addressed in further in the submission section of the report.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA 0139/2015, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made b act on a consent granted by the consent authority and regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA0139/2015.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA0139/2015 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:(i) the regulations, if the regulations so require,or	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2011



Section 4.55 (2) - Other Modifications	Comments
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments' in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	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 in the original consent.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.Clause 92 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.Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements



Section 4.15 'Matters for Consideration'	Comments	
	under the Home Building Act 1989. This matter has been addressed via a condition in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.	
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	 (i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of	
Section 4.15 (1) (c) – the suitability of the site for the development	the existing and proposed land use. The site is considered suitable for the proposed development.	
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.	
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.	

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:	
Ms Myee Jane Allison	57 Ethel Street SEAFORTH NSW 2092	

The subject modification 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 receupt of one (1) submission from:

Name	Address	
Myee J Allison	57 Ethel Street SEAFORTH 2092	

The concerns raised in the submissions received are considered as follows:

- Further non-compliance with the prescribed FSR of 2.1:1 for the site.
- Additional bulk resulting in an overbearing appearance within the Seaforth Business Zone.

The matters raised within the submissions are addressed as follows:

- FSR non-compliance
 - Comment:

Concern has been raised in regards to the further non-compliance of the permitted FSR of 2.1:1 for the site. The modification application proposes to increase the gross floor area by 24.23m². This will result in an FSR of 2.61:1. The increase in gross floor area is considered exceptionally minor in this instance in that the additional floor area will not alter the bulk and scale of the development when viewed from Ethel Street or Sydney Road. The increase in FSR will not impact on the amount of soft open space provided for the site

Bulk and scale

Comment:

Concern is raised in regards to the overall bulk and scale, the increased FSR and the previously approved fourth storey will create for the development within the Seaforth Business Zone. The fourth storey was approved as part of the previous modification and therefore is not a matter of consideration for this application. The increase in gross floor area of 24.23sqm is considered to be minor and will not impact on the approved development in regards to the overall bulk and scale when viewed from a public space.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	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 Principa Certifier prior to the issue of any Interim or Final Occupation



Internal Referral Body	Comments	
	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.	

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 65 - Design Quality of Residential Apartment Development

The proposed modifications do not alter the development's approved compliance with the State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development and the Apartment Design Guide. The assessment and conclusions reached as part of the assessment of the original application, as modified, remain.

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?	f the LEP? Yes	
zone objectives of the LEP?	Yes	

Principal Development Standards



Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	12.5m	16m	No change to approved	N/A	No (discussed in previous modification application)
Floor Space Ratio	FSR: 2:1 (2237.2m ²) Variation of 0.5: permitted if 50% of GFA is used for commercial premises	FSR: (exclusive of the approved arcade) 2.43:1 (2718sqm)	FSR: (exclusive of the approved arcade) 2.61:1 (2917.667sqm)	30.42%	No
Gross Floor Area in Zone B2	At least 25% (765m ²) of the gross floor area of the building will be used as commercial premises	730m ² - 26.2% (based on GFA of 2783m ² including arcade) from previous approved modification application 139/2015 Part 3	730m ² (23.9%). Inclusive of approved arcade 3062m ²	4.6%	No

Note:

1) It is noted that the subject development application modification proposes an additional gross floor area of 24.23m². The previous development application modification approved a GFA of 2718m² (2.43:1) for the site. A calculation of the current plans has revealed a total gross floor area of 2917.667m² which is an increase of 199.67m². This equates to a proposed FSR of 2.61:1. It is unclear as to how these figures were calculated. This is discussed further in the report under Part 4.6 Exceptions to development standards.

2) It is established that the gross floor area of the overall development has increased as a result of updated calculations. Clause 6.6 Gross Floor Area in Zone B2 within the MLEP 2013 requires at least 25% of the gross floor area of the building will be used as commercial premises. The proposed gross floor area (inclusive of the approved arcade) is $3062m^2$. The approved commercial component of the development is $730m^2$ and is not been altered part of the current modification application. The proposed gross floor area of the building to be used as commercial premises is therefore 23.9% ($730m^2$) which is a shortfall of $35m^2$ of the required $765m^2$ (25%). This is discussed further in the report under Part 4.6 Exceptions to development standards.

Clause	Compliance with Requirements
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.9 Foreshore scenic protection area	Yes
6.16 Gross floor area in Zone B2	No



Detailed Assessment

4.4 Floor space ratio

It is noted that the subject development application modification proposes an additional gross floor area of 24.23m2. The previous development application modification approved a GFA of 2718m2 (2.43:1) for the site. A calculation of the current plans has revealed a total gross floor area of 2917.667m2 which is an increase of 199.67m2. With the additional 24.23m² proposed as part of the subject modification application, this equates to a proposed FSR of 2.61:1. This is discussed further in the report under Part 4.6 Exceptions to development standards.

4.6 Exceptions to development standards

Description of non-compliance:

Whilst the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

This application has been made under Section 4.55 the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 96 modification applications. In accordance with this, the Applicant has not provided a written request to vary the Floor Space Ratio and Gross Floor Area in Zone B2 Development Standards. Nevertheless, an assessment of the variation is as follows:

Description of floor space ratio non-compliance:

Development standard:	Floor space ratio	
Requirement:	2237.2m ² (2.1:1)	
Proposed:	2917.67m ² (2.61:1)	
Percentage variation to requirement:	30.42%	

The proposal must satisfy the objectives of Clause 4.4 - Floor Space Ratio, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

(1) The objectives of Clause 4.4 are as follows:

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

Comment:

The proposed will not alter the existing bulk and scale of the development in that the increase in gross floor area will be contained within the approved footprint of the building. The impact of the development on the existing and desired streetscape character will not be altered.



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

Comment:

The proposed works will not alter the approved bulk of the development and therefore will 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,

Comment:

The proposed works are contained within the approved footprint of the development and therefore will maintain the visual relationship between the 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,

Comment:

The proposed works will have 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.

Comment: As existing.

What are the underlying objectives of the zone?

In assessing the development non-compliance, consideration must be given to its consistency with the underlying objectives of the B2 Local Centre zone:

To provide a range of retail, business, entertainment and community uses that serve the needs
of people who live in, work in and visit the local area

Comment:

The proposal will continue to provide a mixed use development which serves the needs of people who live in, work in and visit the local area.

To encourage employment opportunities in accessible locations

Comment:

The minor shortfall of the required commercial component of the building will not impact on the employment opportunities in the current location.

To maximise public transport patronage and encourage walking and cycling

Comment:

The proposal is located in a central location of Seaforth and has good access to public transport.



The proposed modifications do not alter this.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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.

Comment:

The subject modification application does not rely upon the flexibility that may be granted by Clause 4.6 for the reasons outlined in the first paragraph of this assessment.

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

Comment:

The proposed increase in gross floor area is minor (24.23m2) increase in gross floor area will have a negligible impact on adjoining properties in terms of amenity. The proposal will result in a greater outcome than the existing approved development without compromising adjoining properties.

Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Description of non-compliance:

Whilst the modification application will result in a commercial component that falls short of the minimum 25% of gross floor area of a building in a B2 zone permitted by Clause 6.16 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

This application has been made under Section 4.55 the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 96 modification applications. In accordance with this, the Applicant has not provided a written request to vary the Floor Space Ratio and Gross Floor Area in Zone B2 Development Standards. Nevertheless, an assessment of the variation is as follows:

Development standard: At least 25% of the area of the building as commercial pren		
Requirement: 765.5m ² (25%)		
Proposed:	730.0m ² (23.9%)	
Percentage variation to requirement:	4.6%	

Comment:



The development is to provide at least 25% of the gross floor area of the building to be used as commercial premises. The modification application proposes to increase the gross floor area of the residential component of the development by 24.23m2 resulting in an overall gross floor area of 3062m2 (inclusive of the arcade). The previous modification application (DA139/2015 Part 3) calculated a total gross floor area of 2783m² which resulted in a compliant commercial component for the building. The total gross floor area of the building (inclusive of the arcade) has increased as part of the assessment of the subject development modification therefore resulting in a non compliant area to be used as the commercial component. The subject modification application proposes a shortfall of 35.5m2 resulting in a 4.6% variation.

The proposal must satisfy the objectives of Clause 6.16 - Gross Floor Area in B2 Zone, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

(1) The objectives of this Clause 6.16 are as follows:

a) to provide for the viability of Zone B2 Local Centre and encourage development, expansion and diversity of business activities, that will contribute to the economic growth, retention of local services and employment opportunities in local centres.

Comment:

The proposed commerical component of the building currently falls short of the minimum 25% requirement as prescribed in Clause 6.16 of the MLEP2013. This minor variation (4.6%) will maintain a development which will continue to encourage the development, expansion and diversity of business activities, that will contribute to the economic growth, retention of local services and employment opportunities in local centres. The increased gross floor area of 24.23m² will not impact on the built form of the development as the building envelope will not be altered.

What are the underlying objectives of the zone?

The underlying objectives of the B2 Local Centre zone are:

To provide a range of retail, business, entertainment and community uses that serve the needs
of people who live in, work in and visit the local area

Comment:

The proposal will continue to provide a mixed use development which serves the needs of people who live in, work in and visit the local area.

To encourage employment opportunities in accessible locations

Comment:

The commerical component will continue to encourage opportunities within accessible locations.

To maximise public transport patronage and encourage walking and cycling

Comment:

The proposal is located in a central location of Seaforth and has good access to public



transport. The proposed modifications do not alter this.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the MLEP 2013?

(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.

Comment:

The subject modification application does not rely upon the flexibility that may be granted by Clause 4.6 for the reasons outlined in the first paragraph of this assessment.

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

Comment:

The proposed increase in gross floor area is minor (24.23m2) increase in gross floor area will have a negligible impact on adjoining properties in terms of amenity. The proposal will result in a greater outcome than the existing approved development without compromising adjoining properties.

Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

6.16 Gross floor area in Zone B2

The proposed development provides a total gross area of 3062m², including the area of the arcade of which 765.5m² is required to be used as commercial premises to ensure compliance with this clause. The submitted plans note that the total gross area for the commercial use component is 730m². The proposes a shortfall of 35.5m² provides a non compliance with Clause 6.6 of MLEP 2013. A discussion of the proposed non compliance is discussed further in the report under Part 4.6 Exceptions to development standards.

Manly Development Control Plan

Built Form Controls

The application does not propose any changes that would alter the built form controls under the Manly Development Control Plan

Compliance Assessment			
Clause	Compliance with Requirements	Consistency Aims/Objectives	
Part 3	Yes	Yes	
3.1 Streetscapes and Townscapes	Yes	Yes	
3.1.1 Streetscape (Residential areas)	Yes	Yes	



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.2 Heritage Considerations	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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.2.7.4 Façade Design and Front Setback	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

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
- 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

Northern Beaches Council is in receipt of Development Application Modification MOD2018/0683 for Modification of Development Consent 139/2015 granted for Demolition of existing structures and construction of a mixed use development at 559 Sydney Road, Seaforth. The proposed development requires referral to the Northern Beaches Planning Panel for determination, as the original development application was determined by an Independent Assessment Panel. Based on a detailed assessment of the proposal against the applicable planning controls, the proposal is suitable and is an appropriate development for the subject site. The proposed development received one (1) submission in relation to:

- · Floor Space Ratio non compliance; and
- Bulk and scale

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.

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



RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0683 for Modification of Development Consent 139/2015 granted for Demolition of existing structures and construction of a mixed use development. on land at Lot 101 DP 738317,563 Sydney Road, SEAFORTH, Lot 11 DP 597990,42 Ethel Street, SEAFORTH, Lot D DP 390953,559 Sydney Road, SEAFORTH, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
3484 DA 114 Issue B	23 January 2018	Figgison & Jefferson TEPA Pty Ltd
3438 DA 115 Issue C	23 October 2018	Figgison & Jefferson TEPA Pty Ltd
3484 DA 116 Issue H	23 October 2018	Figgison & Jefferson TEPA Pty Ltd
3484 DA 117 Issue H	23 October 2018	Figgison & Jefferson TEPA Pty Ltd
3484 DA 200 Issue G	23 October 2018	Figgison & Jefferson TEPA Pty Ltd
3484 DA 201 Issue G	23 October 2018	Figgison & Jefferson TEPA Pty Ltd
3484 DA 500 Issue D	23 October 2018	Figgison & Jefferson TEPA Pty Ltd

Reports / Documentation - All recommend	dations and requirements	s contained within:
Report No. / Page No. / Section No.	Dated	Prepared By
Fire Engineering Report	26 November 2018	MCD Fire Engineering Pty Ltd

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

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

B. Modify Condition ANS18 to read as follows:



Amended plans are to be provided which show compliance with the following:

In addition to storage in kitchens, bathrooms and bedroom, the following storage is to be provided:

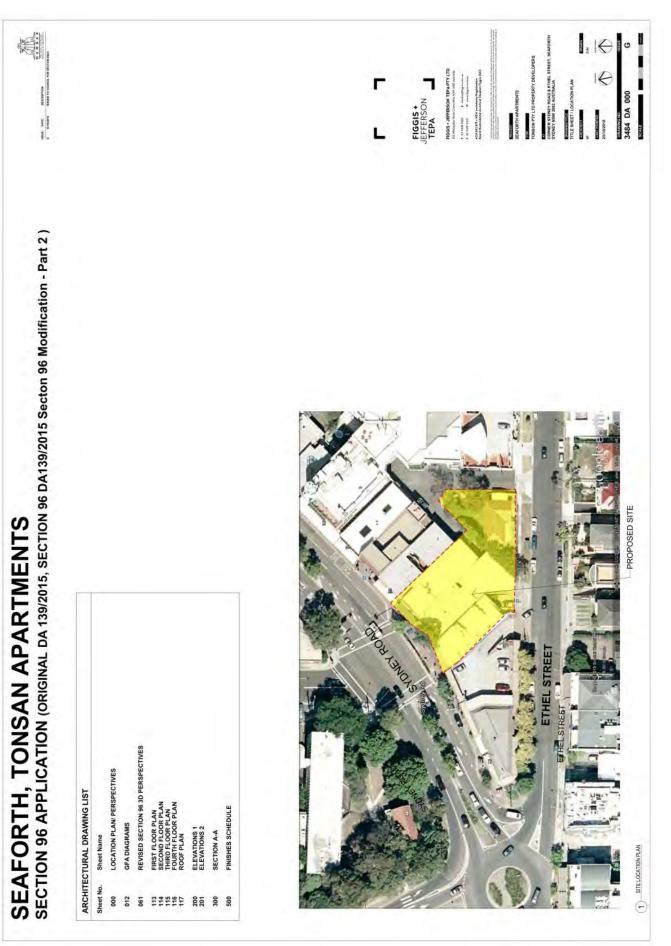
Dwelling Type	Storage size volume	
Studio apartments	4m ³	
1 bedroom apartments	6m3	
2 bedroom apartments	8m3	
3+ bedroom apartments	10m3	

At least 50% of the required storage is to be located within the apartment.

Reason: To ensure compliance with storage required under SEPP 65.



ATTACHMENT 2 Site Plan and Elevations ITEM NO. 3.2 - 3 JULY 2019



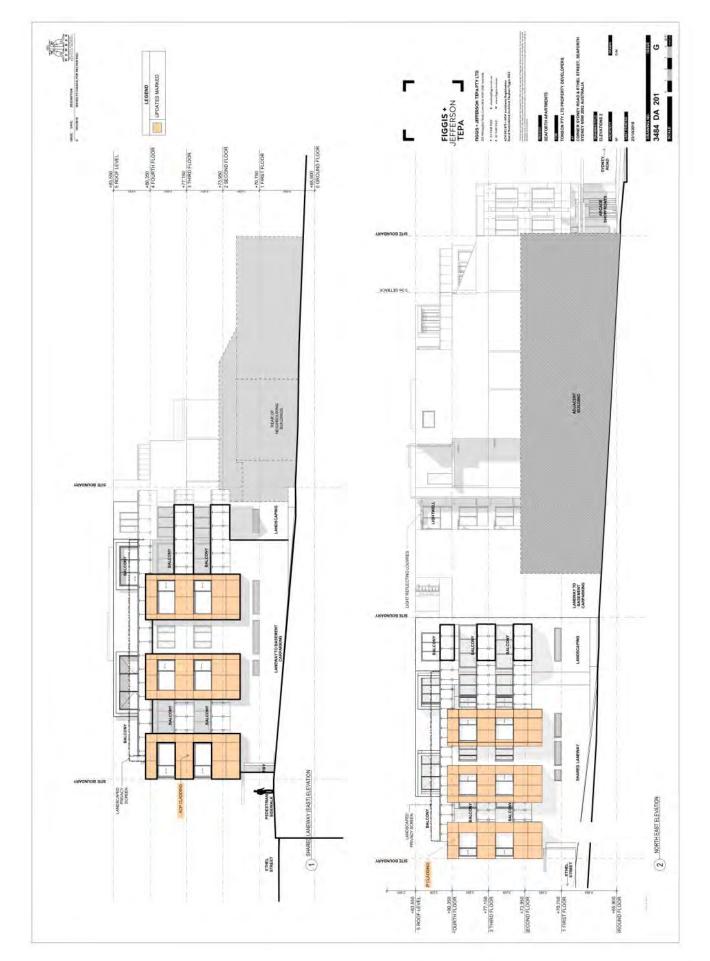


ATTACHMENT 2 Site Plan and Elevations ITEM NO. 3.2 - 3 JULY 2019





ATTACHMENT 2 Site Plan and Elevations ITEM NO. 3.2 - 3 JULY 2019





ITEM NO. 3.3 - 03 JULY 2019

ITEM 3.3	DA2018/1755 - 15 WINSOME AVENUE, NORTH BALGOWLAH - SUBDIVISION OF ONE LOT INTO TWO LOTS AND CONSTRUCT NEW DRIVE
REPORTING OFFICER	Daniel Milliken
TRIM FILE REF	2019/348983
ATTACHMENTS	1 Assessment Report
	2 Site and Subdivision Plans
	3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/1755 for subdivision of one lot into two lots and construct new driveway at Lot 24 DP 6723, 15 Winsome Avenue, North Balgowlah subject to the conditions and for the reasons set out in the Assessment Report.





DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1755
Responsible Officer:	David Auster
Land to be developed (Address):	Lot 24 DP 6723, 15 Winsome Avenue NORTH BALGOWLAH NSW 2093
Proposed Development:	Subdivision of one lot into two lots and construct new driveway
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Ronald Shaw Thomson
Applicant:	Ronald Shaw Thomson

Application lodged:	26/10/2018	
Integrated Development:	No	
Designated Development:	No	
State Reporting Category:	Subdivision only	
Notified:	07/11/2018 to 23/11/2018	
Advertised:	Not Advertised	
Submissions Received:	3	
Recommendation:	Approval	

EXECUTIVE SUMMARY

Estimated Cost of Works:

The proposal seeks consent for the subdivision of one lot into two, with the construction of the relevant driveway and services.

\$40,000.00

The proposed subdivision will result in two new lots that are less than the required minimum lot size of 600sqm. This non-compliance is not considered to result in any unreasonable impacts, and is considered to be generally consistent in both lot size and site arrangement with the existing subdivision pattern in the area.

Submissions were received from the three adjoining neighbours to the east and west. The issues raised in these submissions have been addressed in this report.

DA2018/1755

Page 1 of 42





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 Local Environmental Plan 2011 - 4.1 Minimum subdivision lot size Warringah Local Environmental Plan 2011 - 2.6 Subdivision - consent requirements Warringah Development Control Plan - C1 Subdivision

SITE DESCRIPTION

Property Description:	Lot 24 DP 6723 , 15 Winsome Avenue NORTH BALGOWLAH NSW 2093
Detailed Site Description:	The subject site is located on the southern side of Winsome Avenue in North Balgowlah.
	The site shares borders with Nos. 13 and 17 Winsome Avenue and Nos. 12, 14A and 70 Serpentine Crescent. Each of these properties are zoned R2 Low Density Residential.
	The site has a surveyed area of 1204sqm with a frontage of 15.24m to Winsome Avenue. The site is largely rectangular and has sides of approximately 79m.

DA2018/1755

Page 2 of 42



ATTACHMENT 1 Assessment Report ITEM NO. 3.3 - 3 JULY 2019



The site accommodates a relatively new two storey dwelling, located at the front of the property. The remainder of the property is largely undisturbed, with no structures present.

Surrounding developments consist of detached residential dwellings of varying age, size and construction. A public reserve located between Winsome Avenue to the north and Serpentine Crescent to the south is located two allotments east of the subject site.

The topography of the site has created a natural watercourse through the centre of the site (flowing west to east). The site falls from the front of the property by approximately 7m to around the centre of the site, and then rises by approximately 5.0m further southwards towards the rear boundary.

The survey of the site has identified rock outcrops and scattered rocks throughout the rear of the site, directly behind No. 70 Serpentine Crescent. There is mature vegetation at the rear of the site comprising largely of native species.

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:

Application DA2018/0138 for Subdivision of Torrens Title one lot into two lots and construction of a driveway was withdrawn by the applicants at the request of Council on 09/05/2018. The issues raised

DA2018/1755

Page 3 of 42







included non-compliance with the minimum lot size, and that the requirements of the following clauses of the Warringah DCP had not been adequately addressed:

- C1 Subdivision
- C7 Excavation and landfill
- D1 Landscaped open space and bushland setting
- E1 Preservation of trees or bushland vegetation
- E6 Retaining unique environmental features

Council's Development Engineers and Landscape Officer raised concerns with the proposal. The Aboriginal Heritage Officer (AHO) also requested that a preliminary inspection ('due diligence' under the National Parks and Wildlife Act 1974) by a qualified Aboriginal heritage professional take place prior to any subdivision or development. Given the above issues and possible impacts, the proposal was not considered to achieve the objectives of the Minimum Lot Size control under the Warringah LEP. The applicant has addressed these issues in the current application as follows:

- Amended architectural concept plans for the new rear lot, which have addressed concerns
 raised by Council's Landscape Officer regarding retention of trees and environmental features,
 and amount of excavation. These plans have also addressed the AHO's concerns by no longer
 impacting the large rock outcrops at the rear of the site that previously caused the concerns.
- Revised arborist report to address concerns raised by Council's Landscape Officer.
- Driveway minimum width of 3.25m to address concerns raised by Council's Development Engineers.
- Details of driveway at front of property to address concerns raised by Council's Development Engineers. The driveway details have been further updated during the assessment process to further address the Engineer's concerns.
- Amended concept stormwater plans to address concerns raised by Council's Development Engineers.

As discussed in the relevant parts of this report, these amendments and additional information have generally satisfied the concerns of the relevant referral bodies, and as such the only outstanding matter is the numerical non-compliance with the minimum lot size control. As discussed under clause 4.6 in this report, and given that the previous issues raised have generally been adequately addressed by the applicants in the current application, the non-compliance with the minimum lot size is now supported.

Pre-lodgement Meeting PLM2017/0133 was held on 16/11/2017 for Torrens Title Subdivision of one Lot into two Lots. These notes suggested that the proposal may be supported, and that an even balance in the size of the two new lots should be pursued. The notes also suggested a passing bay should be included in the driveway.

Application CDC2017/0046 for Construction of a secondary dwelling was approved by a Private Certifier on 25/01/2017. This gave approval for construction of a secondary dwelling at the rear of the site. This secondary dwelling has not been constructed to date.

Application DA2016/0907 for Demolition works and construction of a dwelling house was approved by Council on 07/10/2016. This application gave approval to a new two storey dwelling on site, which has since been constructed.

PROPOSED DEVELOPMENT IN DETAIL

DA2018/1755





The proposal involves the subdivision of the existing lot into two new lots, in a battle axe type arrangement.

The proposed site areas are as follows:

- Front/northern lot (labelled as proposed Lot 240 on plans): 521.9sqm (664sqm including the access driveway)
- Rear/southern lot (Lot 241): 540sqm

The proposal will retain the existing house situated at the northern end of Lot 240, and construct a driveway on the western side of the site to access the new rear lot.

Due to concerns raised by Council's engineers, minor alterations will need to take place to the existing dwelling to remove some of the existing western eaves to provide sufficient clearance for emergency vehicles on the proposed driveway. Stormwater works are also proposed.

Amendments to plans

The applicant submitted amendments to the driveway plans during the assessment process to address the concerns raised by Council's Development Engineers. The modifications were generally minor in nature, and as such, re-notification of the application was not required, in accordance with clause A7 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 development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	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. <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.
	<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

Page 5 of 42





Section 4.15 Matters for Consideration'	Comments
	addressed via a condition of consent.
	<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.
	<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.
	<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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impact on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.
	(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.
	(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

DA2018/1755





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:
Graham Johnson	13 Winsome Avenue NORTH BALGOWLAH NSW 2093
Mr Glenn John Ashcroft	17 Winsome Avenue NORTH BALGOWLAH NSW 2093
Mr Richard Anthony John Higgins	70 Serpentine Crescent NORTH BALGOWLAH NSW 2093

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

- Concept plans
- Potential damage to neighbouring property
- Driveway width, gradient, safety, two driveways
- Construction noise and disruption
- Watercourse and stormwater
- Tree removal, natural outlooks

The matters raised within the submissions are addressed as follows:

Concept plans

Concerns were raised with regard to the concept dwelling plans lodged that they were just that a concept, and that there was no guarantee that would be the development that would ultimately take place. Concerns were also raised that the concept plans do not show two parking spaces.

Comment:

The issue raised is correct in that the plans are only a concept, and may bear small relation to a future dwelling on the new rear lot. However, this is the intention of concept plans at the subdivision stage, to demonstrate that it would be possible to construct a dwelling on site that would be generally consistent with the relevant planning controls, but not to gain actual approval for a dwelling. In this regard, the concept plans provided have achieved this goal, as assessed throughout this report.

The plans indicate that an adequate building area of at least 150sqm is available in accordance with clause C1 of the DCP. That the floor plans provided do not include a garage or other parking will not prevent parking from being required and provided as part of an eventual dwelling, within the general footprint shown on the concept plans if necessary. This is an issue for detailed assessment as part of a future application for a dwelling should the subdivision be approved.

The issue is not considered to warrant refusal of the application.

Potential damage to neighbouring property

Concerns were raised regarding potential damage to the neighbouring property at number 13 Winsome Avenue, as a result of the proposed driveway and excavation required.

DA2018/1755

Page 7 of 42





northern beaches council

Comment:

The geotechnical report provided with the application is a preliminary report only, as the site is in area B on the Landslip Risk Map, and does not require a more detailed assessment. As such it does not address possible impacts of excavation on the neighbouring property. Given that the driveway will need to be excavated through rock, and that possible impacts of vibrations are unknown, a condition is recommended requiring a dilapidation report of the neighbouring property to be carried out prior to commencement of works, and a further report prior to issue of a subdivision certificate to ensure any damage is noted. Any repairs required would be at the owner's of number 15 expense.

Subject to these conditions, the submission is considered to be satisfied to a reasonable degree.

Driveway - width, gradient, safety, two driveways

Concerns were raised with regard to the proposed driveway, including the width, the steep gradient, and having two driveways on site. The objectors stated that they measured the distance between the western boundary and the dwelling on the subject site, and that the driveway gap is not 3.25m as shown on the plans. Concerns were raised with the steepness of the driveway and potential safety/visibility concerns. Further concern was raised that the application would result in two driveways on the property.

Comment:

The width of the driveway is dictated by the location of the existing dwelling. It is true that this dwelling has been built relatively recently. However, the dwelling does now exist, and does now create a constraint in this regard.

The objectors have requested that Council use a tape measure to confirm the 3.25m width shown on the plans. However, this is not considered necessary as on site measurements with a tape measure are indicative only, and would not be taken from the surveyed boundary. It is noted that the boundary wall does not line up perfectly with the surveyed boundary. Scaling from the survey plans provided, the gap between the dwelling and boundary appears to be 3.25m. Regardless, the width of the driveway does not comply with the minimum requirement of 3.5m under clause C1 of the DCP. As such, Council's Development Engineers have stated that they are satisfied with a width of 3m and height clearance of 2.72m to allow for a NSW ambulance to use the driveway. This will require the removal of some of the existing eaves of the existing dwelling, to allow for the minimum clearances. The applicants have indicated this on the amended driveway plans, and the Engineers have provided appropriate conditions of consent in this regard.

Given the site constraint caused by the location of the existing dwelling, the minor variation to the control is supported. The driveway will only access one low density residential site, and the minor non-compliance of 250mm will make little noticeable difference in practice. Similarly, the lack of a passing bay is not considered an issue that warrants refusal of the application, based on the driveway providing access to only one lot. A passing bay could easily be provided to the rear of the existing dwelling on site, but this would only cut into the landscaped open space on site with little practical benefit. It is not considered necessary in the circumstances.

Council's Traffic Engineers have also assessed the proposed access, and neither they nor the Development Engineers have raised concerns from a safety or visibility point of view. The driveway will achieve the maximum 1 in 4 grade, and is considered acceptable in this regard.

The proposal will result in two driveways on the site, which is not considered to be ideal. However, as above, it is considered that the existing dwelling, which includes an existing

DA2018/1755

Page 8 of 42





driveway and garage on the eastern side of the site, creates an existing site constraint. Visually, the proposed new driveway will not be dissimilar to a number of the driveways across the road to the north to access existing battle axe lots, and there are many examples in the immediate vicinity of structures in the front setback areas of lots, reducing landscaped area. The proposal will maintain a landscaped area between the driveways of sufficient size and dimensions to allow for substantial planting, maintaining a landscaped front setback. The additional driveway will reduce available on street parking slightly, but any new dwelling ultimately built on the new lot will be required to have off street parking in accordance with the planning controls.

Given these considerations, the issues raised with respect to the driveway are not considered to warrant refusal of the application.

Construction noise and disruption

Concerns were raised with potential for noise and general disruption due to construction works.

Comment:

This is an unfortunate but unavoidable and temporary consequence of development. Standard conditions of consent regarding construction hours, and excavation hours are recommended. The proposed subdivision is not of such a scale that would require any special construction or traffic management plans to be completed.

The issue is not considered to warrant refusal of the application.

Watercourse and stormwater

Concerns were raised with respect to the 'watercourse' shown on the plans and storm water impacts. The submissions stated that there is a flooding issue on the subject site and neighbouring properties. The submissions also stated that other subdivision applications had been refused by Council due to the water course and surrounding trees.

<u>Comment:</u> Although the low point of the site is identified on the plans as a watercourse, Council mapping does not identify it as a watercourse, and the land is not identified as flood prone. Council's Development Engineers have assessed the proposal, and are satisfied that the development will provide adequate stormwater provisions. This includes connecting directly into the Council pipe that adjoins the western boundary of the site. The driveway plans have also been required to be amended to allow for water flows at the entry to the site. Conditions of consent have been provided with respect to constructing the necessary works and creating appropriate easements and positive covenants to comply with Council policy.

A search of Council records relating to the sites along the southern side of Winsome Avenue did not reveal any previous applications for subdivision, refused or otherwise.

Given Council's Engineers satisfaction, the issue is not considered to warrant refusal of the application.

Tree removal, natural outlooks

Concerns were raised regarding the proposed tree removal, including cumulative tree removal after the relatively recent development of the subject site for a new dwelling, and impacts on the outlooks from neighbouring properties.

Comment:

Council's Landscape Officer has assessed the proposal, including assessment of the arborist report and concept dwelling plans provided, and is satisfied that the proposal will (and can in the future) adequately protect the majority of trees on site. With regard to cumulative impacts,

DA2018/1755

Page 9 of 42





landscape plans and replacement planting would generally be required as part of a new development application for a dwelling, which would replace lost trees over time to a reasonable level. There will inevitably be some impact on the outlooks from neighbouring properties. However, neighbouring properties cannot rely to a great extent on vegetation on their neighbour's property for their own outlooks.

The issue is not considered to warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The landscape component is assessed and satisfactorily covered within the Natural Environment - Biodiversity referral.
	No further assessment is provided by Council's Landscape section over and beyond NECC imposed conditions.
NECC (Bushland and Biodiversity)	General Comments This proposal was assessed against Clauses E2 Prescribed Vegetation, and E6 Retaining unique environmental features, within the Warringah DCP 2011. Council's Natural Environment – Biodiversity section supports the application, subject to conditions. Assessment against E2 Prescribed Vegetation The Arborist report (Complete Arborcare 2018) identifies 5 native canopy trees to be removed, and works within the TPZ/SRZ of 4 native trees. The report does not assess the impact of proposed stormwater infrastructure, including the excavation and trenching within the TPZ (and possibly SRZ) of trees T6 Melaleuca quinquenervia, T12 Eucalyptus saligna x botryoides hybrid and T13 Casuarina glauca, which are identified to be retained. To ensure the safe retention of these trees, works within the TPZ/SRZ of these trees, require strict ongoing Arborist supervision and the installation of Tree Protection Fencing. Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be approved by the Project Arborist and reported to the Principal Certifying Authority prior to works recommencing. Five canopy and small tree replacement plantings are required and installed as per the Arborist Report. The report states: "Tree/s selected for replacement plantings should be native endemic
	species which are long lived & will attain a similar height & canopy spread of those removed. They are to be chosen in accordance with
DA2018/1755	Page 10 of 42





Internal Referral Body	Comments
	AS 2303-2015 (Tree Stock for Landscape Use) & must be in a minimum container size of 75 litres. All replanting works are to be undertaken by a suitably qualified AQF person/s before the issuing of a Certificate of Occupancy."
	Assessment against E6 Retaining unique environmental features
	The site contains a number of large natural sandstone boulders. These are concentrated in the south of the property, adjacent trees T1, T2, and T3. This feature is to be retained and protected.
	Any future house DAs should be designed so this feature can be retained and protected in the long-term.
NECC (Development	Further assessment dated 19/6/2019
Engineering)	I refer to the additional information submitted (trim no. 2019/310472).
	Development Engineers now raise no objections to the proposal subject to conditions.
	A condition is issued to provide minimum height clearance between the design finished driveway surface levels and any encroaching eaves of the existing dwelling to be removed to provide adequate access for emergency vehicles to proposed Lot 241. Concurrence should be obtained from Council's Building Control Team to ensure compliance with current BCA requirements and this consent permits the alteration to the existing dwelling.
	Further assessment dated 17/5/2019
	Reference is made to the submitted information (trim no. 2019/254556).
	Although the applicant has demonstrated that height clearance over the proposed driveway for standard vehicles complies with Australian Standards, insufficient information is submitted to demonstrate that adequate clearance is catered for emergency vehicles such as NSW Ambulances.
	As a minimum, sufficient information must be submitted to demonstrate that vehicle access along the whole length of the driveway, based on a NSW Ambulance travel envelope of 3 metres wide and 2.72m high. This will include submission of some cross sections at key locations along the driveway. These cross sections must include location of all encroaching structures, including eaves, gutters, fences, etc to demonstrate the above required clearances are attained.
	Not supported for approval due to lack of information to address:
	Vehicle access for the development in accordance with clause

DA2018/1755

Page 11 of 42





nternal Referral Body	Comments		
	C2 Traffic, Access and Safety		
	Further assessment dated 23/4/19		
	Development Engineers have reviewed the proposal and cannot support the proposal due to the following reasons.		
	1.Insufficient information to demonstrate compliance with Clauses C1 and C2 of Warringah DCP 2011 to address:		
	 minimum width of right of carriageway of 3.5 metres, adequate height clearance over the proposed right of carriageway considering the eaves on the western side of the existing dwelling encroach onto the proposed right of carriageway 		
	Not supported for approval due to lack of information to address:		
	 Subdivision requirements in accordance with Clause C1 Warringah DCP 2011 		
	 Vehicle access for the development in accordance with clause C2 Traffic, Access and Safety 		
	<u>Original assessment</u> Comments for Development Engineers: 1. No overland flow study is required.		
	Council's Development Engineers have assessed the proposal and cannot support the proposal due to the following reasons. 1. The minimum width of a driveway should be 3.5 m, in accordance with Clause C1 of Warringah DCP 2011. In addition, the proposed driveway is more than 30 m in length; a passing bay should be provided in accordance with Clause C1 of Warringah DCP 2011. The proposed driveway does not comply with Clause C1 of Warringah DCP 2011.		
	2. The existing nature strip is flowing from west to east direction. The applicant proposes to build a driveway which requires fill of at least 1-1.5 m in height above the existing ground surface. It will create a trap point of the surface water on the nature strip outside No.13 Winsome Avenue. And the surface water may enter No.13 Winsome Avenue and lead to a flood issue. The applicant hasn't provided any solution to solve the above matter.		
	Not supported for approval due to lack of information to address:		
	 Subdivision requirements in accordance with Clause C1 Warringah DCP 2011 		

DA2018/1755

Page 12 of 42







Internal Referral Body	Comments		
	 Excavation and Landfill in accordance with Clause C7 Warringah DCP 2011 Stormwater design requirements in accordance with Clause C4 Warringah DCP 2011 		
Traffic Engineer	This application is for the Torrens Title subdivision of one lot into two on land and construction of a new driveway and associated civil works.		
	The grade transition along the driveway is not compliant with AS2890.1:2004. As such, the applicant will need to address the driveway grades prior to issue of any Construction Certificate. This will be conditioned.		

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	Reference is made to the proposed development at the above area and Aboriginal heritage.
	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.
	Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.
	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.

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

DA2018/1755

Page 13 of 42





(SREPs)

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	600sqm	Lot 240: 521.9sqm (664 including access driveway)	13%	No
		Lot 241: 540sqm	10%	No

Compliance Assessment

DA2018/1755





Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

2.6 Subdivision - consent requirements

The clause requires that Development consent must not be granted for the subdivision of land on which a secondary dwelling is situated if the subdivision would result in the principal dwelling and the secondary dwelling being situated on separate lots, unless the resulting lots are not less than the minimum size shown on the Lot SizeMap in relation to that land.

As discussed in the History section of this report, there is a Complying Development Certificate (CDC) for a secondary dwelling at the rear of the existing lot, which if constructed would be on a separate lot to the primary dwelling. As such, a condition of consent is recommended should the subdivision application be approved requiring that the CDC be surrendered. Subject to this condition, the proposal will comply with the control.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size	
Requirement:	600sqm	
Proposed:	Lot 240: 521.9sqm (664sqm including access driveway) Lot 241: 540sqm	
Percentage variation to requirement:	Lot 240: 13% Lot 241: 10%	

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

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

DA2018/1755

Page 15 of 42





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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

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

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

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

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

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

Comment:

The Applicant's written request 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:

DA2018/1755

Page 16 of 42





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 subdivision will maintain a compatible relationship with the existing subdivision pattern in the area. The adjoining lot to the east, together with the neighbouring properties on the northern side of Winsome Avenue, comprise lots of a similar size to the proposal.
- The proposed southern lot is capable of accommodating a suitable future dwelling, as demonstrated in the indicative building footprint.
- The development is constrained by the size of the existing lot.
- The variation to the lot size control is inconsequential as it is of negligible impact to the streetscape and the amenity of neighbouring properties."

These arguments are generally concurred with. The proposed lot sizes are similar to many existing lots in the immediate vicinity, including the adjoining lots to the east (70 Serpentine - 543.8sqm, and 17 Winsome - 519sqm), and numerous battle axe type lots across the road on Winsome Avenue which range from lot sizes lower than 500sqm (10 Winsome - 461sqm, 12 Winsome - 487sqm, 14 Winsome - 476sqm, 18 Winsome - 498sqm, 20 Winsome - 478sqm) to others between 500sqm and 600sqm in size (10a Winsome - 570sqm, 16 Winsome - 507sqm, 16a Winsome - 568sqm).

The concept plans provided are adequate to demonstrate that a reasonably sized dwelling may be built on the proposed new lot, without causing unreasonable environmental impacts to site or the

DA2018/1755

Page 17 of 42





surrounding neighbours.

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 new lot will be capable of catering for a dwelling of a good design that will reasonably protect the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Minimum Lot Size 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 4.1 – 'Minimum subdivision lot size' of the WLEP 2011 are:

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

(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality.

Comment:

As discussed above the proposed lot are generally consistent in size, pattern and configuration with numerous existing subdivided sites directly across Winsome Avenue to the north, and with the adjoining neighbours to the east (17 Winsome Avenue and 70 Serpentine Crescent). There is a row of sites (of which the subject site is on the eastern end) along the southern side of Winsome Avenue that have not been subdivided, and are similar in size to the subject site. However, beyond that to the west there are further small lots (1 Winsome, 33 and 33A Bangaroo), and to the east along Florence Court where there are a number of sites smaller than 500sqm in area. It is therefore considered that lot sizes smaller than 600sqm are a well established part of the existing subdivision pattern in the immediate surrounds of the subject site, and the proposal is considered to achieve this objective.

(b) to promote a subdivision pattern that results in lots that are suitable for commercial and

DA2018/1755

Page 18 of 42





industrial development.

Comment:

N/A - the site is in the low density residential zone.

(c) to protect the integrity of land holding patterns in rural localities against fragmentation.

Comment:

N/A - the site is in the low density residential zone.

(d) to achieve low intensity of land use in localities of environmental significance.

Comment:

The subject site is not identified as having any particular environmental significance. There are rocky outcrops and mature native trees on site. However, the concept plans provided have demonstrated that development of the new lot would be possible without unreasonably impacting upon these features.

(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland.

Comment:

The site is not bush fire prone.

(f) to protect and enhance existing remnant bushland.

Comment:

The site is not identified as remnant bushland. However, as discussed above, Council's Landscape Officer has assessed the proposal, and is satisfied that the concept dwelling plans provided demonstrate reasonable development of the proposed new lot will be possible.

(g) to retain and protect existing significant natural landscape features.

Comment:

There are rocky outcrops and mature native trees on site. As mentioned above, the concept plans provided have demonstrated that development of the new lot would be possible without unreasonably impacting upon these features. Both the Aboriginal Heritage Office and Council's Landscape Officer have assessed the proposal and are generally satisfied.

(h) to manage biodiversity.

Comment:

The site is not identified as a wildlife corridor, and is not the subject of any other Council mapping with regard to biodiversity. The application has demonstrated that development of the new lot could be carried out without having unreasonable impacts on the existing vegetation on site.

DA2018/1755

Page 19 of 42





(i) to provide for appropriate stormwater management and sewer infrastructure.

Comment:

Council's Development Engineers have assessed the proposal and are satisfied with the provisions for stormwater. Appropriate conditions of consent have been recommended in this regard.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment:

The proposal will ultimately allow for a new dwelling to be constructed on the new lot. As discussed above, although the proposed lot sizes are below the minimum requirement of 600sqm, they are generally consistent with the surrounding pattern of subdivision in both size and configuration. A new dwelling will help provide for the housing needs of the community within a low density residential environment.

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 proposal will not prevent other land uses from being carried out in the area to meet day to day needs of residents.

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 Warringah.

Comment:

The proposal includes concept dwelling plans that have adequately demonstrated that a landscaped setting could reasonably be maintained when the new lot is developed. The plans have been assessed by the AHO and Council's Landscape Officer, who are both satisfied in this regard.

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:

DA2018/1755

Page 20 of 42





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

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

Warringah Development Control Plan

Built Form Controls

No built form is proposed in the current application, other than a driveway which is not generally subject to the built form controls under Part B. The indicative house plans provided demonstrate that the site would allow for a dwelling to be constructed in accordance with the relevant built form controls.

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	Indicative plans indicate compliance possible	N/A	Yes
B3 Side Boundary Envelope	4m	Indicative plans indicate compliance possible	N/A	Yes
B5 Side Boundary Setbacks	0.9m	Indicative plans indicate compliance possible	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Indicative plans indicate compliance possible	N/A	Yes
B9 Rear Boundary Setbacks	6m	Indicative plans indicate compliance possible	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	Lot 240: 47.6% Lot 241: Indicative plans indicate compliance possible	N/A N/A	Yes Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C1 Subdivision	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
		1

DA2018/1755

Page 21 of 42







Clause	Compliance with Requirements	Consistency Aims/Objectives
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

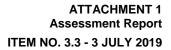
Detailed Assessment

C1 Subdivision

Component	Requirement	Proposed	Compliant
Lot requirements	R2 Low Density Residential zone requirements: Proposed new allotments: a) Minimum width: 13 metres b) Minimum depth: 27 metres; and c) Minimum building area: 150m ²	Lot 240: Width 15.24m Depth 43.565m Build area existing and unchanged Lot 241: Width 15.24m Depth 35.44m Build area 150sqm (concept plans)	Yes
Access	Motor vehicle access to each residential allotment is required from a constructed and dedicated public road. Where access is proposed to a section of unconstructed public road, then the subdivision will need to provide legal, constructed access to the Council's satisfaction. Access for Council service vehicles, emergency vehicles and garbage collection vehicles must be provided. Driveways, accessways, etc, to		No - Refer to discussion below this table

DA2018/1755

Page 22 of 42







beaches ouncil

> allotments should have a gradient not exceeding 1:4 and allow for transitions at a minimum length of 1.5m and at a grade no steeper than 1:10.

Driveways in excess of 200 metres will not be allowed for residential development.

Driveways that are 30m or more in length require a passing bay to be provided every 30m. To provide a passing bay, driveways shall be widened to 5.0m for a distance of at least 10m.

Passing bays should have regard to sight conditions and minimise vehicular conflict.

Vehicular ingress/egress points to internal lots may be used as passing/turning bays, subject to extension of a right-ofcarriageway over the passing/turning bay.

Rights-of-carriageway should be located so as to accommodate all vehicle turning facilities.

Width of accessways are to be as follows:

Number of lots to be serviced	Width of clear constructed accessway (m)
1-5	3.5
6 - 10	5.0
in excess of 10	Access is to be provided by a private or public road constructed with a width that is in accordance with Council standard specifications for engineering

DA2018/1755

Page 23 of 42







		works (AUSPEC 1)		
	Provision of serv carriageway are			
	Number of lots to be serviced	Additional width to be provided in Right of Carriageway (m)		
	Up to 3 lots	0.5		
	4 or more lots	1.0		
Design and construction	And the second sec		Refer to Development Engineer's comments in this report. The site is on a generally north/south orientation. The proposed shape, width and orientation is acceptable, and the lost size is also considered acceptable as discussed under clause 4.6 in this report.	Yes
Drainage	of the land shoul to adversely affe drainage pattern	b be drained by ncil-approved . The topography d not be altered ct the natural s. Stormwater actly to a Council- ge system and properties nalised ainage system. lotments are to	New lot to drain to existing Council drainage system which adjoins the western boundary of the property.	Yes





northern beaches council

	natural fall of the land. Interallotment drainage easements will be required through adjoining properties to adequately drain land to Council's downstream system.		
Restrictions	Any easement, right-of- carriageway, or other restriction that is placed on the title of any land as a requirement of the approval of the subdivision is to be protected by a positive covenant or like instrument with the Council nominated as a party.	The necessary conditions of consent have been provided by Council's Engineers in relation to the creation of positive covenants.	Yes
Environmentally constrained land	In areas subject to constraints such as flooding, tidal inundation, threatened species, landslip risk, bushfire or any other matter, adequate safe area for building, where the risk from hazard is minimised, is to be provided within an allotment. Where possible, lot boundaries should utilise natural land features such as creeks, escarpments and rock outcrops.	The site is not identified as being subject to any hazards. The site is in Area B on the landslip risk map, and the necessary preliminary geotechnical report has been provided with the application.	Yes
Bushfire	Subdivision should be designed to minimise the risk from potential bushfire. Asset protection zones should be contained within the property boundaries of the new subdivision.	The site is not bush fire prone land.	Yes

Description of non-compliance

The proposed driveway is a minimum of 3.25m in width, where the control requires a minimum of 3.5m in width. This is due to the width between the existing dwelling and the western boundary. The driveway is also greater than 30m in length, and does not provide a passing bay.

Merit consideration

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

To regulate the density of development.

Comment:

The proposed variations to the width of the driveway are minor, and do not make a direct contribution to the level of density proposed. The non-compliance is a result of the space

DA2018/1755

Page 25 of 42





available between the existing dwelling and the boundary. A passing bay could be provided behind the existing dwelling. However, the driveway will only serve one dwelling, and is straight so that anyone entering from either end will see if another vehicle is already on the driveway. As such, the requirement for a passing bay is considered unnecessary in the circumstances.

To limit the impact of new development and to protect the natural landscape and topography.

Comment:

The proposal is not considered to result in any unreasonable impacts on the natural landscape, as assessed throughout this report, including by Council's Landscape Officer. The concept plans provided indicate a dwelling could be constructed on the proposed new lot without unreasonable impacts to the topography.

 To ensure that any new lot created has sufficient area for landscaping, private open space, drainage, utility services and vehicular access to and from the site.

Comment:

The concept plans provided indicate that these matters may be provided for. Council's Development Engineers have provided conditions of consent to ensure that the necessary positive covenants are in place in relation to storm water, rights of way and easements for services.

To maximise and protect solar access for each dwelling.

Comment:

The site is orientated in a generally north/south direction. Any new development will receive adequate solar access, and be able to maintain solar access to neighbouring properties in accordance with clause D6 Access to Sunlight of the DCP.

To maximise the use of existing infrastructure.

Comment:

The proposal will connect directly to the existing Council drainage structure to the east of the site.

To protect the amenity of adjoining properties.

Comment:

This issue would be assessed in more detail when an application for dwelling is lodged for the new lot. However, the concept plans included in the application indicate that a reasonably sized dwelling could be located on the new lot, without causing unreasonable amenity impacts to the surrounding neighbours.

To minimise the risk from potential hazards including bushfires, land slip and flooding.

Comment:

The site is not mapped as bushfire or flood prone land. A preliminary geotechnical report has

DA2018/1755

Page 26 of 42





been provided with the application, which states that a full geotechnical report is not required in this instance.

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 inconsistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Council Contributions Plan 2018

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of 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;
- Warringah Local Environment Plan;
- · Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

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

In summary, a detailed assessment has been required for the following specific issues:

DA2018/1755

Page 27 of 42





- Minimum lot size
- Driveway width
- Submissions raising concerns with the concept plans, damage to neighbouring property, driveway issues, construction impacts, watercourse and storm water, and tree removal.

The proposed non-compliance with the minimum lot size is supported in this instance, as the proposal is considered to be generally consistent with the surrounding subdivision pattern, and does not result in any unreasonable impacts in the area.

A minor variation to the required driveway width is also supported, due to the constraint imposed by the location of the existing dwelling on site.

The concerns raised within the submissions do not warrant the refusal of the application, particularly given the comments of Council's referral officers. However, a condition of consent is recommended to require a dilapidation report to ensure that no damage occurs to the neighbouring property to the west.

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

Council is satisfied that:

1) the applicant's written request under clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of clause Clause 4.1 - Minimum subdivision lot size, has adequately addressed and demonstrated that:

a) compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) there are sufficient environmental planning grounds to justify the contravention.

2) the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.**RECOMMENDATION**

THAT Council as the consent authority grant Development Consent to DA2018/1755 for Subdivision of one lot into two lots and construct new driveway on land at Lot 24 DP 6723, 15 Winsome Avenue, NORTH BALGOWLAH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Subdivision Plans - Endorsed with	lans - Endorsed with Council's stamp		
	1	- 1	

DA2018/1755

Page 28 of 42



beaches

Drawing No.	Dated	Prepared By
Ref: 616A	22/8/18	Adam Clerke Surveyors

Engineering Plans		
Drawing No.	Dated	Prepared By
16-0203 H01B	26.09.2018	Peninsula Consulting
16-0203 H02B	26.09.2018	Peninsula Consulting
16-0203 SUB-01C	7.03.2019	Peninsula Consulting
SUB-02E	30.05.2019	Peninsula Consulting

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment	12/09/2018	Complete Arborcare
Preliminary Landslip Risk Assessment Project No.: 2016- 052.2	25 January 2018	Crozier Geotechnical Consultants

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
Northern Beaches Council Waste Management Plan	26/10/18	Vaughn Milligan

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
 - 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

DA2018/1755

Page 29 of 42





northern beaches council

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:

- 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

- 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.

DA2018/1755

Page 30 of 42





ouncil

(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).

- At all times after the submission the Notice of Commencement to Council, a copy of the (b) 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.
- Where demolition works have been completed and new construction works have not (c) 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.
- Prior to the release of the Construction Certificate, payment of the Long Service Levy is (e) 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.
- The applicant shall bear the cost of all works associated with the development that (f) occurs on Council's property.
- No building, demolition, excavation or material of any nature and no hoist, plant and (g) machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- Demolition materials and builders' wastes are to be removed to approved (h) waste/recycling centres.
- No trees or native shrubs or understorey vegetation on public property (footpaths, (i) 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
 - Building/s that are situated in the immediate vicinity of a public place and is ii) dangerous to persons or property on or in the public place
 - Building/s that are to be demolished iii)
 - 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.

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

DA2018/1755

Page 31 of 42





 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:

- 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
- 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 \$1,000 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.

DA2018/1755

Page 32 of 42





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

5. On-site Stormwater Detention Compliance

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's WARRINGAH WATER MANAGEMENT POLICY PL850 and the concept drawing by Peninsula Consulting, drawing number 16-0203 H01B and H02B dated 26.09.2018. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate

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

6. Driveway, stormwater detention and interallotment pipeline

Engineering plans of the internal driveway, onsite stormwater detention system for proposed Lot 240 and associated inter-allotment pipeline, generally in accordance with the plans approved with the Development Application are to be submitted to the Certifying Authority for approval.

Driveway is to be designed in accordance with Australian Standards AS2890.1 and minimum 3.0 metre clear width driveway with no overhang must be provided between the finished surface levels of the driveway and any structures encroaching onto the proposed right of carriageway shall be removed.

A separate Construction Certificate for the structural modification to the existing dwelling shall be obtained in compliance with BCA requirements.

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

Reason: To ensure compliance with the relevant Australian Standards, Council's stormwater drainage requirements and provision of access for emergency vehicles

7. Vehicle Driveway Gradients

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in Council's Minor Works Policy. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure suitable vehicular access to private property

8. Access for emergency vehicles

Existing eaves along the western side of the existing dwelling at proposed Lot 240 are to be removed or modified to provide minimum 2.72 metre height clearance between the design finished surface levels of the access driveway and the underside of any structures encroaching onto the proposed right of carriageway. This must be provided for the full width and length of the proposed right of carriageway.

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

Reason: To provide adequate access for emergency vehicles

DA2018/1755

Page 33 of 42





9. 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.

10. Project Arborist

A Project Arborist is to be employed for the duration of the approved works to ensure all tree protection measures are carried out according to the conditions of consent.

The Project Arborist will provide certification that conditions relating to the Tree Retention and Protection are carried out. The Project Arborist will ensure that all conditions relating to the tree management of the property are fully implemented.

The Project Arborist must have the following qualifications: - AQF Level 5 Arborist or equivalent

Details of Project Arborist engagement is to be submitted to the Principal Consent Authority prior to issue of Construction Certificate.

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

11. Compliance with Standards

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

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

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

12. Surrender of Consent

The applicant shall surrender to Council Development Consent No: Complying Development Certificate 160518 dated 25/01/2017 granted by Compass Building Certification in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

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

Reason: To prevent inconsistencies between consent applying the site (ref s80A (5) EPAA & cl97 EPA Reg).

13. 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:

DA2018/1755

Page 34 of 42





"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.

14. Pre-commencement Dilapidation Report

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of the adjoining private property at 13 Winsome Avenue. A copy of the report must be provided to Council, and the owners of 13 Winsome Avenue.

Reason: Protection of Neighbour's property during construction.

15. Driveway - Grade Transitions

The applicant is to engage a suitably qualified Engineer to prepare plans demonstrating compliance of the proposed driveway in accordance with AS2890.1:2004. These plans are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate. In particular these plans are to address the need for a grade transition in locations where changes in grade are equal to or exceed 12.5% for summits grade changes or 15% for sag grade changes.

Reason: To prevent vehicles from scraping or bottoming. (DACTRCPCC1)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. Public Liability Insurance - Works on Public Land

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. Vehicle Crossings

The provision of one vehicle crossing three metres wide in accordance with Northern Beaches Council Drawing No A4-3330/5 Extra 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.

DA2018/1755

Page 35 of 42





18. 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.

19. Arborist Recommendations to be Implemented

As there are existing trees to be retained within 5 metres of proposed development works, all recommendations as outlined in the supplied arborist report by Complete Arborcare, dated 12/09/2018 are required to be complied with before and throughout the development period, particularly with regard to the following:

- Works, erection/demolition of structures, excavation or changes to soil levels within 5 metres of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials, soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;
- Where specified, tree guards are to be provided to all trees to be retained as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report and must be in accordance with AS4970-2009 Protection of trees on development sites (Standards Australia, 2009);
- c) All works within 5 metres of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. In the event that major structural or feeder roots are encountered, the arborist is to advise the builder to carry out appropriate action to ensure the retention of the tree.
- d) Signage is to be erected advising all contractors and visitors to the site that no works or storage is to take place within the calculated Tree Protection Zone (TPZ) of existing trees.
- e) A stop work notice will be issued to the project manager if any Tree Protection Measures are not found to be complying with the Arborist Report.

Specific requirements from the Arborist report include, but are not limited to, the following:

- Removal works should be undertaken by a qualified Arborist (AQF level 3), following the guidelines provided in the Amenity Tree Industry Work Cover Code of Practice 1998 and Safe work Australia's "Guide to managing risks of tree trimming and removal work".
 Due to trees T3. 6, 12 & 13 having major encroachments from the proposed
- Due to trees **T3**, **6**, **12 & 13** having major encroachments from the proposed development, the Project Arborist (AQF level 5) shall be required to supervise excavations works within their TPZ. If roots >50mm ø are encountered, it will be at the digression of the site arborist to provide a course of action that shall not impact upon these trees.
- Trees T7,10,12 & 13 will also require root investigation to be undertaken within the area that will be encroached upon from the proposed driveway. If roots >50mmø are encounted, it will be at the digression of the site arborist to provide a course of action that shall not impact upon these trees (suspended slab may be required).
- It is recommended that trees T6,7,10,12 & 13 have stem protection installed before any of the proposed works commence. This protection shall stay in place until the completion of all works & must be compliant with clause 4.5.2 (trunk & branch protection) of AS 4970 (See Appendix C, Stem Protection).

DA2018/1755

Page 36 of 42





northern beaches council

 If roots are discovered that can be pruned (which are to be <50mm ø) pruning methods shall be undertaken in accordance with Section 9 (Root Pruning) of AS 4373-2007.

 Any tree pruning works that may be required shall be undertaken by an arborist with a minimum (AQF3) standing & be conducted in accordance with the Australian Standard (AS) 4373-2007, Pruning of Amenity Trees & the current Code of Practice: Amenity tree Industry 1998.

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

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

20. Signage - No work / storage within dripline

The project manager is to erect signs advising all contractors and visitors to the site that nonapproved works or storage are to take place within the dripline of existing trees.

Reason: To protect and retain trees proposed for retention.

21. 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)

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

22. Documentation of Arborist Site Supervision Required

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

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

23. Canopy and Small Tree Planting

Five canopy and small tree replacement plantings are required and installed as per the Arborist Report. The report states:

"Tree/s selected for replacement plantings should be native endemic species which are long lived & will attain a similar height & canopy spread of those removed. They are to be chosen in

Page 37 of 42





accordance with AS 2303-2015 (Tree Stock for Landscape Use) & must be in a minimum container size of 75 litres. All replanting works are to be undertaken by a suitably qualified AQF person/s before the issuing of a Certificate of Occupancy."

Suitable species include: Angophora costata

Banksia serrata Callistemon spp Ceratopetalum gummiferum Corymbia gummifera Elaeocarpus reticulatus

Reason: Tree replacement.

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

24. Retention of Natural Features

All natural landscape features, including natural rock outcrops, natural vegetation, and soil, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To ensure the retention of natural features.

25. Subdivisions - Trees to be retained until DA approval

Although the applicant has surveyed and recommended the removal of T4, a significant tree within the indicative building envelopes, this is not approved to be removed as part of this consent and should be considered in the future development application. The reason being, although an indicative envelope has been nominated, consistent with the planning principle established by the LEC in Parrot v Kiama (2004) NSWLEC 77 the envelopes are indicative only to satisfy the requirements of the Council DCP. As the applicant indicates the building is indicative only, a future application can assess the necessity of this tree being removed.

Reason: To retain the Urban Forest/Natural Environment for as long as practical and to ensure against unnecessary canopy loss.

26. 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.

27. 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 SUBDIVSION OR SUBDIVISION CERTIFICATE

DA2018/1755

Page 38 of 42





28. Positive Covenant for vehicle access for proposed Lot 241

A positive covenant (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and accompanying 88B instrument, requiring the proprietor of the land to ensure the future design of the dwelling allows for vehicles to enter and exit proposed Lot 241 in the forward direction. The terms of the positive covenant are to be prepared to Council's satisfaction. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure vehicles can enter and exit the proposed Lot in the forward direction

29. Positive Covenant for On-site Stormwater Detention

A positive covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the final plan of subdivision and accompanying 88B instrument, 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, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate

Reason: To ensure ongoing maintenance of the on-site detention system.

30. 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

31. 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

32. Right of Carriageway

A right of carriageway 3.25 metres, 3.5 metres and variable width (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and accompanying 88B instrument to include all vehicular access and manoeuvring areas. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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

33. Restriction as to User for On-site Stormwater Detention

DA2018/1755

Page 39 of 42





A restriction as to user (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and accompanying 88B instrument for the on-site stormwater detention system, restricting any alteration or additions to the system. The terms of such restriction are to be prepared to Council's standard requirements, which are available from Northern Beaches Council. 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 the Subdivision Certificate.

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval

34. 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

35. Survey Plan - Construction Identification

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

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

36. 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

37. Certification of Utility Services

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

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

38. Easement for Drainage

DA2018/1755

Page 40 of 42





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

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

39. Easement for Services

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

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

40. 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

41. 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 modification to the existing dwelling has been issued.

Reason: To ensure that the plans relate to approved development

42. 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

43. 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

DA2018/1755

Page 41 of 42





44. Post-Construction Dilapidation Report

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, and the owners of number 13 Winsome Avenue.

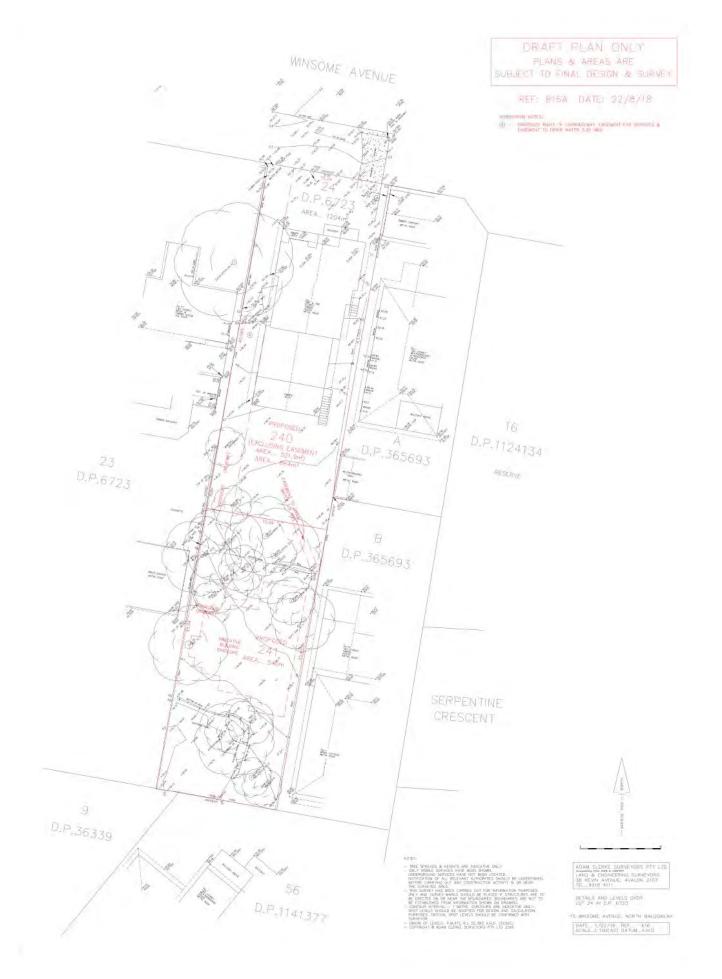
Reason: To ensure security against possible damage to private property.

DA2018/1755

Page 42 of 42

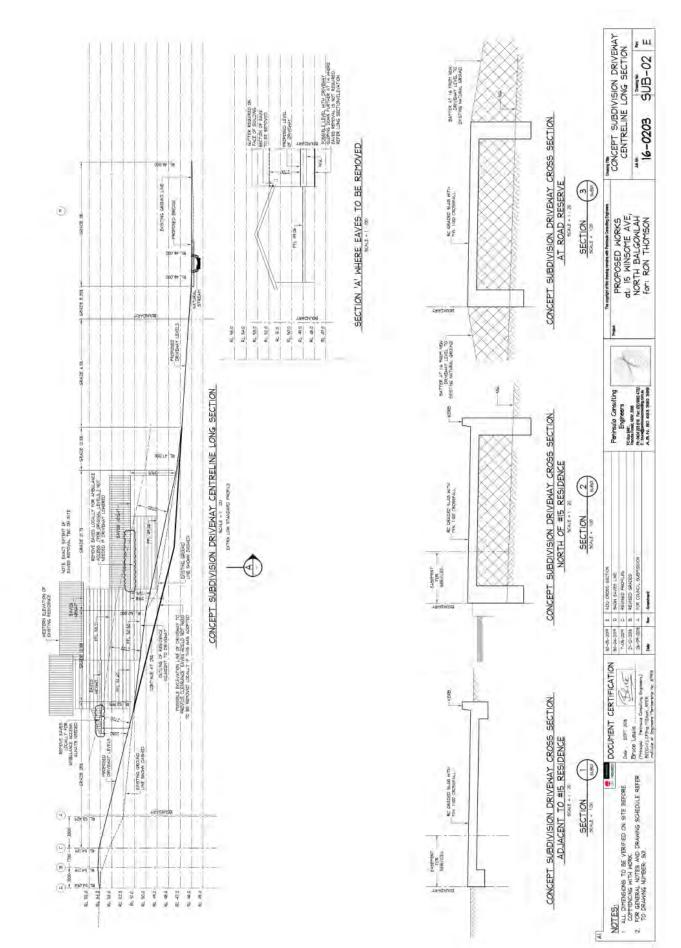


ATTACHMENT 2 Site and Subdivision Plans ITEM NO. 3.3 - 3 JULY 2019



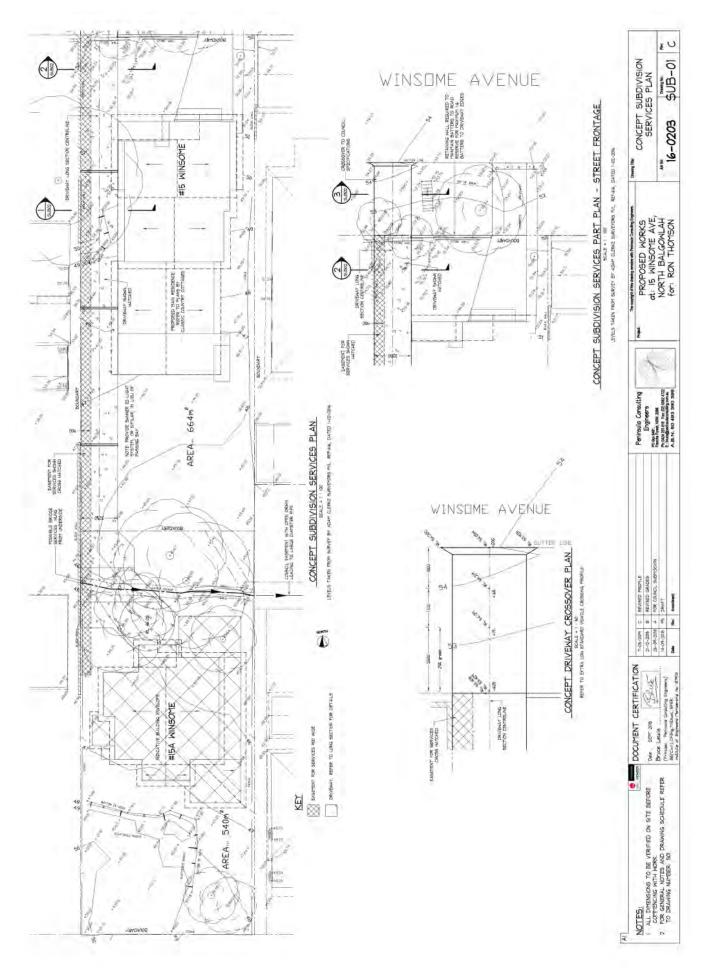


ATTACHMENT 2 Site and Subdivision Plans ITEM NO. 3.3 - 3 JULY 2019





ATTACHMENT 2 Site and Subdivision Plans ITEM NO. 3.3 - 3 JULY 2019





OBJECTION PURSUANT TO CLAUSE 4.6 OF WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

15 WINSOME AVE, NORTH BALGOWLAH

FOR THE TORRENS TITLE SUBDIVISION OF ONE LOT INTO TWO LOTS AND CONSTRUCTION OF A NEW DRIVEWAY

VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MINIMUM SUBDIVISION LOT SIZE AS DETAILED IN CLAUSE 4.1 OF THE WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

For:	Torrens title subdivision of one lot into two lots and construction of new driveway
At:	15 Winsome Ave, North Balgowlah
Owner:	Ron Thomson
Applicant:	Ron Thomson
	c/- Vaughan Milligan Development Consulting

1.0 Introduction

This objection is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. In this regard it is requested Council support a variation with respect to compliance with the minimum subdivision lot size as described in Clause 4.1 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

2.0 Background

Clause 4.1 restricts the subdivision lot size in this locality to a minimum of $600m^2$ and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The resultant allotments which have been defined as Proposed Lots 240 and 241, will have the following indices:

Site Area (Lot 240):	664m ² (521.9m ² excluding easement)
Site Area (Lot 241):	540m ²

The controls of Clause 4.1 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

23

¹⁵ Winsome Ave, North Balgowlah



3.0 Purpose of Clause 4.6

The Warringah Local Environmental Plan 2011 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 the Torrens Title subdivision of an existing lot into two and construction of a new driveway, which is consistent with the stated objectives of the R2 Low Density Residential Zone, which are noted as:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

As sought by the zone objectives, the proposal will provide for the Torrens Title subdivision of an existing lot into two and construction of a new driveway which is sensitive to the location and the topography of the locality.

The proposal will reflect the subdivision pattern in the immediate area and complement the locality.

Notwithstanding the non-compliance with the lot size control, the proposed subdivision will not unreasonably detract from the function of the local residential neighbourhood.



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 [2011]* NSWLEC 1199.

Paragraph 27 of the 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(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The proposed development of and use of the land within the R2 Low Density Residential Zone is consistent with the zone objectives, which are noted as:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

¹⁵ Winsome Ave, North Balgowlah



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 provide for an additional lot to meet the housing needs to the community.
- The proposed subdivision is consistent with the existing subdivision pattern of the surrounding lots and will therefore be in keeping with the residential character of the locality.
- The proposal aims to retain and protect the significant trees on site.

As evidence of this, we note the surrounding subdivision pattern in Figure 4 which indicates a number of similar battle-axe shaped lots within Winsome Avenue and Florence Court, with varying sizes.

A summary of similar lots in the immediate vicinity is provided below:

Northern side of Winsome	Area
Avenue	(approx.)
10 Winsome Ave	461.09m ²
10a Winsome Ave	570.6m ² (excl. access handle)
12 Winsome Ave	487.0m ²
12a Winsome Ave	651.6m ²
14 Winsome Ave	476.3m ²
14a Winsome Ave	684.9m ²
16 Winsome Ave	507.0m ²
16a Winsome Ave	568.75m² (excl. access handle)
18 Winsome Ave	498.26m ²
20 Winsome Ave	478.7m ²
Southern side of Winsome	
Avenue	
1 Winsome Ave	556.40m ²
3, 5, 7, 9, 11, 13, 15 Winsome	1201m ²
Ave	
17 Winsome Ave (neighbour)	519m ²
Continuation of Winsome to	
become Florence Ct (20 metres from 15 Winsome)	
9 Florence Ct	461.60m ²
8 Florence Ct	461.00m 465.98m ²
7 Florence Ct 6 Florence Ct	467.90m ² 537.50m ²
5 Florence Ct	682.80m ²
2 Florence Ct	499.50m ²
2 Florence Ct 1 Florence Ct	499.50m ⁻ 467.90m ²
	543.8m ²
70 Serpentine Crescent	543.8m²

Table 1: Examples of surrounding varying lot sizes

15 Winsome Ave, North Balgowlah



Given the proposed lot size is compatible with the existing subdivision pattern of its immediate neighbours to the east and on the northern side of Winsome Avenue, and as the relevant LEP & DCP Objectives are satisfied, Council's support of the variation to the minimum lot size control is requested in this instance.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.1 are articulated at Clause 4.1(1):

- (1) The objectives of this clause are as follows:
 - (a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality,
 - (b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development,
 - (c) to protect the integrity of land holding patterns in rural localities against fragmentation,
 - (d) to achieve low intensity of land use in localities of environmental significance,
 - (e) to provide for appropriate bush fire protection measures on land that has an interface to bushland,
 - (f) to protect and enhance existing remnant bushland,
 - (g) to retain and protect existing significant natural landscape features,
 - (h) to manage biodiversity,
 - (i) to provide for appropriate stormwater management and sewer infrastructure.

Comments

Despite the minor variation to the statutory lot size control which occurs as a result of the extent of the existing lot, the proposed subdivision is considered to be in keeping with the desired future character of the locality.

The proposed subdivision is consistent with the existing subdivision pattern of the adjoining lots to the east and on the northern side of Winsome Avenue and will therefore be in keeping with the residential character of the locality.

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 Torrens Title subdivision of an existing lot into two and construction of a new driveway, which is constrained by the extent of the subject lot.

Council's controls in Clause 4.1 require a minimum lot size of 600m².

It is considered that the proposal achieves the Objectives of Clause 4.1 and that the development is justified in this instance for the following reasons:

 The proposed works will maintain consistency with the existing subdivision pattern of the adjoining property to the east, together with the neighbouring properties on the northern side of Winsome Avenue.

For the above reason 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 4.1 provide a minimum lot size of 600m² for the subject site.

The resultant allotments which have been defined as Proposed Lots 240 and 241, will have the following indices:

Site Area (Lot 240): Site Area (Lot 241): 664m² (521.9m² excluding easement) 540m²

The development is justified in this instance for the following reasons:

- The subdivision will maintain a compatible relationship with the existing subdivision pattern in the area. The adjoining lot to the east, together with the neighbouring properties on the northern side of Winsome Avenue, comprise lots of a similar size to the proposal.
- The proposed southern lot is capable of accommodating a suitable future dwelling, as demonstrated in the indicative building footprint.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for minimum lot size.

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.

¹⁵ Winsome Ave, North Balgowlah



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 this 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.

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 15 Winsome Avenue, North Balgowlah, 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 development is constrained by the size of the existing lot.
- The variation to the lot size control is inconsequential as it is of negligible 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;

¹⁵ Winsome Ave, North Balgowlah



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;

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: Whilst it is not submitted that Council has abandoned its own development standard, it is clear from the assessment in Table 1 & Figure 1 that in the immediate area, variations to the minimum allotment size are not uncommon.

The minimum 600m² allotment standard is not reflective of any existing local dominance of lots which meet or exceed the standard.

In fact, the identified variations to the lot sizes in the immediate surrounds of the site indicate that lots in this locality are commonly less than 600m² in area and can comfortably sustain modest development that meets the needs of the occupants.

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 proposed a departure from the minimum lot size development standard, with the proposed subdivision to provide lot sizes of 664m² (521.9m² excluding easement) and 540m² for the proposed Lots 240 and 241 respectively.

This variation occurs as a result of the size and configuration of the existing allotment.

This objection to the minimum lot size control specified in Clause 4.1 of the Warringah LEP 2011 adequately demonstrates that that the objectives of the standard will be met.

Strict compliance with the minimum lot size control would be unreasonable and unnecessary in the circumstances of this case.

Vaughan Milligan

VAUGHAN MILLIGAN Town Planner

15 Winsome Ave, North Balgowlah



ITEM NO. 3.4 - 03 JULY 2019

ITEM 3.4	DA2018/1930 - 118 BOWER STREET, MANLY - ALTERATIONS AND ADDITIONS TO THE BUILDING AND CHANGE OF USE TO AN ATTACHED DUAL OCCUPANCY
REPORTING OFFICER	Rebecca Englund
TRIM FILE REF	2019/349056
ATTACHMENTS	1 Assessment Report
	2 Site Plan and Elevations
	3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2018/1930 for alterations and additions to the building and change of use to an attached dual occupancy at Lot 29 DP 3806, 118 Bower Street, Manly subject to the conditions and for the reasons set out in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:

DA2018/1930

Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 29 DP 3806, 118 Bower Street MANLY NSW 2095
Proposed Development:	Alterations and additions to the building and change of use to an attached dual occupancy
Zoning:	Manly LEP2013 - Land zoned E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Jake Seymour Rowe Luke Seymour Rowe
Applicant:	Boston Blyth Fleming Pty Ltd

Application lodged:	06/12/2018	
Integrated Development:	No	
Designated Development:	No	
State Reporting Category:	Residential - Alterations and additions	
Notified:	17/12/2018 to 24/01/2019	
Advertised:	Not Advertised	
Submissions Received:	7	
Recommendation:	Refusal	

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of development application DA2018/1930 from Boston Blyth Fleming Pty Ltd for alterations and additions to an existing building to facilitate a dual occupancy development at 118 Bower Street, Manly.

The subject site is zoned E4 Environmental Living under the provisions of Manly Local Environmental Plan 2013 (MLEP 2013) and the proposed dual occupancy is permissible with consent.

The notification of the application resulted in seven submissions in objection to the development from and on behalf of adjoining property owners. A number of concerns raised echo those raised by Council throughout the assessment of the application, particularly those relating to impacts upon the streetscape and views currently enjoyed from adjoining properties.



The application is reliant upon a variation to the maximum floor space ratio development standard prescribed by clause 4.4 of MLEP 2013, with a maximum variation of 16.9%. The applicant's written submission is not considered to satisfactorily address the matters required, and overall, the consent authority cannot be satisfied of the relevant matters of clause 4.6 of MLEP 2014.

As the application for a dual occupancy development involves a variation to a numerical development standard greater than 10%, the application is referred to the Northern Beaches Local Planning Panel for determination in accordance with the direction issued by the Minister for Planning on 23 February 2018.

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 - Zone E4 Environmental Living Manly Local Environmental Plan 2013 - 4.4 Floor space ratio Manly Development Control Plan - 3.1.1 Streetscape (Residential areas) Manly Development Control Plan - 3.4.2 Privacy and Security Manly Development Control Plan - 3.4.3 Maintenance of Views Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR) Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 29 DP 3806, 118 Bower Street MANLY NSW 2095
-----------------------	---



ATTACHMENT 1 Assessment Report ITEM NO. 3.4 - 3 JULY 2019

Detailed Site Description:

The site is trapezoidal in shape, with a 15.24m wide frontage to Bower Street (south-west), a 15.3m wide frontage to Marine Parade (north-east), a maximum depth of 53.57m and a total area of 806m². The site currently contains an existing two storey dwelling house, with two detached single garages presenting to Bower Street. Primary pedestrian access is obtained via Bower Street, with access stairs also connecting to the public walkway along Marine Parade. The site experiences a slight fall of 5.72m across the length of the site, with a slope of approximately 10%. Existing canopy trees are located within the courtyard separating the garages from the primary dwelling.

The site is surrounded by residential development of varying age, character and density, ranging from single storey dwelling houses to 8+ storey residential flat buildings. Significant views are obtained from the subject site and surrounding properties, including the public domain.



SITE HISTORY

On 6 December 2018, the subject application was lodged with Council.

From 17 December 2018 to 24 January 2019, the application was notified to adjoining property owners in accordance with Council's Notification Policy.

On 28 March 2019, the assessing officer undertook an inspection of the site, and adjoining sites at 3/114 and 120 Bower Street, Manly. The site inspections of the adjoining properties were inspected in the presence of the relevant property owners.

On 28 March 2019, Council wrote to the applicant identifying a series of issues with the application relating to:



- insufficient survey information,
- non-compliance with wall height, number of storeys, side setbacks and impacts to views,
- non-compliance with FSR,
- non-compliance with total private open space requirements,
- loss of on-street parking and dominance of the streetscape,
- impacts to canopy trees, and
- visual privacy.

On 5 April 2019, the assessing officer met with the applicant to discuss the outstanding issues.

On 1 May 2019, amended plans were provided by the applicant, demonstrating:

- a 676mm increase to the south-east side setback of the north-eastern most portion of the upper floor (for a length of 5.5m), and
- a 2.1m increase setback to the front setback of the garages (from nil).

On 5 June 2019, height pole certification was received.

On 6 June 2019, the height poles were inspected from the adjoining property at 3/114 Bower Street, Manly in the presence of the relevant property owner.

On 13 June 2019, correspondence was sent to the applicant, requesting the withdrawal of the application, noting that a number of issues remained unresolved, namely:

- non-compliance with wall height, number of storeys and view loss, and
- non-compliance with FSR.

On 19 June 2019, the applicant confirmed that the application would not be withdrawn.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to the existing building, to facilitate a dual occupancy at the subject site. The proposal includes;

- a new top floor addition,
- alterations and additions to the existing ground and lower ground floors, and
- demolition of the two x existing single garages and the construction of two x double garages.

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	See discussion on "Environmental Planning Instruments" in this report.



Section 4.15 Matters for Consideration'	Comments
instrument	
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 2013 (MDCP 2013) 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)	authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent. <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 can be addressed via a condition of consent.
	<u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter can be addressed via a condition of consent.
	<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 can be addressed via a condition of consent.
	<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 can be addressed via a condition of consent.
	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the MDCP 2013 section in this report.
	(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.
	(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance	See discussion on "Notification & Submissions Received" in this report.



Section 4.15 Matters for Consideration'	Comments
with the EPA Act or EPA Regs	
Section 4.15 (1) (e) – the public interest	The application seeks to vary the floor space ratio development standard prescribed by clause 4.4 of MLEP 2013, yet the proposal has not been found to be consistent with the objectives of the standard or the zone that the site is located within. As discussed in further detail with respect to clauses 4.4 and 4.6 of MLEP 2013, the proposal is not in the public's interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Proprietors of Strata Plan 7812	114 Bower Street MANLY NSW 2095
Mr Lazar Stankov	1 / 114 Bower Street MANLY NSW 2095
Mr Dennis Keith Astley	3 / 114 Bower Street MANLY NSW 2095
Mr Anthony Maxwell Walls	Po Box 156 MANLY NSW 1655
Mr Murray Rowan Walls	Care Corporate & Executive Leasing PO Box 912 NEUTRAL BAY NSW 2089
Ms Juanita Joan Walls Mr Maxwell Ronald Walls	2 Liverpool Lane EAST SYDNEY NSW 2000
Mrs Colleen Joan Miller Mr Robert Bliss Miller	116 Bower Street MANLY NSW 2095

The concerns raised in the submissions received are considered as follows:

Building height

<u>Comment:</u> Each of the submissions received raised concerns with regard to the height of the development, with some suggesting that the height measurements shown on the plans have been taken from the incorrect reference point. The submissions state that the building height should be measured from the upper side of the excavated lower ground floor slab, as opposed to the ground levels along the outer face of the building. Measuring the height of buildings from



the base of an excavated hole would be inconsistent with the objectives of the height of buildings development standard which relate to the natural topography of the land, and as addressed in the matter of *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*, would lead to an absurdity in the height plane, unreasonably restricting sites that are subject to prior excavation. The height plane demonstrated on the plans provided are considered to accurately reflect the 8.5m height plane, and the proposal is maintained below the maximum height building standard.

Note: Submissions also make reference to an alleged non-compliance along the outer face of the south-east elevation. Amended survey detail was provided upon request which clarifies levels along this elevation.

Three storey development

<u>Comment:</u> Submissions received raised concerns regarding the three storey nature of the proposal. Whilst the prevalence of three storey development within the catchment is appreciated, the three storey portion of the development is non-compliant with MDCP 2013, and attributes to unreasonable impacts upon views. See further discussion with regard to 4.1.2 of MDCP 2013.

View loss

<u>Comment:</u> Submissions have been received from and on behalf of the adjoining property owner of 3/114 Bower Street, raising concerns with regard to loss of views. As discussed with respect to clause 3.4.3 of MDCP 2013, the impacts upon views currently enjoyed is considered to be unreasonable, warranting the refusal of the subject application.

Siting and design of garages

<u>Comment</u>: A number of submissions have raised concerns with regard to the siting and design of the proposed garages. As discussed in further detail with regard to clauses 3.1.1 and 4.1.4 of MDCP 2013, the design of the proposed garages is not supported.

Solar access

<u>Comment:</u> Submissions have been received from the adjoining dwellings at 116 Bower Street and 1/114 Bower Street raising concerns regarding overshadowing arising from the proposed development. The application was supported by elevational shadow diagrams to confirm that areas of private open space and windows associated with living rooms of these adjoining dwellings will maintain 2 hours of direct sunlight between 9am and 3pm in midwinter, consistent with the provisions of MDCP 2013.

Proximity to sewer line

<u>Comment:</u> Submissions received from and on behalf of an adjoining owner raise concerns relating to potential impacts upon a sewer line that dissects the subject site. If approved, the applicant would be required to negotiate with Sydney Water to ensure that the development does not unreasonably impact upon their asset.

Excessive bulk

<u>Comment:</u> A number of submissions received raise concern regarding the bulk of the proposed development, noting non-compliance with numerous aspects of MLEP 2013 and MDCP 2013.



As discussed in further detail with respect to individual built form standards/controls, the scale of the development attributes to unreasonable impacts upon adjoining properties and the streetscape, and the proposal is not supported in this regard.

Lack of consideration of CM SEPP

<u>Comment:</u> Submissions received highlight the lack of consideration of the CM SEPP in the statement of environmental effects provided to support the application. An amended statement of environmental effects was subsequently provided which addresses the relevant provisions of this policy.

Visual privacy

<u>Comment:</u> A submission has been received raising concerns regarding overlooking of current and approved areas of open space. As discussed with regard to clause 3.4.2 of MDCP 2013, the proposal is not considered to appropriately resolve overlooking between properties.

Impacts upon value of adjoining properties

<u>Comment:</u> Submissions have been received in objection to the proposal with concerns regarding the potential impacts upon the value of surrounding properties. Potential impacts upon the value of properties is not a matter for Council's consideration of this application.

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	 Approval, with conditions. The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
NECC (Bushland and Biodiversity)	Approval, with conditions. The proposed development has been assessed against the following provisions: - NSW Biodiversity Conservation Act 2016 - MLEP Section 6.5 (Terrestrial Biodiversity) - MDCP Section 5.4.2 (Threatened Species and Critical Habitat) The proposed development will have a minor impact on existing soft open space, with the exception of the removal of three Broad-leaved Paperbark Trees (Melaleuca quinquinervia) as identified on the Proposed Site Plan (Sammy Fedele, 30 September 2018). Replanting

REFERRALS



Internal Referral Body	Comments	
	in compensation for the removal of these trees will enable the proposal to achieve consistency with relevant zoning (Environmental Living) and tree protection provisions.	
	Submission of a five-part test for the endangered population of Long- nosed Bandicoots satisfies requirements under Section 7.3 of the <i>Biodiversity Conservation Act</i> 2016 and Section 5.4.2 of the Manly DCP.	
	The submitted flora and fauna report recommends exclusion of bandicoot access to existing habitat within the subject site on account of the current occupation of the site by a domestic cat. However, the 'Environmental Impact Assessment Guidelines for the Endangered Long-nosed Bandicoot Population at North Head' (NPWS, 2004) identifies exclusion from habitat and the effective fragmentation of habitat which results from this as a key threat to the population:	
	"Development proposals must asses direct and indirect impacts on the bandicoot population and its habitat. Direct impacts can include harm to individual bandicoots, loss, fragmentation of habitat and restriction of access to shelter and foraging areas through barriers/fences Major threats to the North Head population include the loss, modification, degradation and/or fragmentation of suitable habitat and direct impacts to individuals".	
	Permanent exclusion of bandicoots from on-site habitat due to current occupation by a cat is not consistent with these guidelines and is therefore not considered to be appropriate for this development. Conditions of consent to maintain bandicoot access within and through the site are therefore proposed, in accordance with existing standards for development in North Head bandicoot habitat.	
	It is considered that, subject to recommended conditions of consent, the proposal can achieve consistency with the relevant controls.	
NECC (Coast and Catchments)	Approval, with conditions.	
	The DA has been assessed in accordance with the following:	
	 SEPP (Coastal Management) - The site is mapped as Coastal Use and Coastal Environment areas Manly LEP - Clause 6.8 Landslide Risk - The site is mapped as having a coastal hazard and landslide risk. 	
	The development has been assessed as not having significant impact on the coastal environment subject to conditions.	
NECC (Development Engineering)	Refusal.	
	Initial Referral Response (20 February 2019) The application proposed to extend two existing single garages to two double size garages and widen two driveways to accommodate the	



Internal Referral Body	Comments
	proposed garages
	In accordance with the section 4.1.6.1 of Manly DCP 2013, the maximum width of any garage is not to exceed a width equal to 50 percent of the frontage which up to a maximum width of 6.2 m per lot. However, the proposed driveways are approximately 12 m wide when the frontage of the lot is only 15.24 m wide. It does not comply with the current Council Manly DCP 2013.
	Furthermore, an on street parking space will be lost due to the widening of the driveways.
	As such, Development Engineer cannot support the application.
	Response to amended plans (3 June 2019)
	The issues raised have not been addressed.
NECC (Riparian Lands and Creeks)	Approval, with conditions. No objection to approval subject to conditions as recommended. The stormwater outlet will need to be addressed by the Development Engineers.
Strategic and Place Planning (Heritage Officer)	Approval, no conditions. Further to a review of the available documents and site visit, The site of proposed development is not a listed heritage item in its own right, however, it is located near the coastal area and in vicinity of heritage items, including stone kerbs and trees in the street. Given the nature of the proposal and the items, the impact on heritage values is assessed as acceptable. Based on the above, I have no objections to this proposal from heritage perspective.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Approval, no conditions. 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)*

Aboriginal Heritage Office

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

Approval, no conditions.



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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 969462M dated 16 November 2018). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed	
Water	40	44	
Thermal Comfort	Pass	Pass	
Energy	50	50	

If approved, a condition could be included to require compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

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

SEPP (Coastal Management) 2018

Portions of the site are located within the Coastal Use Area and Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP), and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP,
- . the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of



the CM SEPP,

- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP,
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

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?	No

Principal Development Standards

Standard	Requirement	Proposed	Variation	Complies
Height of Buildings:	8.5m	8.5m		Yes
Floor Space Ratio:	0.6:1 (483.6m ²)	0.7:1 (565.5m ²)	81.9m² (16.9%)	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	No
6.1 Acid sulfate soils	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
6.12 Essential services	Yes

Detailed Assessment

Zone E4 Environmental Living

The applicant has not satisfactorily demonstrated that the proposed development is consistent with the objectives of the E4 Environmental Living zone, as follows:



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

<u>Comment:</u> The proposed development will dominate the streetscape and result in unreasonable impacts upon significant coastal views currently enjoyed from adjoining properties. The character of the streetscape and the views obtainable from dwellings in this area are considered to form part of the aesthetic value of the subject E4 zone, and as such, the proposal is not considered to be a low-impact residential development.

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

<u>Comment</u>: As above, the proposed development will have an adverse impact upon the aesthetic significance of the area, as currently enjoyed from adjoining properties.

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

<u>Comment:</u> The proposed development will provide enhanced tree canopy and is not considered to dominate the natural scenic quality of the foreshore.

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

<u>Comment:</u> The proposed development does not negatively impact upon the nearby foreshore, significant geological features or bushland.

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

<u>Comment:</u> The proposed development reasonably reduces the impact of hard surfaces, and the proposed stormwater plan has been supported by Council's development engineers.

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

<u>Comment</u>: The height and bulk of the proposed development has adequate regard for existing vegetation, topography and surrounding residential land uses.

4.4 Floor space ratio

and 4.6 Exceptions to development standards

With a gross floor area of 565.5m², the proposed development has a floor space ratio (FSR) of 0.7:1, exceeding the 0.6:1 maximum FSR prescribed by clause 4.4 of MLEP 2013 by 81.9m². The maximum FSR prescribed by clause 4.4 of MLEP 2013 is a development standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of MLEP 2013 can be applied.

Pursuant to clause 4.6(2) of MLEP 2013, consent may be granted for development even though the development contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause,



the maximum FSR development standard is not expressly excluded and thus the clause can be applied in this instance.

Has the Applicant's submission addressed the relevant criteria?

Pursuant to clause 4.6(4) of MLEP 2013, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of MLEP 2013. The application was supported by a detailed submission (attached) addressing the provisions of clause 4.6 of MLEP 2013. The submission is considered with regard to the criteria of clause 4.6(3) of MLEP 2013, as follows:

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

<u>Comment</u>: In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard. The applicant's submission has not satisfactorily demonstrated that the proposed development will achieve consistency with the objectives of the FSR development standard. In particular, the applicant's submission has not demonstrated that the non-compliant FSR calculation does not attribute to a development that will obscure important landscape and townscape features (Objective b), or that adverse impacts upon the enjoyment of adjoining land have been appropriately minimised (Objective d).

The applicant's submission also relies on one of the other ways to demonstrate that compliance with a development standard is unreasonable or unnecessary outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827, being the abandonment of the development standard. The applicant's submission includes a table of statistics relating to other adjoining and nearby properties, with an alleged record of the FSR calculation for each site. Unfortunately, the submission does not include information relating to the relevant development consents, or confirmation that the alleged FSR calculations were endorsed after 2013, being the time at which the FSR became a development standard in MLEP 2013 (as opposed to a development control within the relevant DCP). At this time, the statement is not considered to satisfactorily demonstrate that the FSR development standard has been abandoned.

As such, strict compliance with the 0.6:1 FSR is not considered to be unreasonable and unnecessary in the circumstances of this application.

b. That there are sufficient environmental planning grounds to justify contravening the development standard.

<u>Comment:</u> In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, "environmental planning grounds" were found to be grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act.

The applicant's submission highlights the following environmental planning grounds to justify contravention of the FSR development standard:

- Consistency with the characteristics of surrounding development,
- A significant area of floor space attributing the non-compliance is associated with a
 predominantly subterranean lower ground storage area which does not contribute to actual



or perceived building bulk,

- The abandonment of the FSR control in the context of the site, and
- The desire to realise the reasonable development potential of the site, consistent with that of surrounding properties.

It is with this in mind, that the applicant concludes that the proposed development represents the orderly and economic development of the site, consistent with Objective 1.3(c) of the EP& A Act.

However, noting the extent of non-compliance with Council's policies and the resultant impacts upon the amenity of adjoining properties, the proposal cannot be said to represent orderly development of the site. Whilst other properties along Bower Street may have greater FSR calculations, it does not remove the requirement to consider impacts to adjoining properties, or warrant the concentration of floor space/built form at the north-eastern most extent of the site, removing views currently enjoyed by adjoining properties. The proposed development exceeds the FSR development standard by 81.9m², a variation of 16.9%. Whilst is is appreciated that the applicant attributes the 38m² lower ground storeroom to a significant portion of this non-compliance, the 60m² area of the upper floor that exceeds the two storey height development control and impacts upon views from the adjoining property could be equally attributable to this area of non-compliance.

With this in mind, the applicant's written request to vary the maximum building height development standard has not satisfactorily demonstrated that there are sufficient environmental planning grounds to justify contravention of the FSR development standard.

Therefore, the consent authority cannot be satisfied that the applicant's written request has satisfactorily addressed the matters required by clause 4.6(3) of MLEP 2013.

Is the proposal in the public interest?

Under the provisions of clause 4.6(4)(a) of MLEP 2013, consent must not be granted to a proposal that contravenes a development standard unless the proposed development (as a whole) will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is to be carried out.

The objectives of the FSR development standard are considered, as follows:

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

<u>Comment:</u> The site is surrounded by residential properties of varying density, bulk and scale. With this in mind, it cannot be said that the proposed development is inconsistent with the existing character of the streetscape. However, in the absence of a desired future character statement within MDCP 2013, the desired character of the streetscape is considered to be reflected by the relevant development standards and controls. In this regard, the desired character would be for the streetscape to comprise two storey development, and as such, the proposed three storey presentation to Marine Parade is inconsistent with the 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,

<u>Comment:</u> The FSR development standard does not act in isolation, but rather is complemented by other built form development standards and controls which prescribe where the bulk of a building



should be located on a site. With regard to the subject application, the proposal is not only in breach of the maximum prescribed FSR, but also the wall height and number of storeys development controls prescribed by WDCP 2013. As discussed with regard to clause 3.4.3 of MDCP 2013, this non-compliant concentration of development at the north-eastern extent of the site will unreasonably obstruct beach and coastline views currently enjoyed from the adjoining dwelling at 3/114 Bower Street.

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

<u>Comment</u>: The proposed development will maintain an appropriate visual relationship with 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,

<u>Comment</u>: As above, the proposed development has not been designed to minimise impacts upon the views currently enjoyed at an adjoining property.

(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 considered to be applicable in relation to the subject site.

As such, the proposed development is not considered to be consistent with the objectives of the FSR development standard.

Furthermore, as discussed in further detail separately above, the proposal is not considered to be consistent with the relevant objectives of the E4 Environmental Living zone.

Therefore, the consent authority cannot be satisfied that the proposal is in the public's interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4)(b) of MLEP 2013, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Planning Circular PS 18-003 (dated 21 February 2018) issued by the NSW Department of Planning and Environment, the Secretary's concurrence may be assumed in this instance as the application is to be determined by the Northern Beaches Local Planning Panel.

Conclusion

Overall, the consent authority cannot be satisfied of the matters prescribed by clause 4.6 of MLEP 2013, and the proposal should not be supported due to the proposed contravention of the FSR development standard.

Manly Development Control Plan

Built Form Controls

Built Form Controls	Control	Proposed	%	Complies



			Variation*	
4.1.1.1 Residential Density and Dwelling Size	Density: 3 dwellings (max.)	2 dwellings	1.0	Yes
4.1.2.1 Wall Height	North-West: 7m	8m	14%	No
	South-East: 7m	8m	14%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.75m	25%	No
	Pitch: 35 degrees (max.)	7 degrees	- W []	Yes
4.1.4.1 Street Front Setbacks	6m	2.1m	65%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	North-West: 2.0m - 2.65m	1.9m - 2.65m	5 - 24%	No
	South-East: 2.0m - 2.65m	1.8m	10 - 32%	No
	Secondary street frontage: Prevailing setback	consistent with prevailing setback	-	Yes
4.1.4.5 Foreshore Building Lines and Foreshore Area	landward of FSBL	landward of FSBL	*	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	6m (common boundary)	6m		Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 55% of site area	55%		Yes
Residential Open Space Area	Open space above ground 40% of total open space	19%	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	63%	221	Yes
	3 native trees	3 trees	-	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	40m 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	12.1m or 80%	95%	No
Schedule 3 Parking and Access	2 spaces per dwelling	4 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		Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	No	No



Clause	Compliance with Requirements	Consistency Aims/Objectives
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)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	No	No
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
3.7 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	No	No
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.3 Floor Space Ratio (FSR)	No	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	No
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	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
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

With the exception of the singles garages currently in existence on the subject site, and a double



garage on the adjoining site at 120 Bower Street that is approved for removal, the north-western section of Bower Street generally lacks the presence of garages presenting to the street. The proposal, which seeks consent for two new double garages spreading across the majority of the street frontage, is inconsistent with predominant streetscape in this regard. The visual dominance of the proposed car parking structures is compounded by the architectural design and form of the garages themselves, with flat and overly dominant parapets presenting to the street. The subject application provides an opportunity to enhance the current streetscape, and whilst the proposed design may mimic what currently exists, it is not sympathetic or in any way responsive to the character of the local area or the form of other development within the visual catchment of the site.

The design of the garages and the treatment of the front setback is considered to be inconsistent with a number of provisions of clause 3.1.1.1 of MDCP 2013, namely:

- Development in the streetscape (including buildings, fences and landscaping) should be designed to:
 - complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;
 - ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;
 - vi) visually improve existing streetscapes through innovative design solutions;

Furthermore, the proposed development is also inconsistent with the provisions of clause 3.1.1.4 of MDCP 2013, which prescribes that garages must be designed and sited in a manner that does not dominate the street frontage by it's roof form, material choice and detailing by being subservient to the associated dwelling, and being compatible with the streetscape and the location in relation to front setback criteria.

3.4.2 Privacy and Security

The proposed development has not appropriately resolved overlooking of adjoining dwellings arising from the proposed upper floor rear balcony. The proposed tacked-on screen along the north-western side of the lower roof form is not considered to be an appropriate architectural response to mitigate overlooking of the existing primary area of private open space of the adjoining property to the west. Furthermore, the proposal has no consideration of the resultant direct line of sight between the approved development on the adjoining site, as highlighted in the submissions received on behalf of the relevant property owners. The proposed intensified development is not considered to reflect an appropriate balance between the reasonable obtainment of available views and privacy between adjoining properties.

3.4.3 Maintenance of Views

Submissions were received from and on behalf of the adjoining property owner of 3/114 Bower Street, raising concerns with regard to potential view loss arising from the proposed development. In response to these concerns, height poles were erected on the site to demonstrate the likely impact of the development. The impact upon views has been considered with respect to clause 3.4.3 of MDCP 2013 and the View Sharing Planning Principle development by the NSW LEC in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*.



From its top floor position, the property at 3/114 Bower Street enjoys expansive views from the north across to the east, encapsulating Queenscliff headland to Long Reef to the north, and Fairy Bower and Shelly Beach to the east (as shown in **Figure 1**, below). The views towards the north are obtained over the common side boundary and the roof of the existing dwelling at the subject site. The views of the ocean and part of Fairy Bower are obtained over a rear boundary and the roof of the adjoining dwelling at 116 Bower Street. The views towards Shelly Beach are obtained over a side boundary and the development at 112 Bower Street. All available views are obtained from a sitting and standing position within the living room, the master bedroom and the rear balcony.



Figur

As evident from the erection of height poles on the site, the proposal will impact upon the highly valued views of the coastline in a northerly direction. The entirety of this portion of the view, in addition to a portion of the ocean, will be completely lost as seen from a sitting and standing position within the living room, master bedroom and the rear balcony. The impact upon views is considered to be moderate.

The portion of the development that impacts upon the northern view changes as you move across the width of the property. When standing at the north-western side of the rear balcony, the majority of the land/water interface is obstructed by a portion of the development that is two storeys in height, albeit with a non-compliant wall height and side setback. The portion of the development that is three storeys in height (and non-compliant with wall height) obstructs a portion of the ocean, which contributes to the panoramic view but is not as significant as the land/water interface. The impact of the northern view from the north-western side of the rear balcony is shown in **Figure 2**, with the division between the two and three storey elements of the proposal highlighted by the yellow dashed line.





Figur

When standing at the south-eastern side of the rear balcony, the three storey portion of the development is responsible for the obstruction of slightly more than half of the northern coastline view. The impact of the northern view from the south-eastern side of the rear balcony is shown in **Figure 3**, with the division between the two and three storey elements of the proposal highlighted by the yellow dashed line.





Figur

As discussed with regard to clauses 4.4 and 4.6 of MLEP 2013, the proposal exceeds the maximum FSR calculation by 89m². Whilst the applicant attributes this non-compliance to a 38m² storeroom on the lower ground floor, it is noted that the portion of the development that exceeds the 2 storey height limit has an area of approximately 60m², which could be equally attributable to the FSR non-compliance.

The impact upon northern views currently enjoyed by the occupants of 3/114 Bower Street is exacerbated by non-compliance with several built form controls, and as such, the impact is considered to be unreasonable in the circumstances of the proposal.

It is also noted that properties on the high side of Bower Street enjoy ocean views over the ridge line of the existing dwelling from all windows and balconies on their front elevations. Whilst no submissions were received to this effect, it is noted that the impact upon these views is intensified by the non-compliant side setbacks proposed at the upper floor (ie: the upper floor is wider than than anticipated by MDCP 2013, removing a greater proportion of available ocean views).

Overall, the proposed dual occupancy has not been designed to minimise the loss of views from adjoining properties, and as such, the proposed development is not considered to be consistent with the objectives and requirements of this development control.

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

The proposed upper floor extends beyond the 7m wall height prescribed for the site by clause 4.1.2.1 of



MDCP 2013, with a maximum wall height of approximately 8m on both side elevations. Furthermore, the north-eastern end of the proposed upper floor, where it overlaps with the existing two storey structure to be retained below, is inconsistent with the two storey limitation prescribed by 4.1.2.2 of MDCP 2013. As discussed above, these non-compliant elements of the proposal contribute to unreasonable impacts upon views currently enjoyed from an adjoining property, inconsistent with the objective of these controls which aims to "minimise disruption of views from nearby residential development to public spaces (including the harbour and foreshores)".

In response to concerns regarding non-compliance with these controls, the applicant has advised that these controls derogate from the 8.5m maximum building height prescribed by clause 4.3 of MLEP 2013. However, as highlighted in clause 4.1.2 of MDCP 2013 itself:

While the LEP contains Height of Buildings development standard and special height provisions, these paragraphs control the wall and roof height and the number of storeys within and in support of the LEP provisions in relation to residential development.

Whilst the proposal is technically compliant with the 8.5m maximum building height prescribed by clause 4.3 of MLEP 2013, the proposal is not consistent with the objectives of the height of buildings development standard, nor the scale of development anticipated by the complementary DCP controls. Furthermore, there is no automatic entitlement to build to the maximum height plane across the site, and there must be consideration of the form and scale anticipated under the provisions of MDCP 2013.

4.1.3 Floor Space Ratio (FSR)

As discussed with regard to clause 4.4 of MLEP 2013, the proposed development is inconsistent with the maximum FSR development standard prescribed for the site. Whilst clause 4.1.3 of MDCP 2013 outlines some circumstances where a variation to the FSR development standard may be warranted, no such variations relate to the subject application.

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

With a setback of 2.1m from the front boundary, the proposed garages are inconsistent with the 6m front setback prescribed by clause 4.1.4.1 of MDCP 2013. Furthermore, with nil setbacks to both sides, the garages are also inconsistent with the 1/3 of the wall height side setback requirement prescribed by clause 4.1.4.2 of MDCP 2013. As discussed with respect to clause 3.1.1 of MDCP 2013, the non-compliant setbacks of the garages contribute to the visual dominance of the development and incompatibility with the streetscape, inconsistent with the objectives of clause 4.1.4 of MDCP 2013, which aim to "enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street".

The side setbacks of the proposed upper floor are also non-compliant with the 1/3 of the wall height side setback requirement prescribed by clause 4.1.4.2 of MDCP 2013, with a maximum non-compliance of 800mm along the north-western side elevation and 600mm along the south-eastern elevation. These non-compliance's at the upper floor are in addition to the retention of existing non-compliant side setbacks on the lower levels of the development.

Whilst no objection was received to this effect, it is noted that properties on the high side of Bower Street currently obtain ocean views over the roof of the existing dwelling. In particular, it is apparent that the dwellings at 117 and 119 Bower Street have horizon views over the ridge line of the existing dwelling which will be impacted as a result of the proposal. The proposed upper floor, which extends beyond the minimum setbacks on both sides, will erode a greater proportion of the view that than anticipated by this built form control. As proposed, the development is not considered to be consistent



with the objectives of clause 4.1.4 of MDCP 2013, which aim to "ensure and enhance local amenity by facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public places".

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

The design of the proposed garages and driveways are inconsistent with the provisions of clause 4.1.6.1 of MDCP 2013 which prescribes that the design and location of garages must minimise their visual impact on the streetscape, and that garages should not dominate the street frontage. The proposal is also inconsistent with the provisions of clause 4.1.6.4 of MDCP 2013, which prescribes that vehicular access and parking for buildings with more than one dwelling are to be consolidated within onelocation, and that driveway crossings should be minimised and spaced to maximise on-street car parking.

The applicant has not provided any reason or justification to support the non-compliant parking solution, and noting the area of available space between the garages and the primary building, it is considered that a more skilful design could be employed to reduce both the visual impact of the development and the amount of driveway crossings associated with the intensified development.

The proposed development does not "ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape". As such, the proposal is found to be inconsistent with the objectives of these development controls.

4.1.10 Fencing

Whilst the majority of the front facade is dominated by garages, the central portion of the facade comprises a 1.8m solid fence and gate. The height and design of the proposed front fence and gate are not only inconsistent with the provisions of clause 4.1.10 of MDCP 2013 which limit the height of front fences to 1m, but also actively attribute to the dominance of the garages and ensure that there is no relief along the entire frontage of the site.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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



Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

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

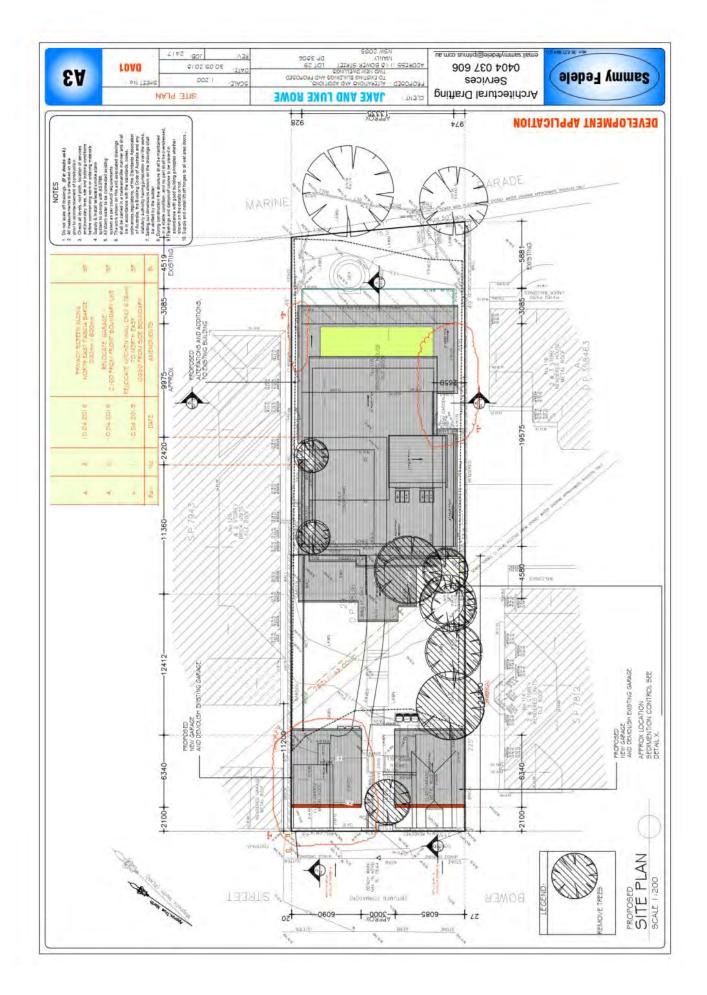


RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2018/1930 for the Alterations and additions to the building and change of use to an attached dual occupancy on land at Lot 29 DP 3806,118 Bower Street, MANLY, for the reasons outlined as follows:

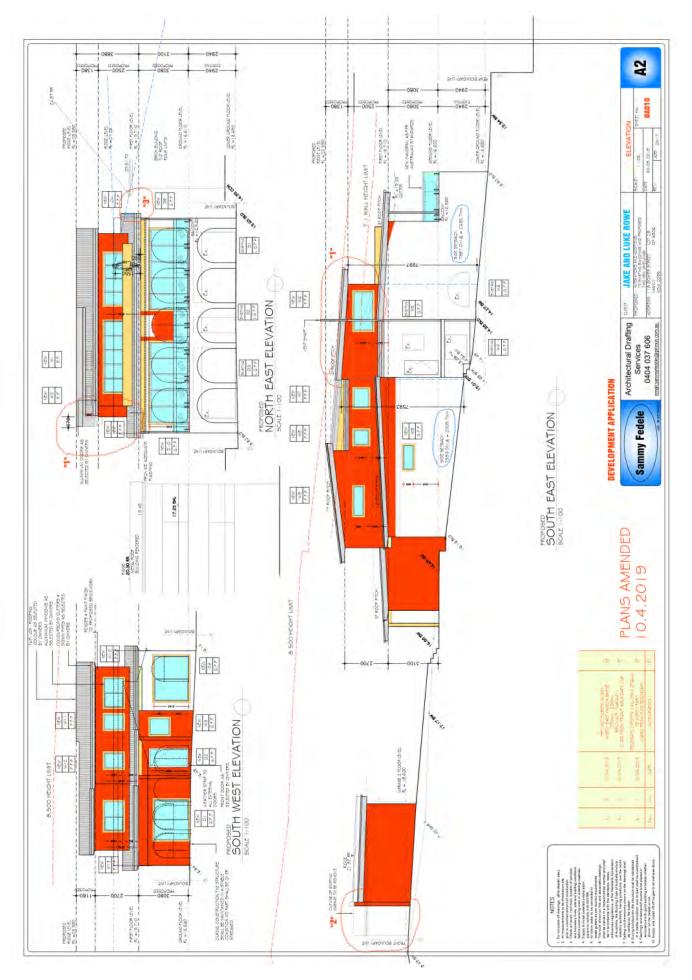
- The proposed development exceeds the maximum permitted floor space ratio prescribed by clause 4.4 of MLEP 2014. The request to vary this development control is not supported in these circumstances, as the proposal does not meet the objectives of the floor space ratio development standard or the E4 Environmental Living zone, and Council is not satisfied that the applicant's request to vary the development standard satisfactorily meets the provisions of clause 4.6 of MLEP 2013.
- The design and siting of the proposed driveways, garages and fencing dominates the front setback and is inconsistent with the dominate character of the streetscape, resulting in noncompliance with the requirements and objectives of clauses 3.1.1, 4.1.4, 4.1.6 and 4.1.10 of MDCP 2013.
- 3. The proposed development is inconsistent with a number of built form controls, including the wall height and number of storeys development controls prescribed by clause 4.1.2 of MDCP 2013 and the side setback controls prescribed by 4.1.4 of MDCP 2013. The non-compliant concentration of development at the north-eastern most portion of the site attributes to unreasonable impacts upon the amenity of adjoining properties, with unresolved overlooking and unacceptable impacts upon views, inconsistent with the provisions of clauses 3.2.2 and 3.4.3 of MDCP 2013.





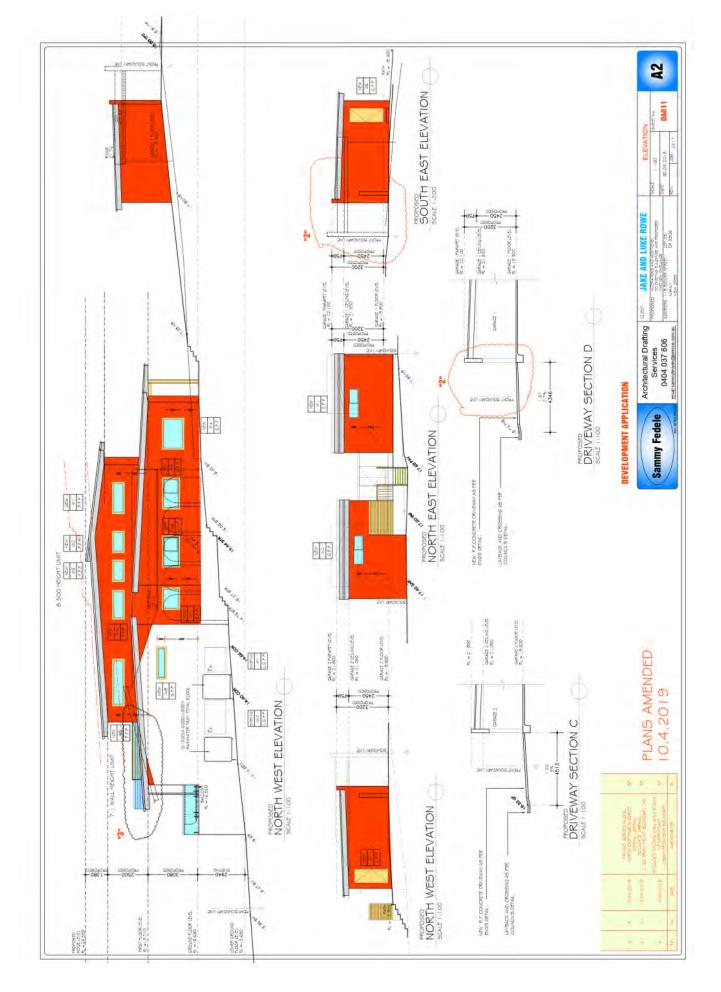


ATTACHMENT 2 Site Plan and Elevations ITEM NO. 3.4 - 3 JULY 2019



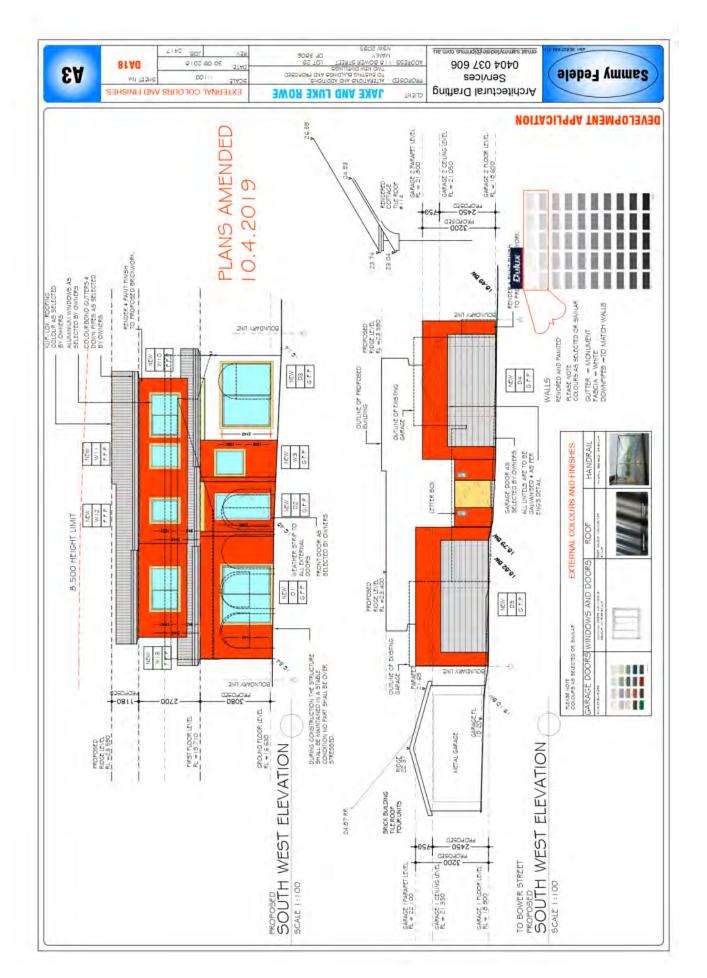


ATTACHMENT 2 Site Plan and Elevations ITEM NO. 3.4 - 3 JULY 2019



ATTACHMENT 2 Site Plan and Elevations ITEM NO. 3.4 - 3 JULY 2019







Attachment 1

Clause 4.6 variation request - FSR

Pursuant to Clause 4.4 MLEP 2013 based on the CMS surveyed area of the site being 806 square metre the maximum FSR for development on the site is 0.6:1 representing a gross floor area of 483.6 square metres. The stated objectives of this clause are:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

It has been determined that the proposal has a gross floor area of 565.5 square metres, as defined, representing a floor space ratio of 0.7:1 and therefore non-compliant with the FSR standard by 81.9 square metres or 16.9%.

We note that the plans tabled at formal pre-DA discussion with Council (PLM2018/00402017) proposed a GFA of 580sqm, representing a variation of 20%, with the minutes advising:

The proposal requires a significant variation of the floor space ratio control.

The proposal is consistent with the surrounding development and will maintain an appropriate relationship between the existing and desired streetscape character. The addition of the first floor will result in the floor space ratio non-compliance and is likely to result in the disruption of views.



A comprehensive view loss analysis is to be undertaken and the design amended to ensure no unreasonable loss of views. Providing the development does not result in any unreasonable loss of views the variation to the control could be supported.

We confirm that in the preparation of the original building design particular attention was given to view loss with the GFA/ FSR reduced and the building height lowered to comply with the 8.5 metre height standard to ensure a view sharing outcome with surrounding properties.

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

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

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

This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

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

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

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

(a) the consent authority is satisfied that:

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



objectives for development within the zone in which the development is proposed to be carried out, and

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

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

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

Claim for Variation

Zone and Zone Objectives

The subject property is zoned E4 Environmental Living pursuant to Manly Local Environmental Plan 2013 ("MLEP 2013") with dual occupancies (attached) permissible in the zone with consent. The stated objectives of the zone are as follows:

- 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 protect tree canopies and ensure that new development 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.



A dual occupancy attached is defined as 2 dwellings on one lot of land that are attached to each other but does not include a secondary dwelling. The proposed development results in 2 dwellings on one lot of land that are attached to each and are accordingly appropriately defined as dual occupancy (attached) and permissible with consent in the zone.

The proposed development is consistent with the relevant zone objectives as follows:

- Provides for a low-impact residential development in an area with special ecological and aesthetic values and does not have an adverse effect on the values in terms of terrestrial biodiversity and foreshore scenic protection. (1st and 2nd objectives)
- The development does not dominate the natural scenic qualities of the foreshore due to the maintenance of the established foreshore setbacks and adjacent vegetation. (3rd objective).
- The development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation. (4th objective).
- The development incorporates an enhanced site drainage regime in terms of discharge arrangement and stormwater quality. (5th objective).
- The height and bulk of the development has regard to existing vegetation, topography and surrounding land uses and is complimentary and compatible in such context. (6th objective).

The proposal is consistent with the zone objectives as outlined.

Floor Space Ratio Standard and Objectives

This standard and the associated objectives have been previously identified. The spread sheet at Figure 1 over page would appear to reflect an abandonment of the FSR standard along this section of Bower Street and within the immediate precinct generally making strict compliance unreasonable and unnecessary particularly given the relatively minor nature of the FSR variation sought.



Address	1.0		GFA	Site Area	FSR
1 Bower Lane	Manly	House	300	372	0.806
3 Bower Lane	Manly	House	260	316	0.823
7-9 Marine Parade	Manly	Unit	522	572	0.913
98 Bower Street	Manly	Unit	926	1189	0.779
102 Bower Street	Manly	Unit	1456	1107	1.315
104 Bower Street	Manly	Unit	492	567	0.868
15 Marine Parade	Manly	Unit	1185	520	2.279
108 Bower Street	Manly	Unit	1046	405	2.582
17 Marine Parade	Manly	Unit	390	450	0.867
110 Bower Street	Manly	Other	1085	873	1.243
114 Bower Street	Manly	Unit	300	465	0.645
116 Bower Street	Manly	House	300	354	0.847
118 Bower Street	Manly	House	296	803	0.369
120 Bower Street	Manly	Other	648	784	0,827
122 Bower Street	Manly	Unit	2974	1541	1.930
126 Bower Street	Manly	Unit	922	721	1.279
128-130 Bower Street	Manly	Other	641	702	0,913
132 Bower Street	Manly	Unit	2952	1502	1,965
Average		_	927	736	1.2

Figure 1 – Spread sheet confirming the GFA/ FSR of surrounding development

Notwithstanding, having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

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

Response: The height, bulk and scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by adjoining development and development generally along the low side of Bower Street within this particular street block as depicted in Figures 2, 3 and 4 over page.





Figure 2 – Aerial photograph showing predominant multi storey residential flat building forms on the lows side of Bower Street within this street block





Source: Google Earth Figure 3 – View looking north west along Bower Street from the subject site



Source: Google Earth Figure 4 – View looking south east along Bower Street past subject site

15



In this regard, it is apparent that development within the site visual catchment displays an existing FSR, and in many cases building height, which far exceed the standards with the development clearly consistent with the existing streetscape character. It is reasonably concluded that the building height and FSR standards have effectively been abandoned within this particular street block with the existing character entirely disparate to the desired future character as reflected by the height and FSR standards.

That said, the proposal complies with the applicable 8.5 metre height control ensuring that in terms of building height the proposal is consistent with the desired streetscape character as anticipated by the height standard. A significant area of non-complaint floor space is associated with the existing predominantly subterranean lower ground floor storage area which does not in any manner contribute to actual or perceived building bulk.

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

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

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

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

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

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

Response: As depicted on plan DA09 the proposed development is within 19.65 square metres of strict compliance with the total open space DCP control with a compliant quantum of landscaped area provided. Strict compliance would be achieved were the garages able to be pushed to the front boundary alignment.



The proposed ground floor additions maintain the setbacks established by the existing dwelling house with the upper floor stepped in from both side boundaries to maintain view corridors down both sides of the property. Deep soil landscaped areas at the front and rear of the site provide appropriately for landscaping with the front, side and foreshore setbacks maintaining an appropriate visual relationship between adjoining development.

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

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

Response: In relation to shadowing impact the application is accompanied by shadow diagrams DA14 and DA15 which show the impact of shadowing on the only affected neighbouring properties to the south east. We note that these adjoining dwellings have elevated living and open space areas orientated to the north east to take advantage of views and ensuring that at least 3 hours of direct solar access will be maintained to the principal living and adjacent open space areas between 9am and 3pm on 21st June. No unacceptable overshadowing will occur to the public domain.

In relation to privacy, we confirm that in the preparation of the current building design particular attention was given to orientating all elevated living rooms and adjacent primary balconies towards Marine Parade with a majority of side boundary facing fenestration highlight in design or off-set from neighbouring windows. The plans nominate the provision of a fixed privacy screen adjacent to the western edge of the first floor terrace to prevent direct downward overlooking into the north facing private open space area of the adjoining property.

Having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140 as they relate to an assessment of view impacts from Unit 3/114 Bower Street we have formed the following opinion:

First Step - Assessment of views to be affected

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



ATTACHMENT 3 Clause 4.6 ITEM NO. 3.4 - 3 JULY 2019

The photographs from Unit 3/114 Bower Street contained within the submission dated 24th January 2019 prepared by Symons Goodyer on behalf of the owner of this property provide assistance in relation to such analysis.

These photographs demonstrate that the views obtained from the principle living room and adjacent balcony of this apartment are sweeping views of the Pacific Ocean over No. 116 Bower Street and across the front portion of the subject site. These more oblique views include the Queenscliff and Freshwater land/ water interface. From available survey information we are able to confirm that views are available over the roof of No. 116 Bower Street however are unable to confirm the extent of views, if any, across No. 112 Bower Street however such views need to be taken in to account in term of determining the totality of available views.



Figure 5 – Aerial photograph showing available view lines (Unit 3/ No. 114 Bower Street shown with red star)



Second Step - From what part of the 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: These views are available from the living area and adjacent balcony from both a standing and seated position. The views available over the subject site are obtained directly across the side boundary and over the front boundaries of the apartments and over the roof of the existing dwelling located on the subject site.

Third Step – Assessment of extent of the impact

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

Comment: We have formed the considered opinion that proposed upper level roof will impact on views obtained from the living area and adjacent balcony of Unit 3/ No. 114 Bower Street with the land/ water interface retained from the south eastern end of the balcony. Based on an assessment of the totality of the views available from this property, and the vulnerability of views available across site boundaries, we consider the view impact to be appropriately described as moderate.

Fourth Step – Reasonableness of the proposal

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them.

Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.



With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The proposed development complies with the 8.5 metre maximum prescribed building height with the setback of the north-western most kitchen element also compliant with the side boundary setback control. The land/water interface view impact arises from the fully compliant roof form proposed. A significant area of non-complaint floor space is associated with the predominantly subterranean lower ground floor storage area which does not in any manner contribute to actual or perceived building bulk.

Strict compliance is unreasonable and unnecessary under the circumstances including the apparent abandonment of the FSR standard along this section of Bower Street.

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: N/A

Having reviewed the detail of the application we have formed the considered opinion that a view sharing scenario is maintained between adjoining properties in accordance with the principles established in Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140 and Davies v Penrith City Council [2013] NSWLEC 1141.

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

Response: This objective is not applicable.

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



In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment and the fact that a significant area of non-complaint floor space is associated with the existing predominantly subterranean lower ground floor storage area which does not in any manner contribute to actual or perceived building bulk.

Further, the floor space proposed promotes/ reflects the orderly and economic use and development of the land, consistent with objectives 1.3(c) and (g) of the Act, in circumstances where the FSR standard has effectively been abandoned within this particular street block and given the desire for the current property owner to realise the reasonable development potential of their property, consistent with that of surrounding development, which are all located in an waterfront iconic area of the Northern Beaches.

The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also give weight to the acceptability of the variation sought.

Conclusions

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

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



ATTACHMENT 3 Clause 4.6 ITEM NO. 3.4 - 3 JULY 2019

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



ITEM NO. 3.5 - 03 JULY 2019

ITEM 3.5	MOD2019/0024 - 43 BOORALIE ROAD, TERREY HILLS - MODIFICATION OF DEVELOPMENT CONSENT DA2016/0523 GRANTED FOR DEMOLITION WORKS, CONSTRUCTION OF A SERVICE STATION AND SIGNAGE
REPORTING OFFICER	Steve Findlay
TRIM FILE REF	2019/349066
ATTACHMENTS	1 Assessment Report
	2 Plans

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a modification of a determination made by a local planning panel.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. MOD2019/0024 for Modification of Development Consent DA2016/0523 granted for demolition works, construction of a service station and signage at Lot 1 DP 545812, 43 Booralie Road, Terrey Hills subject to the conditions and for the reasons set out in the Assessment Report.



APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0024
Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 1 DP 545812, 43 Booralie Road TERREY HILLS NSW 2084
Proposed Development:	Modification of Development Consent DA2016/0523 granted for Demolition Works construction of a service station and signage
Zoning:	Warringah LEP2011 - Land zoned IN2 Light Industrial
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Eastden Pty Ltd
Applicant:	Inland Building And Construction

Application lodged:	24/01/2019	
Integrated Development:	No	
Designated Development:	No	
State Reporting Category:	Commercial/Retail/Office	
Notified:	06/02/2019 to 23/02/2019	
Advertised:	09/02/2019	
Submissions Received:	7	
Recommendation:	Approval	

EXECUTIVE SUMMARY

This assessment report is submitted to the Local Planning Panel for the consideration of Modification Application No. Mod2019/0024, which seeks consent to modify Development Application No. DA2016/0523 to retrospectively approve the increased height of the forecourt canopy from 5.5m to 6.0m for an approved service station.

The subject site is zoned for IN2 Light Industrial and is adjoining by R2 Low Density Residential development, RE1 Public Recreation land and IN2 zoned development.

The proposed modifications are to be made to a "Service station" as defined under the Warringah Local Environmental Plan (WLEP) 2011, which is a prohibited use in the IN2 Light Industrial zone. However, the site has Existing Use Rights for the purposes of a service station as per Division 4.11 of the Environmental Planning and Assessment Act, 1979. As such, the planning controls apply in respect to



the merit assessment of the application.

The increased height of the canopy complies with the 8.5m building height control under WLEP 2011.

In relation to the Warringah Development Control Plan (WDCP) 2011, the issue of glare and nuisance from the lighting on the underside of the canopy was assessed and it revealed that there are no unreasonable impacts arsing from the additional height of the canopy and associated lighting system. Suitable conditions have been imposed.

The proposal was notified and advertised and seven (7) submissions were received. The issues raised do not warrant any reduction in the height of the canopy to address any impacts on residential amenity or streetscape and do not warrant the refusal of this modification.

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

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone IN2 Light Industrial Warringah Development Control Plan - D12 Glare and Reflection

SITE DESCRIPTION

Property Description:	Lot 1 DP 545812, 43 Booralie Road TERREY HILLS NSW 2084
Detailed Site Description:	The site is located on a corner allotment on the south eastern corner of Booralie Road and Tepko Road.
	The site is irregular in shape and has a surveyed area of 1088m ² with a street frontage to Booralie Road of 31.1m



ATTACHMENT 1 Assessment Report ITEM NO. 3.5 - 3 JULY 2019

and to Tepko Road of 45.3m.

Presently the site accommodates a self-service petrol station with a canopy structure, and signage.

The site is upon land zoned for IN2 Light Industrial and is bound by similarly zoned land to the south and west. North and east of the site is land zoned for R2 Low Density Residential development and accommodates residential accommodation of varying forms. A narrow strip of land zoned for RE1 Public Recreation runs along the eastern edge of the site and connects to Myoora Road. This strip of land provides a landscaped buffer between the residential and industrial zones.

The allotment is generally flat with no topographical features and does not have any significant or noteworthy vegetation.



SITE HISTORY

A review of Council records has revealed that the subject site has operated as a service station and associated uses over the past 30+ years.

DA2016/0523

Development Application No. DA2016/0523 for demolition works and construction of a service station and signage was approved by the Northern Beaches Development Assessment Panel (NBDAP) on 12 October 2016.

MOD2016/0324

Modification Application No. MOD2016/0324 sought to change the approved hours of operation and



signage illumination approved under DA2016/0523. Due to concerns in relation to impacts on surrounding residential amenity, the NBDAP refused the application.

MOD2017/0223

A second Modification Application No. MOD2017/0223 sought to change the approved hours of operation and signage illumination. The proposed hours were:

- Monday to Friday 5.00am 11.00pm;
- Saturday 6.00 am 11.00pm; and
- Sunday and Public Holidays 7.00am 10.00pm

The assessment report recommended the proposed hours be reduced and that they should be subject to a 12 month trial period. The recommended hours were:

- Monday to Friday 6.00am 11.00pm;
- Saturday 6.00am 11.00pm;
- Sunday and Public Holidays 7.00am 10.00pm

The application was approved by the NBDAP on 13 December 2017.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks retrospective approval for an increase in the height of the service station canopy from 5.5m to 6.0m.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the
 applicant, persons who have made submissions regarding the application and any advice given
 by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2016/0523, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(2) of the Environmental Planning and Assessment Act, 1979, are:



Section 96(2) - Other Modifications	Comments
A consent authority may, on application being made by the act on a consent granted by the consent authority and subj regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2016/0523.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2016/0523 did not require concurrence from the relevant Minister, public authority or approval body.
 (c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and 	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environment Plan 2011 and Warringah Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Public Exhibition" in this report.

Section 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.



Section 79C 'Matters for Consideration'	Comments	
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.	
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.	
	<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.	
	<u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.	
	<u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.	
	<u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.	
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.	
	(ii) Social Impact The development is not considered to give rise to any unreasonable or detrimental social impacts on the locality considering the nature of the existing land use.	
	(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 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.	
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Public Exhibition" in this report.	
Section 79C (1) (e) – the public interest	This assessment has found the proposal to be consistent with the relevant requirement(s) of the WLEP 2011 and WDCP 2011 and will not result in a	



Section 79C 'Matters for Consideration'	Comments
	development that would give rise to unreasonable amenity impacts or be contrary to the public interest.

EXISTING USE RIGHTS

The use of the land as a Service Station is a prohibited land use under the WLEP 2011. However, the site has Existing Use Rights for the purposes of a service station as per Division 4.11 of the Environmental Planning and Assessment Act, 1979. **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:	
Mr Daniel Gary Cook	37 Booralie Road TERREY HILLS NSW 2084	
Withheld	TERREY HILLS NSW 2084	
Terrey Hills Progress Association	22 Myoora Road TERREY HILLS NSW 2084	
Mrs Carol Audrey Parr	1 Jinchilla Road TERREY HILLS NSW 2084	
Mr Peter Geoffrey Addison	2 Wanari Road TERREY HILLS NSW 2084	
Withheld Withheld	TERREY HILLS NSW 2084	
John Clark		

The following issues were raised in the submissions:

- Lighting
- Works already completed
- Landscaping .
- Potential spillage ٠
- Non-compliant height ٠
- Sediment spillover ٠
- Working outside of the approved construction hours ٠
- Signage .
- Potential traffics hazards ÷

The matters raised within the submissions are addressed as follows:

Lighting



The submissions raised concerns that the increased height of the the canopy will create an unreasonable light spillover to the upper bedrooms of the dwelling house at No. 37 Booralie Road.

Comment:

It is acknowledged that the proposal will raise the level of the down-lights underneath the canopy. However, the applicant has provided illumination details on the installed down-lights, which indicate that the lights are directed in a downwards manner and do not shed illumination horizontally. They also have a proud edge that limits the projection downward. Additionally, the application was reviewed by Council's Environmental Health team, who assessed the potential impacts of the down-lights and they recommended a condition to ensure compliance with AS4282-1997: Control of the Obtrusive Effects of Outdoor Lighting.

Therefore, the concern has been addressed by information and conditions and does not warrant refusal of the application.

Works already completed

Concerns have been raised that the works have already been completed and the canopy already sits at the proposed height of 6.0m.

Comment:

The works proposed under this modification have in fact been completed and this modification is seeking retrospective approval. The Environmental Planning and Assessment Act 1979 (EP&A Act) provides the consent authority with the ability to modify a development consent and retrospectively approve works that have been completed, provided that the modified works are substantially the same development as the original approval. Overall, it is considered that the works represent a minor amendment to DA2016/0523.

Therefore, this matter does not warrant refusal of the application.

Landscaping

Concerns have been received that the subject site has not provided landscaping in accordance with the approved landscape plans under DA2016/0523.

Comment:

This matter is the subject of an investigation by Council's Compliance team.

Potential spillage

The submissions raised concerns that the ground levels within the bunded forecourt area do not appear to be at an adequate height to contain any spillage of petrol entering the stormwater drainage system.

Comment:

This matter is the subject of an investigation by Council's Compliance team.

Non-compliant height

Concerns have been raised that the proposed canopy height does not comply with Council's maximum building height standards.

Comment:



This modification seeks approval for the increased height of the canopy to 6.0m. Council's maximum building height standard for this area is 8.5m, which complies with the relevant height control, which is addressed under the WLEP 2011 section of this report.

Therefore, this matter does not warrant refusal of the application.

Sediment spillover

Concerns have been received that during the construction of the service station, there was an issue regarding sand being swept/hosed into the stormwater drain.

Comment:

This matter is the subject of an investigation by Council's Compliance team

Working outside of the approved construction hours

Concerns have been received that during the construction process of the service station there instances when construction extended beyond the approved hours.

Comment:

This matter is the subject of an investigation by Council's Compliance team.

Signage

Concerns have been raised that the design of the signage on the retail shop, particular the signage that occupy's the Tepko Road facade, does not relate to the approved signage under DA2016/0523 and nor is it consistent with the character of the area.

Comment:

This matter was investigated by Council's Compliance team through the issue of a Building Certificate (BC2019/0058) and that BC requires the removal of authorised 'pie face' signage on the western façade of the service station and the repainting of the wall to comply with the Consent.

Potential traffics hazards

 A submission raised concerns that vehicles existing the subject site onto Tepko Road will create traffic hazards for vehicles turning onto this road from Booralie Road, due to the curve in the intersection and parked cars.

Comment:

Traffic related issues associated with the new service station and its access arrangements were assessed as part of DA2016/0523 and were deemed to be satisfactory. The concern should be reported to Council to allow Council's Traffic Team to investigate.

Therefore, this matter does not warrant a refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire	The application has been investigated with respects to aspects



Internal Referral Body	Comments
and Disability upgrades	relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.
	Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Industrial)	General Comments Existing approved DA being modified to only increase canopy height (Service Station)
	Light nuisance may be an issue for adjacent residences.
	Recommendation APPROVAL - subject to conditions
NECC (Development Engineering)	The applicant proposed to change the height of Canopy. Development Engineer has no objection to the application. No additional condition is required.

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

The parent application (DA2016/0523) indicated that the site has been used as a service station since at least 1970 and that it was likely the site would contain some subsurface contamination. Council's



Environmental Team completed their assessment of the original proposal and raised no objections subject to conditions.

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	s the development consistent with:
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	5.5m (Canopy)	6.0m	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes



Clause	Compliance with Requirements
6.4 Development on sloping land	Yes

Detailed Assessment

11.10

Zone IN2 Light Industrial

The current use of the site as a service station is a prohibited use in the IN2 zone under the WLEP 2011, however the site has the benefit of Existing use Rights as a service station, which was confirmed as part of the assessment of the original DA.

Warringah Development Control Plan

Standard	Requirement	Approved	Proposed	Complies
B3 Side Boundary Envelope	South - 4.0m	No encroachment	No encroachment	No change
	East - 4.0m	No encroachment	No encroachment	No change
B5 Side Boundary Setbacks	South - 0.9m	0.9m	0.9m	No change
	East - 0.9m	2.0m	2.0m	No change
B7 Front Boundary Setbacks - Booralie Road	4.5m	Store - 22.5m Canopy - 3.5m	Store - 22.5m Canopy - 3.5m	No change
B7 Secondary Front Boundary Setbacks - Tepko Road	4.5m	Store - 2.0m Canopy - 2.6m	Store - 2.0m Canopy - 2.6m	No change
D1 Landscaped Open Space and Bushland Setting	40%	0.3% (34.7sqm)	0.3% (34.7sqm)	No change

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front 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



Clause		Consistency Aims/Objectives
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes

Detailed Assessment

D12 Glare and Reflection

The increased height of the canopy will increase the level at which the down-lights are situated by 500mm. Within the assessment of the DA, it was found that the submitted lighting plan was reasonable, as "the proposed lighting to be used is down-lighting from underneath the canopy and internally illuminated sign boxes. No lighting is directed toward any residential property."

The applicant has provided information to support the current application, which indicates that the down-lights are directional and do not shed light horizontally. They also have a proud edge that limits the projection downward. Additionally, conditions have been imposed that will require compliance with AS4282-1997: *Control of the Obtrusive Effects of Outdoor Lighting*.

Overall, it is considered that the minor amendment to the canopy height will not cause unreasonable amenity impacts to adjoining residential properties, as a result of excessive glare or lighting nuisance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Council Contributions Plan 2018

Section 7.12 contributions were levied on the Development Application.



CONCLUSION

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

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

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

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

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

The existing development contains a self-service station with a canopy structure, retail shop, concrete forecourt and associated signage. The current application seeks consent to modify Development Consent No. DA2016/0523 to retrospectively approve the increased height of the forecourt canopy from 5.5m to 6.0m.

The service station has existing use rights and so the planning controls apply in respect to the merit assessment of the application. Despite this, the increased height of the canopy complies with the 8.5m building height control under WLEP 2011 and does not raise any other matters in relation to the LEP controls.

In relation to the WDCP 2011, the issue of glare and nuisance from the lighting on the underside of the canopy was assessed and it revealed that there are no unacceptable impacts arsing from the additional elevation of the canopy and associated lighting system. Suitable conditions have been imposed in this regard.

The notification of the application resulted in seven (7) submissions, which do not warrant any reduction in the height of the canopy to address any impacts on residential amenity or streetscape and do not warrant the refusal of this modification.

Overall, it is considered that the modification is reasonable and satisfactory on its merits.

Accordingly, the application is recommended for approval subject to the modified conditions. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.



ATTACHMENT 1 Assessment Report ITEM NO. 3.5 - 3 JULY 2019



RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0024 for Modification of Development Consent DA2016/0523 granted for Demolition Works construction of a service station and signage on land at Lot 1 DP 545812,43 Booralie Road, TERREY HILLS, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DWG. A301 - Issue C	August 2018	Calare Civil Consulting Engineers
DWG. A302 - Issue C	August 2018	Calare Civil Consulting Engineers
DWG. A303 - Issue C	August 2018	Calare Civil Consulting Engineers
DWG. A304 - Issue C	August 2018	Calare Civil Consulting Engineers

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

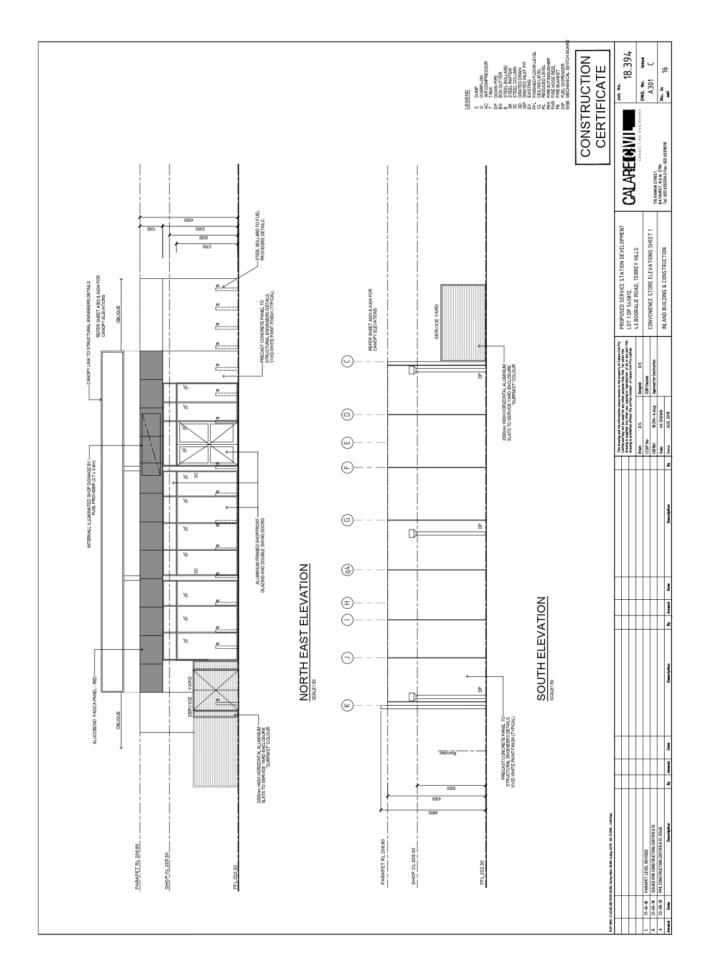
B. Modify Condition - Internal and External Lighting:

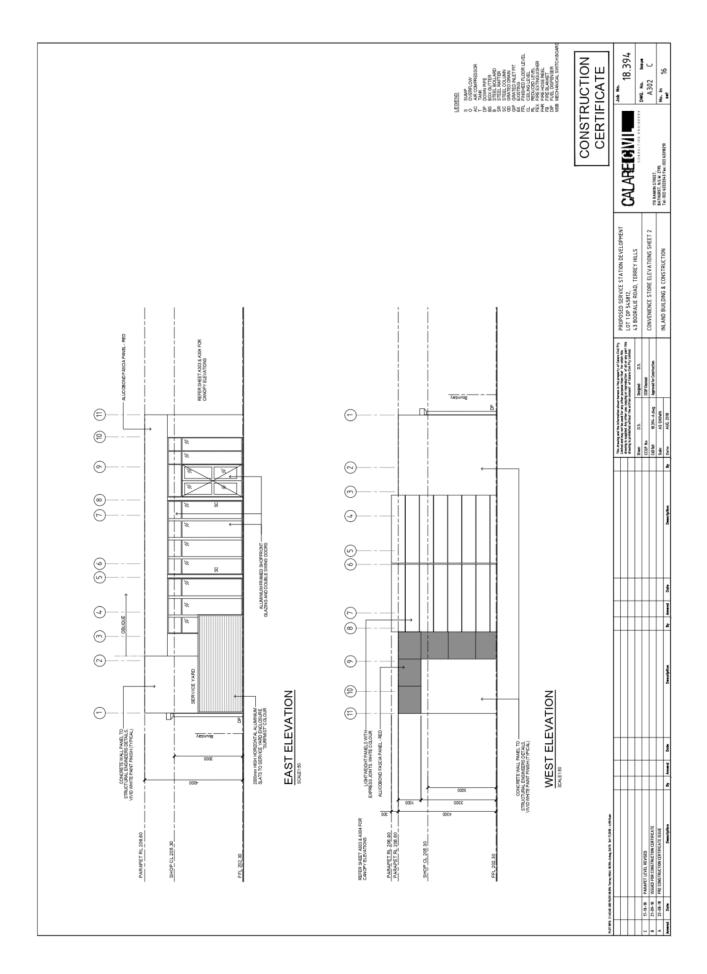
Glare from internal and external lighting is not permitted to extend beyond the limits of the building authorised by this approval, must comply with AS 4282 "Control of the obtrusive effects of outdoor lighting" and shall not cause a nuisance to any neighbouring residents.

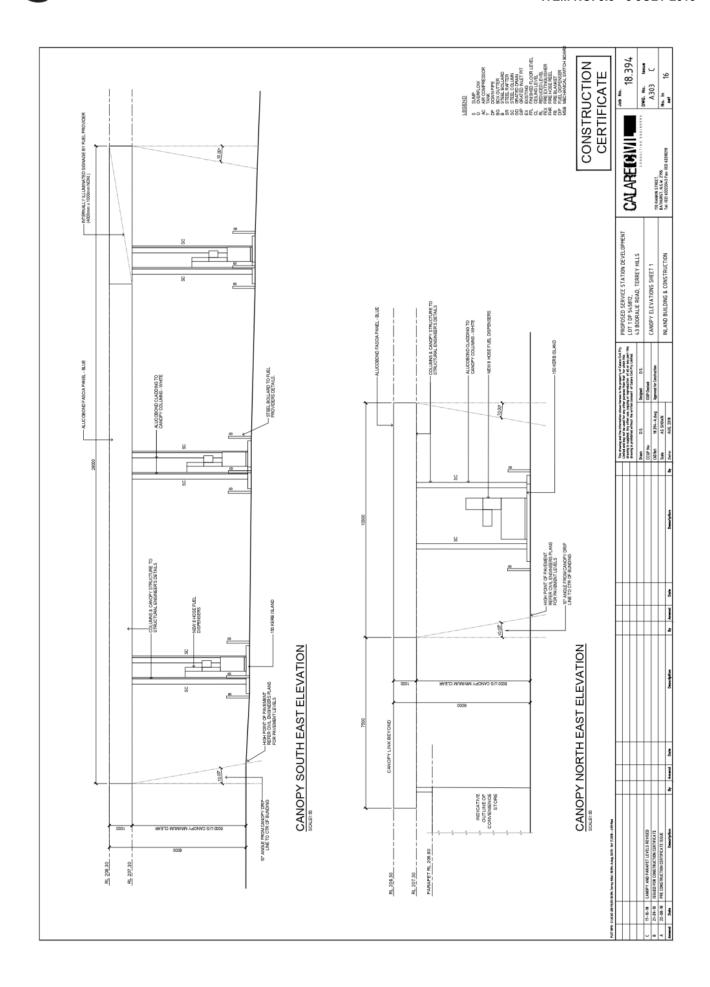
A suitably qualified person shall certify compliance with the above requirements and submit that certification to Council within 30 days from the date of the issue of the modified consent.

Reason: To ensure there is no glare from internal or external lighting to neighbouring properties and land (DACHPBOC6)

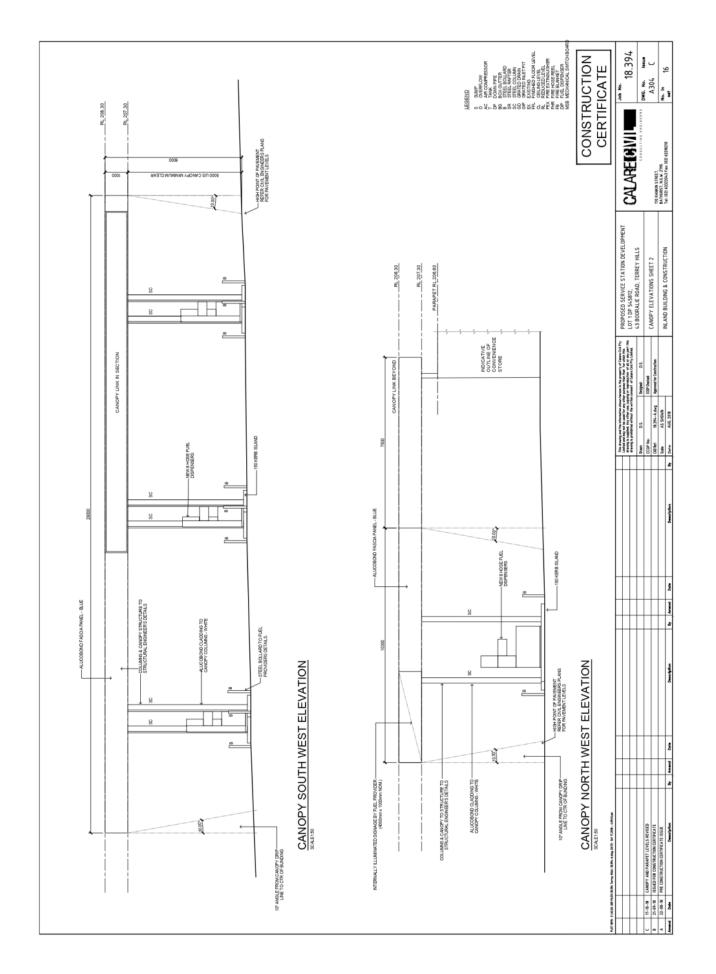


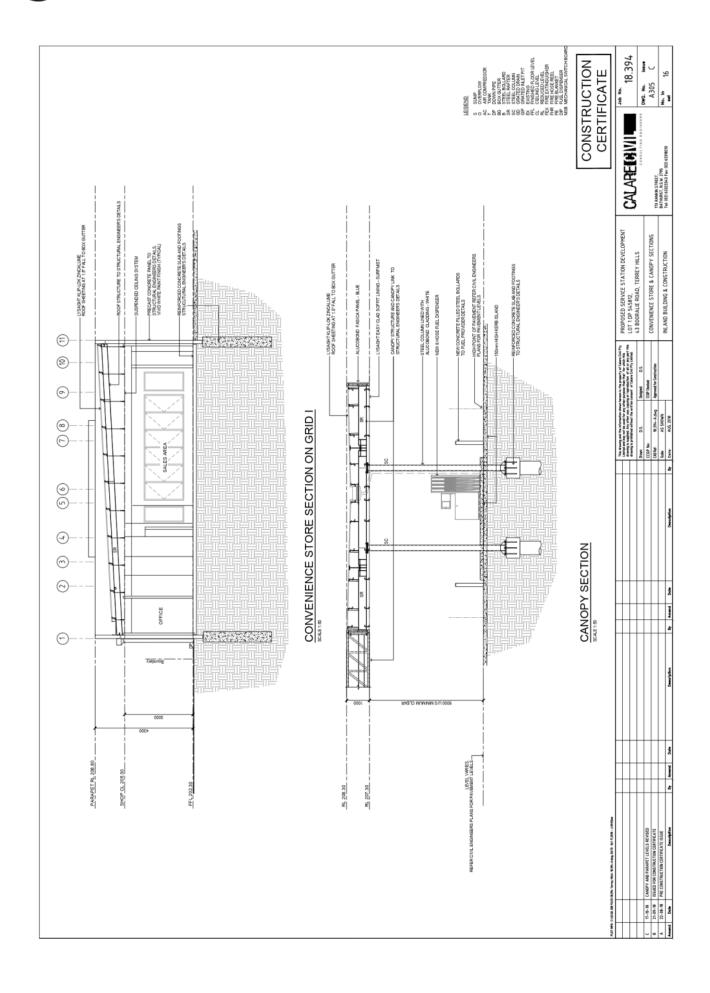














ITEM NO. 3.6 - 03 JULY 2019

ITEM 3.6	MOD2019/0029 - 46 VICTORIA PARADE, MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA367/2010 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING
REPORTING OFFICER	Anna Williams
TRIM FILE REF	2019/349106
ATTACHMENTS	1 Assessment Report
	2 Plans
	3 SEPP 65 Report

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a modification of a determination made by a local planning panel.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. MOD2019/0029 for Modification of Development Consent DA367/2010 granted for demolition works and construction of a residential flat building at Lot CP SP 10040, 46 Victoria Parade, Manly for the reasons set out in the Assessment Report.



APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0029	
Responsible Officer:	Papas Erry	
Land to be developed (Address):	Renee Ezzy Lot CP SP 10040, 46 Victoria Parade MANLY NSW 2095	
Proposed Development:	Modification of Development Consent DA367/2010 granted for demolition works and construction of a residential flat building	
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential	
Development Permissible:	Yes	
Existing Use Rights:	No	
Consent Authority:	Northern Beaches Council	
Delegation Level:	NBLPP	
Land and Environment Court Action:	No	
Owner:	Proprietors of Strata Plan 10040	
Applicant:	BBF Town Planners	

31/01/2019	
No	
No	
Residential - New multi unit	
13/02/2019 to 02/03/2019	
16/02/2019	
27	
Refusal	
	No No Residential - New multi unit 13/02/2019 to 02/03/2019 16/02/2019 27

Executive Summary

This report provides an assessment of a Modification of Development Consent (MOD2019/0029) for a five (5) storey residential flat building with basement parking at No. 46 Victoria Parade, Manly.

The original consent was issued by the NSW Land and Environment Court on 23 December 2011 for a residential flat building containing thirteen (13) apartments with basement parking for eighteen (18) cars. This consent established specific conditions relating to the maintenance of amenity through the rear setback of the building and roof design.

On 4 December 2018, the NBLPP refused MOD2018/0294 as the application provided insufficient information to assess the shadow impacts of the modifications on the adjoining property to the west at 42-44 Victoria Parade and insufficient information to assess the proposed ceiling heights or roof form changes.



The current application seeks to modify the court consent and includes most of the changes previously proposed under MOD2018/0294, specifically the reduction of the rear setback of the building with some additional facade and roof changes. The applicant has provided a revised shadow analysis for the approved and proposed building forms to demonstrate that there is no additional adverse impact on the adjoining property in terms of overshadowing from the amended design, particularly the changes to the roof form.

The subject site is zoned R3 Medium Density Residential under Manly Local Environmental Plan 2013 (MLEP 2013). Development for the purposes of a 'residential flat building' is permissible with consent.

The assessment of the modified application has concluded that notwithstanding the changes to the roof form and addition of a lift overrun, the proposal in terms of solar access and overshadowing has been demonstrated as acceptable. The assessment of the proposed changes at the rear of the property reducing the approved building setback by up to 1.5m are considered an unnecessary additional non-compliance on the site that will result in adverse amenity impacts on the adjacent properties. The further reduction of the rear setback is not supported. The application is not suitable to consent to with conditions as the internal layout of the apartments on Level 1 and Level 2 would require a redesign in order for the floor plate to comply with the setback.

The application was advertised and notified in accordance with the Manly Development Control Plan 2013 (MDCP 2013) and twenty seven (27) submissions were received. Accordingly, the application is referred to the NBLPP for determination.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S79C Assessment



Manly Local Environmental Plan 2013 - 4.3 Height of buildings Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards Manly Development Control Plan - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing Manly Development Control Plan - 3.4.2 Privacy and Security Manly Development Control Plan - 3.4.3 Maintenance of Views Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot CP SP 10040, 46 Victoria Parade MANLY NSW 2095
Detailed Site Description:	The site is located on the south-eastern side of Victoria Parade Manly and has a north-western to south- eastern orientation. It is legally described as Strata Plan 10040.
	The site is level and is a rectangular shape. It is 14.56 m wide (at the Victoria Parade frontage) with side boundaries being 42.06 metres. The rear of the site is 14.585 metres wide. It adjoins a heritage-listed electricity substation (No 16124).
	The substation shares a boundary of 9.265 metres with the subject site. The remainder of the rear boundary and the adjacent north-eastern side boundary adjoin Dungowan Lane. Total site area is approximately 612.8m ² .
	Surrounding Development
	 To the north-east: No 14 South Steyne (heritage listed) and a multi-storey hotel building.
	 To the south-east: A one-storey sub-station and adjacent to that, a multi-storey hotel building
	 To the south-west: No 42-44 Victoria Parade (Pacific Harbour), a five-storey residential flat building of twenty units.
	 Opposite the site are several heritage listed buildings which back onto the Royal Far West complex.
	 The street trees of Victoria Parade have environmental heritage status.

Map:





SITE HISTORY

21 April 2011

Development application DA367/2010 for a seven (7) storey residential flat building containing eleven (11) units and two (2) levels of basement parking for eighteen (18) vehicles was refused by the Manly Independent Assessment Panel (MIAP) on 21 April 2011

22 July 2011

Section 82a Review of Determination against refusal of DA367/2010 was lodged. The application had been amended to a six (6) storey residential flat building with ten (10) apartments and one level of basement car parking for ten (10) vehicles.

12 October 2011

Land and Environment Court appeal lodged for the 'deemed refusal' of the s82a review.

23 December 2011

DA367/2010 approved through s34 agreement and consent orders issued by the NSW Land and Environment Court.

17 September 2012

<u>DA367/2010/2</u> - s 34 agreement for s96(8) modification to consent for 5 storey residential flat building with basement carparking for 18 cars.

21 August 2014

DA367/2010/3 - This modification of the court consent (S96AA) was approved by MIAP.

4 December 2018

MOD2018/0294 - This 4.56 modification application of DA367/2010 (court consent) was refused by the NBLPP for the following reasons:

 The information provided with the modification application is insufficient to enable a proper assessment of the shadow impacts on the adjoining property to the west, number 42 –



44 Victoria Parade Manly.

2. The information provided with the modification application is insufficient to enable a proper assessment of the proposed ceiling heights and roof form of the building.

MOD2019/0029

This 4.56 modification application was lodged with Council on 31 January 2019 and seeks to modify the development as approved both internally and externally and is the subject of this assessment report.

PROPOSED DEVELOPMENT IN DETAIL

This Section 4.56 (previously 96(AA)) of the EP&A Act seeks to address the reasons for refusal provided by NBLPP on 4 December 2018 for Mod2018/0294. The modifications to the development include:

General changes proposed:

- Lowering of the maximum roof level by 202mm to RL20.98,
- Modification to roof form from a hipped roof to a flat roof set 202mm below the approved maximum roof ridge height of 21.20 and change to the shape of the roof cutout on the western side
- Chamfer the roof profile from gridline D @ 14 degrees around a cutout in the roofline from gridline 7 to 0.8m past gridline 8 (total maximum width 3.1m)
- Move Levels 3 and 4 in an easterly direction by 600mm to address shadowing impact between 9 am and 12 noon.
- Amended floor to ceiling heights to each level to provide 2.7m internal ceiling height
- Modifications to window locations and arrangements
- Addition of a lift overrun to RL21.78
- Reduction of the balcony area to the north-western elevation at level 4, Unit 4A and level 3, Unit 3B
- Adjustment to fire stair location and lobby
- Front units on Levels 3 and 4 moved to the east by 600mm to align with boundary
- Modifications to the balcony sizes and building footprint, including the enclosure of part of the balconies to the southern elevation at levels 1 and 2
- Changes to apartment configurations at each floor level, reducing the total numbers of units from 13 units to 11 units comprising the following mix:

Ground Floor 1 x 3 bed + study (or 4 bed unit - unit G)

First Floor 1 x 4 bed + theatre room (or 5 bed unit - unit 1A) 1 x 1 bed + study (or 2 bed unit - unit 1B)

Second Floor 2 x 2 bed (unit 2A and 2B) 1 x 1 bed + study (or 2 bed unit - unit 2C)

Third Floor 1 x 1 bed + study (or 2 bed unit - unit 3A) 1 x 2 bed (unit 3B) 1 x 1 bed (unit 3C)

Fourth Floor 1 x 3 bed (unit 4A) 1 x 1 bed (unit 4B)

Notwithstanding the unit configuration quoted on the plans, the unit layouts include study and theatre rooms which are commensurate in size to bedrooms. The development actually provides the following unit mix:

o 1 x 5 bed o 1 x 4 bed o 1 x 3 bed o 6 x 2 bed o 2 x 1 bed

Basement Level

- Modification to basement car parking layout including provision of 17 car parking spaces utilising the approved car stacker arrangement, plus two accessible car parking spaces, with a total 19 car parking spaces provided within the basement level. (In addition to the basement parking, the modified design maintains the three (3) visitor spaces accessed off Dungowan Lane, as approved.)
- Revised fire stair configuration, dedicated storage areas to each apartment located around the southern end of the basement
- Basement boundary wall extended into the south-west corner (additional 12m2)
- Relocation of the waste storage area to the basement with a temporary collection area provided adjacent to Dungowan Lane.

Ground Floor Level

- Changes as detailed above to the unit layout
- Relocation of mechanical plant room behind visitor parking

The application also proposes the deletion/ modification of the following conditions. The comments under each item are the applicant's reasons for their requested changes.

Modification of Condition 1

"The rear wall (southern elevation) of the proposed building is to be setback a minimum of 11 metres from the rear (northern) boundary of the property known as 27 Ashburner Street Manly SP76027. The rear balconies are to be setback a minimum 9.5 metres from the rear (northern) boundary the property known as **47** (27) Ashburner Street, Manly being SP76027. Plans are to be suitably amended prior to the issue of the Construction Certificate."

*bold indicates error in condition - this condition should reference 27 Ashburner Street

Deletion of condition 96

This condition can be deleted based on the acceptability of the privacy impacts associated with the reconfigured lift lobby and adjacent balcony.

Deletion of Condition 101

We seek to delete this condition pertaining to shadowing impacts on the basis that the accompanying shadow diagrams and analysis are accurate and sufficient to enable a proper assessment of the shadow impacts on the adjoining property to the west.



Deletion of Condition 119

This condition can be deleted based on the acceptability of the privacy impacts associated with the reconfigured lift lobby and adjacent balcony.

Modification of Condition DA1 to reference the modified documentation.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the
 applicant, persons who have made submissions regarding the application and any advice given
 by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA367/2010, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) A consent authority may, on application being to act on a consent granted by the consent author regulations, modify the consent if:	made by the applicant or any other person entitled ity and subject to and in accordance with the
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA367/2010 .and subsequent approved modifications.
(b) it has notified the application in accordance with:(i) the regulations, if the regulations so require, or	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2013 and Manly Development Control Plan.
(ii) a development control plan, if the consent	



Section 4.56- Other Modifications	Comments
authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA367/2010.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

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

Section 79C '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)	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 in the original consent. 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



Section 79C 'Matters for Consideration'	Comments
	documentation was submitted with the original application.
	<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.
	<u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.
	<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.
	<u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.
	<u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
	<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 matter has been addressed via a condition in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built	(i) 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.
environment and social and economic impacts in the locality	(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.
	(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public	The scope of amendments proposed by this modification





Section 79C 'Matters for Consideration'	Comments	
interest	application are extensive as outlined within the Detailed Description of Development. No objection is raised to the modifications within the basement or minor changes to the balconies at the front of the building (Unit 3B and Unit 4A) or the roof line.	
	While the revised unit layouts comply with the requirements of SEPP 65, the apartments at the rear on Level 1 and Level 2 (Unit 1B and Unit 2C) rely on the revised configuration extending a further 1.5m into the rear building setback to provide a functional working apartment. This development appears to incorporate incremental increases in floor area and building bulk with each amendment to the design.	
	The development as currently approved substantially exceeds many of the Manly building controls including height and setback. The further encroachment into the rear setback in this instance is considered an unjustified additional breach which will create additional adverse impacts on the adjoining property owners to the west.	
	While the revised shadow diagrams appear to support this extra building bulk, the physical impact of this extended building section on the small setback corridor available at the rear of the site to allow natural light, ventilation, and separation between sites is considered unnecessarily compromised.	
	The proposed modifications, in particular the additional building bulk and the extension of the building form a further 1.5m into the rear setback of the site, are considered an over- development which is not 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 27 submission/s from:

Name:	Address:	
Ms Kathryn Jane Fayle	Po Box 866 MANLY NSW 1655	



Name:	Address:	
Mr Jeffrey David Schaffer	5 / 25 - 27 Victoria Parade MANLY NSW 2095	
Ms Barbara Mary Vickers	20/42-44 Victoria Parade MANLY NSW 2095	
Robinson Strata Management	PO BOX 280 FRESHWATER NSW 2096	
Mr Edmond Hall Mrs Judith Hall	12 David Road COLLAROY PLATEAU NSW 2097	
Mr Christopher John Taylor	Po Box 66 MANLY NSW 1655	
Proprietors of Strata Plan 12935	43 Ashburner Street MANLY NSW 2095	
Mr Edward Lee Keller	Po Box 758 MANLY NSW 1655	
Pamela Humphreys	23 / 7 South Steyne MANLY NSW 2095	
Mr Kum Leong Bernard Ho	C/- L J Hooker Shop 63/197-215 Condamine Street BALGOWLAH NSW 2093	
Mr Geoff Kaye	16 / 42 Victoria Parade MANLY NSW 2095	
Mr Jeremy Ross Cooper	22 / 7 South Steyne MANLY NSW 2095	
Mr Martin Nielson Schmidt	4 / 42 Victoria Parade MANLY NSW 2095	
Mr Michael William Skillicorn	13 Nield Avenue BALGOWLAH NSW 2093	
Mr David Leslie Schmidt	7 Hendy Avenue COLLAROY NSW 2097	
Ms Sheridan May Nossiter	14 / 7 South Steyne MANLY NSW 2095	
Mr David Edwards	24 / 7 South Steyne MANLY NSW 2095	
Mr Graham John Butson	5 / 42 Victoria Parade MANLY NSW 2095	
Mr George Varga	19 / 42 Victoria Parade MANLY NSW 2095	
Mr Warwick Anthony Marshall	1 Rymills Lane ORANGE NSW 2800	
Mr Geoffrey Alistair Kaye Ms Ann Beth Hatton	16 / 42 Victoria Parade MANLY NSW 2095	
Mrs Peta Vivienne Butson	5 / 42 Victoria Parade MANLY NSW 2095	
Michael Vimal Du Monteil Mrs Annemieke Vimal Du Monteil	12 Worrobil Street NORTH BALGOWLAH NSW 2093	
Mr Ricky Brett Koster	6 / 7 South Steyne MANLY NSW 2095	
Mr Martin Gerard Walker Mrs Deborah Jane Walker	46 McIntyre Street GORDON NSW 2072	
Mr Michael Edwyn West	9/42-44 Victoria Parade MANLY NSW 2095	
Mr Clive Owen Gestern Williams	3 Arthur Circuit FORREST NSW 2603	

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

- Overshadowing and accuracy of shadow drawings
- View Impacts
- Building Height and Floor to Ceiling Heights
- Enclosure of rear balconies at Level 1 and 2 (Unit 1B and 2C) and addition of louvres within rear setback



- Change to roof design
- Landscaping
- Deletion of Condition 101
- Changes proposed are not all highlighted in the plans
- Level 4 Balcony (Condition 119 deletion)
- Objection to proposed 7 storey building

The matters raised within the submissions are addressed as follows:

Overshadowing and accuracy of shadow drawings

Comment:

It is acknowledged that this development has had a change of architect since the original court approval from Woodhouse and Danks Architects. The original diagrams were revised by Design Cubicle and accompanied the previous modification application in 2014. It is now claimed that those previous shadow diagrams were incorrectly generated using magnetic north and not true north as required by the Land and Environment Court practice notes.

Due to the extent of uncertainty resulting from the previous shadow diagrams, the current architects ARC Architects have engaged Urbaine Architecture to remodel the current modified design with the Design Cubicle shadow impacts of the originally approved proposal using new survey data incorporating accurate window openings within the building at 42-44 Victoria Parade which it is alleged were not previously correct.

The current shadow diagrams plot the previously approved development using True North with correct surveyed window locations and the proposed amended design for comparison.

The shadow analysis now provided indicates the following:

- 1. No east facing windows or balconies within the adjoining building at 42-44 Victoria Parade are further affected by overshadowing as a result of the modifications between 9am and 3pm on 22 June.
- 2. The yellow shading on the shadow diagrams prepared by Urbaine Architecture indicates a net reduction of shadows from the currently approved design.
- 3. Some minor additional overshadowing indicated in red between 9am and 11am affect solid masonry elements of the building only and not windows or balconies.

The Urbaine Architecture shadow diagrams have been certified by the Architect as correct and accurate. Council has reviewed these plans and considers them to be reliable to accurately ascertain the impacts from the proposed development/modifications.

View Impacts

Comment:

A view assessment of the proposed modifications has been included within Part 3.4.3 Maintenance of Views within the Manly DCP 2013 section of this report. The applicant has provided a view analysis of the proposed building with the modifications shaded out from the view corridor at each level. The views from the north-east corner of the building are retained by the amended balconies at Level 3 (Unit 3B) and Level 4 (Unit 4A) where the western corner of these balconies has been removed completely.

The proposal is considered acceptable in terms of addressing any potential view loss. This issue



does not hold determining weight.

Building Height and Floor to Ceiling Heights

Comment:

The floor to ceiling heights originally provided for in the Design Cubicle drawings allowed a clearance from the top of one floor slab to the underside of the slab above of approximately 2.75m. In order to provide a floor to ceiling clearance of 2.7m to comply with SEPP 65 and the Apartment Design Guide, the design has moved the finished floor levels accordingly and amended the roof design to a flat roof to reduce the need for further overall building height. As the design amendments have included a chamfered roof section along the western side of the roof line to ensure the solar access to No. 42-44 Victoria Parade is retained, no objection is raised to the amended floor levels. This issue does not warrant refusal of the application.

Enclosure of rear balconies at Level 1 and 2 (Unit 1B and 2C) and addition of louvres within rear setback

Comment:

As indicated in the submissions, the rear setback for this development was established as part of the Land and Environment Court proceedings with a setback to the face of the building on the southern facade of 4.765m measured to the boundary of the heritage substation in Dungowan Lane. Condition 1 as drafted in the original consent DA367/2010 states:

"1.

The rear wall (southern elevation) of the proposed building is to be setback a minimum of 11 metres from the rear (northern) boundary of the property known as 27 Ashburner Street Manly SP76027. The rear balconies are to be setback a minimum 9.5 metres from the rear (northern) boundary the property known as 47 Ashburner Street, Manly being SP76027. Plans are to be suitably amended prior to the issue of the Construction Certificate.

Reason: To achieve closer compliance with Council's Development control Plan for the Residential Zone Amendment 1 and reduce impacts on the amenity of adjoining properties."

This setback measurement is taken from the boundary of the property on the southern side of the substation. This southern boundary contains a step in front of the substation facade resulting in a varying width for the substation of between 6.23m and 6.73m. None of the previous reports from the court proceedings or subsequent modifications clarify from which point the setback was taken. As the setback on the survey plan at the Dungowan building line is 6.23m, it is this point that has been used for the purpose of calculating setbacks for this assessment.





Figure 1 - Boundary setbacks to Substation - Source: Survey Plan supplied with application prepared by Veris Australia

Adopting this dimension of 6.23m, the changes proposed to the Level 1 and Level 2 facade will result in a setback to the substation of 3.2m and a setback to the southern substation boundary of 9.43m. The original condition 1 references a requirement for the setback to the building facade of 11m and to the balcony of 9.5m. This results in a further departure of 1.5m from the court consent.

In relation to the louvres added to the rear facade of these extensions, there is no objection to



this form of shading/screening device in principle except that they will be attached to a building element that is within the rear setback.

The extension of the building footprint 1.5m further into the rear setback is not supported and has been included as a reason for refusal.

Change to roof design

Comment:

The roof design has been changed from a pitched roof to a flat roof with a chamfered edge along the western side. This change has resulted from the need to adjust the internal floor to ceiling heights into compliance with SEPP 65 and the ADG and ensure that the overall building height, particularly along the western side of the building does not increase or create any greater overshadowing of the adjoining property to the west.

An assessment of the changes as they impact the shadows on the facade of No. 42-44 Victoria Parade has been provided within Clause 3.4.1 of Manly DCP. The changes to the roof incorporating a 14 degree chamfer are considered to adequately address the issue of overshadowing resulting in no additional further material shadow impact on any window or balcony in the adjoining development. This issue does not hold determining weight.

Landscaping removal and Condition 92

Comment:

Removal of landscaping in the south-western corner of the site is proposed as part of the modifications to the basement area. The submissions request that the requirements of Condition 92 be maintained. The application does not seek to remove or change Condition 92. Therefore the requirements for landscaping imposed under that condition are maintained.

In relation to landscaping removed along the boundary by the developer in 2015, it is assumed that this landscaping was within the subject site. Any works relating to this development should be within the subject site. Should any works occur on the neighbouring site by this development, Council's Compliance Sections should be notified. This issue does not hold determining weight.

Deletion of Condition 101

Comment:

Following further discussions with the applicant about this aspect of the development, the Applicant proposed that this condition be amended instead of deleted to the following:

"101.

The extent of the proposed west elevation (including new services at Level 4) is to be limited such that there will be no shadowing of the east facing living room windows and balconies to the existing residential flat building at No.42-44 Victoria Parade additional to that cast by the approved modified shadow diagrams prepared by Urbaine Architecture dated January 2019.

Reason: To reduce impacts on the amenity of adjoining residential properties."

Given the amendments to the design, and certification of the resulting shadow impacts not being



any greater than the already approved development, the modified wording to condition 101 is considered suitable and supported. This issue does not warrant refusal of the proposal.

Changes proposed are not all highlighted in the plans

Comment:

The full subtleties of the modifications sought by this application have not been extensively highlighted on the plans. The accompanying Statement of Environmental Effects prepared by Boston Blyth Fleming Town Planners provides additional detail informing the scope of modifications sought.

The full list of modifications have been outlined within this assessment report under Detailed Description of Development.

The plans and documentation are sufficient for a full assessment, of all the proposed modifications, to be made.

This issue does not hold determining weight.

Level 4 Balcony (Condition 119 deletion)

Comment:

The balcony referred to by this condition is on the western side of the building at Level 4 adjacent to the north side of the stair well. The condition states:

"The solid balustrade on western elevation of level four at RL 17.265 which is related to the lobby area of Units 12 and 13 is to be replaced with a clear glass balustrade so as to remove the proposed planter.

Reason: To protect the amenity of neighbours"

Following discussions with Council after notification of the application, the applicant agreed in writing to abandon the deletion of this condition and accept the requirements of the condition. Accordingly, this issue does not hold determining weight.

Objection to proposed 7 storey building

Comment:

A number of submissions were received objecting to the development generally and referring to the original design. These submissions do not provide any objection to the specific modifications that are the subject of this application and therefore, do not warrant refusal of the modifications.

REFERRALS

Internal Referral Body	Comments	
Building Assessment - Fire and Disability upgrades	Approval (subject to conditions)	



Internal Referral Body	Comments
	The application seeks amendments to the current approval as detailed.
	Compliance with the National Construction Code (NCC) DTS provisions has not been achieved. However a qualified Fire Engineer has identified in a submission with the Modified application that in regards to:
	1. Certain non compliant 'Egress paths' located on the south side of the building, a proposed NCC Performance Based Solution based primarily on construction of a new 2.0 m high wall of solid non- combustible construction such as concrete or masonry is proposed to be provided to separate 'unprotected windows' from the required egress path.
	This should be considered as part of the DA Planning assessment review as to its suitability; and
	2. Unprotected openings on the Dungowan Lane frontage being located as little as 4.0 m from the opposite side of the laneway in lieu of 6.0 m (as required). It is proposed to support this identified departure by way of another NCC Performance Solution on the basis of 'window restrictions' provided to limit the opening of those windows to 100 mm maximum, together with externally mounted wall-wetting sprinklers
	There are no objections from the Building Certification Team to these proposals subject to conditions to ensure compliance with the National Construction Code/ Building Code of Australia.
Landscape Officer	Approval (subject to conditions)
	The modifications as set out in the Statement of Environmental Effects do not alter the landscape outcome for this development.
NECC (Development	Approval
Engineering)	Development Engineering has no objection to the modification application. No additional engineering condition is required when there is no significant change on building footprint and stormwater management method.
Waste Officer	Approval
	No objections have been raised by Council's Waste Services. It is noted that issues raised previously in relation to the requirement for the development to provide a bin room at ground level and within 6.5m of the front boundary to ensure they can be serviced by Council and/or its contractors has been addressed in this application with a bin room located adjacent to Dungowan Lane to be used for bin day only. Bin storage is to be within the basement.



External Referral Body	Comments				
Ausgrid: (SEPP Infra.)	Approval (subject to conditions)				
	The proposal was referred to Ausgrid. A formal response was received from Ausgrid dated 16 March 2019 raising no objections to the proposed modifications subject to conditions. Should the application be considered for approval, the requirements of Ausgrid will be incorporated as a condition of consent.				
NSW Police - Local Command (CPTED)	Approval The application was referred to the NSW Police for review. No issues, objections or conditions were received.				

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 development as approved is for the erection of a five (5) storey residential flat 'housing' development plus basement car parking for the provisions of eleven (11) self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel.

DESIGN QUALITY PRINCIPLES

The application is for the modification of an approved residential flat building. The modifications proposed do not materially alter the design of the development to an extent that the proposal deviates from the original assessment and conclusions made under DA367/2010/Part 3. The proposed modifications do not change the developments design quality in terms of the design quality principles. The relevant controls within the Apartment Design Guide are addressed below:

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 De	evelopment	
Deep Soil Zones	Deep soil zones are to meet the following	Consistent



h

	minimum requirer	nents:		The proposed
	Site area	Minimum dimensions	Deep soil zone (% of site area)	modifications remain consistent with the overall planting areas approved on
	Less than 650m ²		7%	the site with the exception of approximately 12m2 in the south-west corner of
	650m ² – 1,500m ²	3m		the site which was originally approved with a
	Greater than 1,500m ²	6m		curved piled retaining wall to the basement.
	Greater than 1,500m ² with significant existing tree cover	6m		This area has been excavated to the boundary and is included in the modifications for this application as part of the
				changed, the original planting schedule approved is not sought to be amended. The Landscape Plans that form part of the original consent are retained.
Visual Privacy	Minimum required buildings to the sid follows:	Consistent The separation distances of the court approved		
	Building height	Habitable rooms and balconies	Non-habitable rooms	development from the side boundaries with the residential flat building to
	Up to 12m (4 storeys)	6m	3m	the west are not further reduced by the proposed modifications.
	Up to 25m (5-8 storeys)	9m	4.5m	The amendments to the
	Over 25m (9+ storeys)	12m	6m	rear of the development includes a reduction in
	Note: Separation the same site sho separations depen Gallery access cin habitable space w	uld combine re nding on the ty _l culation should	quired building be of rooms. I be treated as	distance from the face of the building at levels 1 and 2 to the northern boundary of the heritage substation from 4.765m to 3.2m (approx. 1.5m).
	separation distant properties.			The setback of the development from the rear boundary with 27



		Ashburner Street is measured at 9.43m, which is 1.57m short of being consistent with the court setback measurement references within Condition 1. The setback is however consistent with the requirement of this criteria.
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	Consistent
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Consistent
Bicycle and Car Parking	 For development in the following locations: 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 The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised. 	Consistent
Part 4 Designing the	Building	
Amenity	To activity the symphony of another state of the	Consistant
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: Living rooms and private open spaces of at least 70% of apartments in a building	Consistent



	are to i sunligh winter.	t betw		
	N/A			
Natural Ventilation	The number o ventilation is n indoor environ • At leas cross v the bui greater only if these l ventila	naximis ment f ventilat Iding. / r are de any en evels a	Consistent	
	through	h apart	of a cross-over or cross- ment must not exceed 18m, as line to glass line.	Consistent
Ceiling Heights	Measured fror ceiling level, n		Consistent The amendments to the	
	Minimum ce	eiling I	finished floor levels within	
	Habitable rooms	2.7m	the building has ensured the development as modified will provide	
	Non- habitable	2.4m		compliant floor to ceiling heights.
	For 2 storey apartments	2.4m area c	for main living area floor for second floor, where its loes not exceed 50% of the nent area	
	Attic spaces		at edge of room with a 30 e minimum ceiling slope	
			for ground and first floor to te future flexibility of use	
Apartment Size and Layout	Apartments ar minimum inter		Consistent Each apartment is larger in	
	Apartment	type	Minimum internal area	size than the minimum internal area required.
	Studio		35m ²	
	1 bedroom		50m ²	
	2 bedroom		70m ²	
	3 bedroom		90m ²	



	area of 15m ² and a minimu The maximum number of a	Consistent		
	For apartments at ground le similar structure, a private o instead of a balcony. It mus	Consistent		
	The minimum balcony dept contributing to the balcony			
	3+ bedroom apartments	12m ²	2.4m	
	2 bedroom apartments	10m ²	2m	
	1 bedroom apartments	8m ²	2m	required.
	Studio apartments	4m ²	-	minimum area and width
	Dwelling Type	Area	Minimum Depth	The modifications proposed both at the front and rear of the development maintain the
Private Open Space and Balconies	All apartments are required balconies as follows:	Consistent		
	The width of cross-over or apartments are at least 4m deep narrow apartment lay	Consistent		
	Living rooms or combined I have a minimum width of: 3.6m for studio and 4m for 2 and 3 bedr	Consistent		
	Bedrooms have a minimum and must include built in wa for freestanding wardrobes 3.0m minimum dimension.			
	Master bedrooms have a m and other bedrooms 9m2 (space).		and the second sec	Consistent
	In open plan layouts (where kitchen are combined) the room depth is 8m from a w	maximum h indow.	abitable	Consistent
	Habitable room depths are of 2.5 x the ceiling height.	limited to a	maximum	Consistent
	Every habitable room must external wall with a total mi not less than 10% of the flo Daylight and air may not be rooms.	Consistent		
	increase the minimum inter each.			
	A fourth bedroom and furth			
	minimum internal area by 5	m ⁻ each.		



	For buildings of 10 store maximum number of ap lift is 40.	eys and over, the partments sharing a single	N/A
Storage	In addition to storage in bedrooms, the following	Consistent Additional storage is	
	Dwelling Type	provided within the	
	Studio apartments 4m ²		basement area for each
	1 bedroom apartments	6m ²	apartment.
	2 bedroom apartments	8m ²	
	3+ bedroom apartments		
	At least 50% of the required to the sequence of the sequence of the second seco		
Acoustic Privacy	service areas, plant roo mechanical equipment, spaces and circulation a least 3m away from bed	active communal open areas should be located at drooms.	from the adjoining residential development adjacent to the western boundary of the site. While the location of this plant room meets the minimum setback, given its placement adjoining the driveway access, the vented wall for this infrastructure should be on the eastern side of the enclosure adjoining the open at-grade visitor parking to reduce the potential for noise from this plant travelling across the concrete driveway and impacting the adjoining residences. This could be included as a condition of consent should the application be considered worthy of approval.
Noise and Pollution	Siting, layout and desig	n of the building is to	Consistent



Configuration						
Apartment Mix	apartme supportir	he develop nt types an ng the need uture and i ing.	Consistent			
Ground Floor Apartments		round floor ty for their	Consistent			
Facades	interest a	hat building along the st while resp a.	ing	Consistent		
Roof Design	adjacent sustaina Can the space? T any unre	he roof des buildings a bility feature roof top be This is not s asonable a e roof top.	Consistent The proposed amendments to the roof responds to the constraints and concerns for this site to ensure overshadowing is not increased on the adjoining properties. The amended design includes a 14 degree chamfered roof along the western side to replace the cutout previously included in this side of the roof and approved by the court to minimise overshadowing on the neighbouring properties.			
Landscape Design		ndscape pl well to the				N/A
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:					N/A
	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	-	35m ³		6m x 6m	



	Trees	high, up to 8m crown spread at maturity			or equivalent	
	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	
	Shrubs			500- 600mm		
	Ground Cover			300- 450mm		
	Turf	2		200mm	1	
Universal Design	develop	ment incorp	orate th	rtments in tl ne Livable H ⁄ersal desig	lousing	Consistent The apartment layouts and mix are considered to incorporate the Living Housing Guidelines.
Adaptable Reuse	contemp	litions to ex orary and o s identity ar	N/A			
Mixed Use	transpor public do Non-resi levels of	developme t and does omain? dential use buildings in be appropr	N/A			
Awnings and Signage	activity, a Awnings and cont Signage	active front are to com ribute to th	ages an plemen e identif	nd over build It the buildir ty of the dev		N/A
Performance						
Energy Efficiency		e requireme own in the s		ne BASIX c ed plans?	ertificate	Consistent
Water Management and Conservation	water me potable v	er manager easures inc water, rainv indwater?	Consistent			
Waste Management	part of th	ne developr	nent ap		monstrating	Consistent



	waste and recycling?	
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent

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:

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.
- (3) To remove doubt:

(a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
(b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.

Note. The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

Adequate regard has been given to the matters raised under subclause (2). Notwithstanding the proposed amendments satisfactorily address the requirements of SEPP 65, the application is recommended for refusal.

SEPP (Building Sustainability Index: BASIX) 2004



A BASIX certificate has been submitted with the application (see Certificate No. 431991M_02 dated 8 June 2018).

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

Commitment Required Target		Proposed	
Water	40	43	
Thermal Comfort	Pass	Pass	
Energy	50	31	

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. A formal response was received raising no objections to the modification subject to conditions.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of	11m	17.25m	Roof -	No	Yes



Buildings:			17.048m Lift overrun - 18.814m	change 71%	No
Floor Space Ratio	FSR:0.75:1 (1072.4m ²)	FSR: 1.78:1 (1090.7m ²) (DA0367/2010/3)	FSR: 1.78:1	No change (3%)	Yes

Compliance Assessment

Clause	Compliance wi Requirements	
4.3 Height of buildings	No	
4.4 Floor space ratio	No	
4.6 Exceptions to development standards	Yes	
6.1 Acid sulfate soils	Yes	
6.4 Stormwater management	Yes	
6.8 Landslide risk	Yes	
6.9 Foreshore scenic protection area	Yes	
6.12 Essential services	Yes	

Detailed Assessment

4.3 Height of buildings

The underlying objectives of the standard pursuant to Clause 4.3 'Height of Buildings' of the Manly LEP 2013 are:

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

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

Comment:

The subject site currently has a valid development consent for a residential flat building with a maximum height of 17.25m. The proposed modifications seek to lower the overall roof height marginally to 17.048m with the additional inclusion of a lift overrun up to 18.814m. The modifications to the roof line, including the addition of the lift overrun are considered consistent with the approved development and not inconsistent with the prevailing building height surrounding the site or the desired future character of the locality.

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

Comment:

The changes to the roof line do not result in any perceptible additional bulk on the building. The development is consistent with this objective.

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



Comment:

The changes to the building height and the roof form do not create any new or additional disruption of views. A view analysis has been provided and the proposal includes the removal of the corner balcony and planter box sections at the front elevation to Levels 3 and 4 which has been demonstrated to clear any building elements which would interrupt the existing view lines.

(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 applicant has provided revised shadow projections for the new roof line which demonstrate that the net impact on the shadow lines affecting 42-44 Victoria Parade is not worse that the approved design.

(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

(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.

Comment:

The development as approved by the NSW Land and Environment Court exceeds the building height requirement for the site by 6.25m.

4.6 Exceptions to development standards

The proposed modifications result in an additional breach to the maximum building height limit by the proposed lift overrun of 71% (noting the building height as approved provided a breach of 56.8%). The original development also approved a 3% breach to the floor space ratio requirement which is maintained by this modification.

In 'Gann v Sutherland Shire Council [2008] NSWLEC 157', the Court was prepared to distinguish an earlier line of authority, and hold that, since Clause 4.56 was a "free-standing" provision, it could be utilised to modify a consent even where (in that case) no Clause 4.6 Objection could be lodged.

By application of that case in the context of this application, the Council can consider (and approve) a modification that will result in a breach of the height control, without reference to SEPP 1 or Clause 4.6, relying instead on the "free-standing" power of Clause 4.56.

In this regard, the matters for consideration under SEPP 1 or Clause 4.6 provide a reasonable and consistent means of assessing any Clause 4.56 that is beyond the provisions of the planning controls. Whilst this modification application will result in new building elements with a height that exceeds the maximum permitted by Clause 4.3 of MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Clause 4.56 of the EP&A Act, which is a free-standing provision which in itself authorises the development to be approved notwithstanding any breach of development standards. Clause 4.56 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant s.4.15 matters) and does not rely upon having a Clause 4.6 variation objection in order to determine the modification.



Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Clause 4.56 modification applications. Notwithstanding that Clause 4.6 does not apply to modification applications, the merits of the departure have been assessed and found that the development satisfies the underlying objectives of Clause 4.3 Height of Buildings and the objectives of the R3 Medium Density Residential zone under MLEP 2013 and the variation can be supported on its merit.

Manly Development Control Plan

Built Form Controls	Requirement	Approved	Proposed	Complies
- Site Area: 607m ² 4.1.2.1 Wall Height	East: 9m	15.95m (RL21.2)	15.73m (RL20.98)	Yes, no greater than approved wall height
	West: 9m	15.95m	15.73 (RL20.98) m	Yes, no greater than approved wall height
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.25m, consistent with prevailing setback	Victoria Parade 7.22m, consistent with prevailing setback	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	Secondary street frontage - East: 5.26m (based on wall height)	Nil	Nil	Yes, no change to approved
	West: 5.26m	Nil to basement 3.45m to face of building	Nil to basement 3.45m to face of building	Yes, no change to approved setback
4.1.4.4 Rear Setbacks	8m (substation)	Nil to basement 4.765m to building 5.5m to balcony	Nil to basement 3.2m to building L1 & L2 5.13m to balcony L1 & L2 3.5m to balcony L3 & L4	No
Schedule 3 Parking and Access	Total - 17 Spaces 14 x Residential 3 x Visitor	Total - 17 Spaces 14 x Residential 3 x Visitor	Total - 22 Spaces 17 x Residential (car stacker) 2 x Accessible (Basement) 3 x Visitor (Ground Level)	Yes

Compliance Assessment



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	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
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)

Description of non-compliance

The proposal is not considered to meet the objectives under Part 3.4 of the Manly DCP 2013, as the proposed additions to Level 1 and Level 2 at the rear of the development fails "to protect the general amenity of adjoining and nearby properties".

The rear setback of the development was subject to detailed consideration as part of the Land and Environment Court proceedings. Out of these proceedings came a condition, Condition 1, which states:

"1. The rear wall (southern elevation) of the proposed building is to be setback a minimum of 11 metres from the rear (northern) boundary of the property known as 27 Ashburner Street Manly SP76027. The rear balconies are to be setback a minimum 9.5 metres from the rear (northern) boundary the property known as 47 (27) Ashburner Street, Manly being SP76027. Plans are to be suitably amended prior to the issue of the Construction Certificate.

Reason: To achieve closer compliance with Council's Development Control Plan for the Residential Zone Amendment 1 and reduce impacts on the amenity of adjoining properties."



This condition was specifically imposed to preserve the amenity of the residents in the adjoining building to the west.

Merit Consideration

With regard to the consideration of a variation, the development is considered against the objectives of the control:

Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.

Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.

Designing for Amenity

a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is especially relevant in higher density areas, development adjacent to smaller developments and development types that may potentially impact on neighbour's amenity such as licensed premises.

b) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.

c) The use of material and finishes is to protect amenity for neighbours in terms of reflectivity. The reflectivity of roofs and glass used on external walls will be minimal in accordance with industry standards. See also Council's Administrative Guidelines regards DA lodgement requirements for materials and finishes.

The setback specified for the apartments and their balconies provided for a more acceptable separation for the occupants of the apartments to the south-west at No. 42-44 Victoria Parade, specifically those in the units at the rear, directly facing this area.

The proposed modifications will result in a building facade on the south western side of the development at Levels 1 and 2 which provides a 3.2m setback to the substation and a 9.43m setback to the northern boundary of 27 Ashburner Street. While the numerical difference is approximately 1.5m, the resulting built form will present a solid extension of the building measuring a height of 8.2m above the top of the ground floor level planter box in this location. The additional structure will adversely exacerbate the bulk and scale of the building from the adjacent Unit 5 and Unit 9 creating an adverse impact on the amenity of these properties.

3.4.1 Sunlight Access and Overshadowing

Concerns relating to overshadowing have formed an underlying issue of contention between the Applicant and the adjoining property owners to the west at 42-44 Victoria Parade.

The previous modification application (MOD2018/0294) was refused by the NBLPP on the basis that the "information provided with the modification application is insufficient to enable a proper assessment of the shadow impacts on the adjoining property to the west..."

In response to this refusal, the applicant engaged Urbaine Architecture to review the overshadowing



impacts of the development using the previous projections undertaken by Design Cubicle supported by new survey information. The outcome of comparing the previous shadow diagrams with the current ones identified discrepancies in the positioning of the proposed building and the neighbouring building in the Design Cubicle drawings.

The Architect states that "using identical positioning of models, the shadow cast by the new proposal is contained within that cast by the previously approved DA". The comparison indicates that the location of the building at 42-44 Victoria Parade was higher and slightly further north than the current survey information provides.

The shadow drawing produced by Urbaine demonstrating a comparison between the original and proposed development using the Design Cubicle shadow drawings indicate that the amended roof form will result in a net reduction in the extent of shadow falling on the eastern facade of 42-44 Victoria Parade.

9am Mid Winter

The difference in the shadows at this time of day is identified between Level 3 and Level 4 in the centre of the building where there is a minor reduction in the shadow cast over part of one of the balconies and a small reduction of shadow to the doors of the Level 3 apartment below. Some minor additional overshadowing occurs at Ground Floor and Level 1 corner apartments toward the front northern end of the building where the shadow will extend into the balcony of these two apartments.

10am Mid Winter

At this time of day, the shadow line is reduced at Level 3 within the rear half of the building along the balcony level and some minor improvements within the northern half of the building where the shadow line is pulled back to the south.

11am Mid Winter

The changes in the shadow impact at this time of day is obvious in a number of areas. At the rear of the site, the balcony at the Level 2 apartment has a reduction in the shadow reaching the balustrade to both balconies. In addition, there is a minor improvement with additional sunlight access to four (4) of the windows at Level 2, some reduction in the centre of the building at Ground Floor level and some improvement to the shadow line on masonry sections of the building between the Ground Floor and Level 2.

Midday Mid Winter

The shadows indicated at midday are reduced to fall below the balcony of the Level 1 Unit 5 (at the rear of the building) with some additional sunlight access to the doors of the Ground Floor unit below. Some other minor reductions in the shadows extend along the previous shadow projections in this location.

After midday, the sun angle has moved over the top of the subject site and the adjoining property to the west so that the only shadows cast are self-shadowing from their own building.

The amended shadow diagrams and professional certification provided with this application has been accepted as a true projection of the overshadowing impacts. The proposed modifications based on the shadow analysis is considered consistent with the objectives of this control.

3.4.2 Privacy and Security

Description of Non-Compliance

The proposed modifications in relation to the extension of the building into the rear building setback is considered inconsistent with the objectives under Part 3.4.2 Privacy and Security of Manly DCP 2013.



Merit Consideration

The proposed modifications are considered against the relevant objectives of the control:

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;
- mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.

Comment:

While the design of the extended rear section of the building provides adequate visual protection through louvre screening and solid wall sections directly facing the adjoining neighbours, it is these elements of the design which will create unnecessary amenity impacts due to the bulk, scale and reduction of separation.

2. To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The proposed extension of the rear of the development is considered inconsistent with this objective of the control as the modified setback will extend the bulk of the building approximately 8.2m in height a further 1.5m closer to the rear boundary with the heritage substation from 4.765m to 3.2m. The rear setback control specifies an 8m setback to this boundary which was reduced as part of the court proceedings that approved the original development. The small setback as approved provided the apartments in the south-western corner of the adjoining development at 42-44 Victoria Parade with a small amount of access to air and light through to Dungowan Lane. The extension of the building form in this location will erode this access to an even smaller amount and will exacerbate the bulk of the development in front of their only private open space and internal living areas.

3. To encourage awareness of neighbourhood security.

Comment

The development does not change the awareness of neighbourhood security.

3.4.3 Maintenance of Views

Description of non-compliance

Concerns were raised in the submissions about potential loss of views for the apartments located at the front of the the adjoining development at 42-44 Victoria Parade (unit 12, level 2 and Unit 16, Level 3) by changes in the design. The applicant has provided a view analysis from the balcony area of these front north-east apartments which have an oblique view line across the front of the site to Manly Beach front. The front of the development has been slightly altered with the removal of the north-west balcony sections at Level 3 and 4 at the same angle as the view corridor.

Merit consideration:

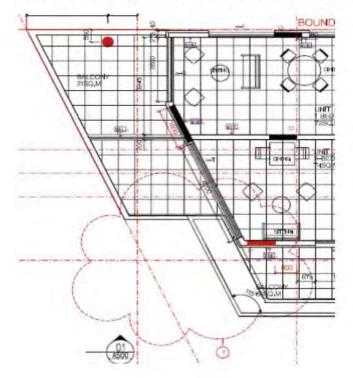
With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:



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

Comment:

The proposal with the amended balcony design provides for view sharing for the existing and future occupants of the adjoining apartments at the front of 42-44 Victoria Parade.





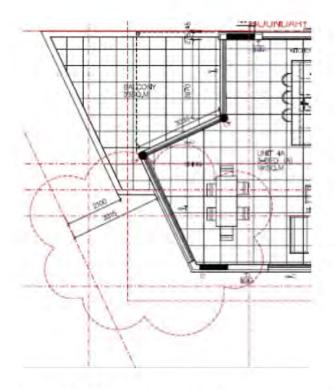


Figure 2 and 3 - Level 3 and Level 4 removal of corner balcony and relocation of planter previously within view corridor

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

An assessment of view loss has also been undertaken with reference to the Views Principle established by the NSW Land and Environment Court as follows:

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

Comment:

The existing views across the site are considered highly valued iconic views of Manly Beach and the land water interface in this location.

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

Comment:



The views from these apartments are from the main private open space (balcony) and the main living and dining areas directly adjoining the balcony. The views are available from an oblique angle across the side and front of the property.

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

Comment:

The view analysis provided demonstrates that there is negligible impact on the views from these apartments with the new development suitably angled to protect these view corridors.

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

Comment:

The modifications to the front of the development are considered reasonable in the context of their location. The shape of the building setback provides a design which protects the view corridors to the north-east at the end of Victoria Parade and is acceptable.

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

Comment:

The proposed modifications are considered to improve the previous development's response to the view corridor across this site and is not considered to contribute to accumulated view loss creep.



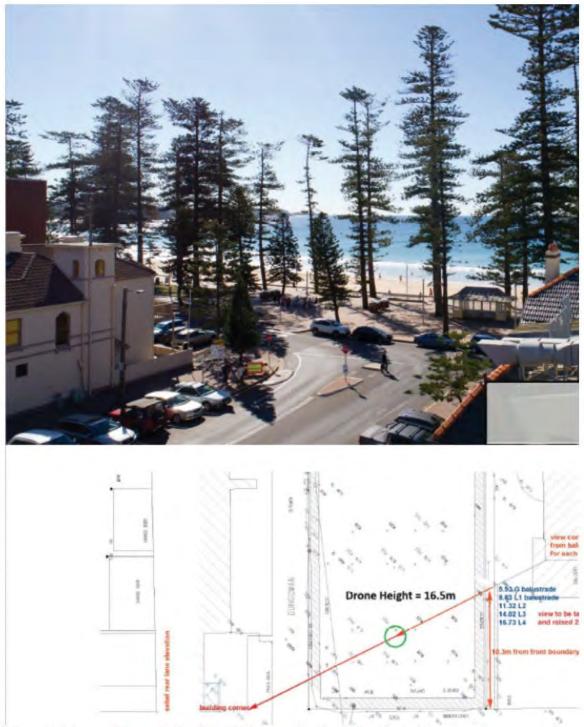


Figure 4 - View corridor analysis at Level 4 (source: Applicant View Analysis)

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objecties 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 relation to concerns of view loss.

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

The proposed development includes a further reduction to the approved rear building setback. The proposal is considered inconsistent with the objectives of the control.

Merit Consideration:

The proposed modification is considered against the following requirements:

a. The distance between any part of a building and the rear boundary must not be less than 8m

Comment:

The approved development provided a setback to the rear boundary with the heritage substation to the south of 4.765m. The proposed modifications seek to reduce this setback to 3.2m measured to the face of the building at Level 1 and Level 2. The modifications result in further inconsistency with this requirement.

b. Rear setbacks must allow space for planting of vegetation, including trees, other landscape works and private and/or common open space. The character of existing natural vegetated settings is to be maintained.

Comment:

The proposed development as approved included a corner of landscaping within the south-west corner. While the proposed modifications indicate this corner has been reclaimed as part of the basement structure, there is no modification sought to the approved Landscape Plan or relevant condition (Condition 92) within the consent.

c. On sloping sites, particularly where new development is uphill and in sensitive foreshore locations, consideration must be given to the likely impacts of overshadowing, visual privacy and view loss.

Comment:

The site is flat and not considered sloping.

d. Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy and view loss.

Comment:

The development as approved does not provide any consistency in relating to the prevailing pattern of setbacks on the surrounding properties. The further reduction of the rear setback does not result in any apparent further material overshadowing in accordance with the revised shadow diagrams or create any further view loss, the extended building form is considered to exacerbate the visual privacy of the adjoining property to the west by creating an increased building bulk which encroaches on these properties outlook. Accordingly, the changes within the rear building setback are not supported and form a reason for refusal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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



CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

This Clause 4.56 Modification Application has been assessed having regard to the reasons of refusal provided for MOD2018/0294, Section 4.15 of the Environmental Planning and Assessment Acr, 1979, SEPP 65, MLEP 2013 and the relvant codes and policies of Council. This assessment has taken into consideration the modified plans, Modified Statement of Environmental Effects, other documentation supporting the application and public submissions.

The modified plans and supporting documentation have successfully resolved issues around the overshadowing impacts of the modified roof form. However, the concerns raised in relation to the additional building form extending into the rear setback at Level 1 and Level 2 are not considered suitably justified.

Twenty seven (27) submissions were received in response to the notification of the modified proposal. The issues raised in the submissions have been addressed in the 'Public Notification Section' of this report.

The modified proposal in relation to the extension of the rear of the development cannot be supported and fails to satisfy the rear setback controls and the established setback requirement for this site. Accordingly, it is recommended that the NBLPP refuse the application.

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



ATTACHMENT 1 Assessment Report ITEM NO. 3.6 - 3 JULY 2019

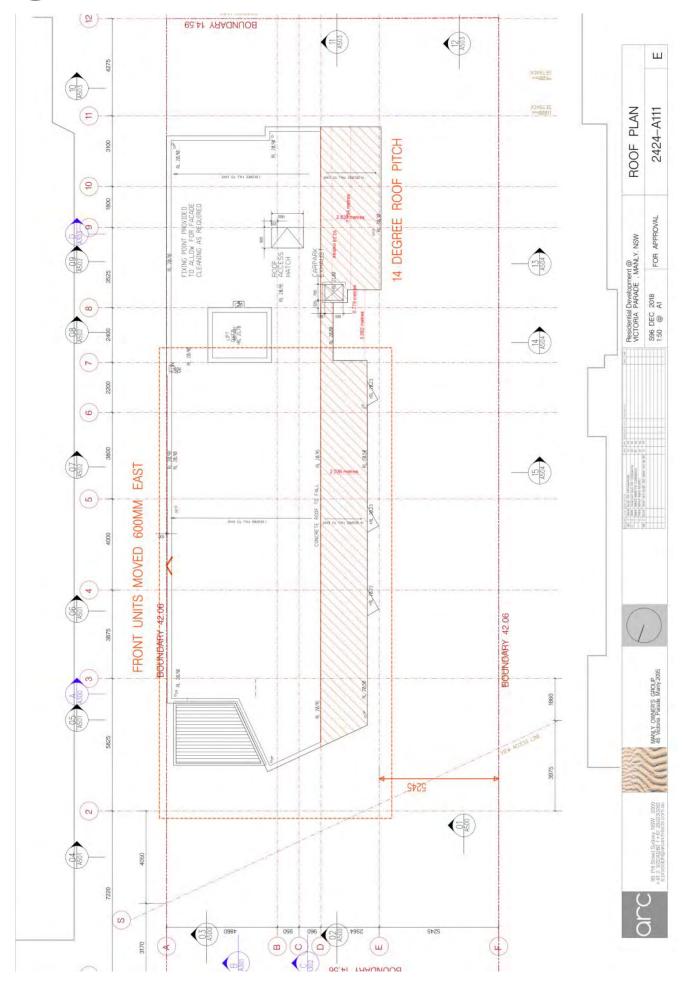


RECOMMENDATION

THAT Council, as the consent authority REFUSE Modification Application No. Mod2019/0029 for Modification of Development Consent DA367/2010 granted for demolition works and construction of a residential flat building on land at Lot CP SP 10040,46 Victoria Parade, MANLY, subject to the reasons outlined as follows:

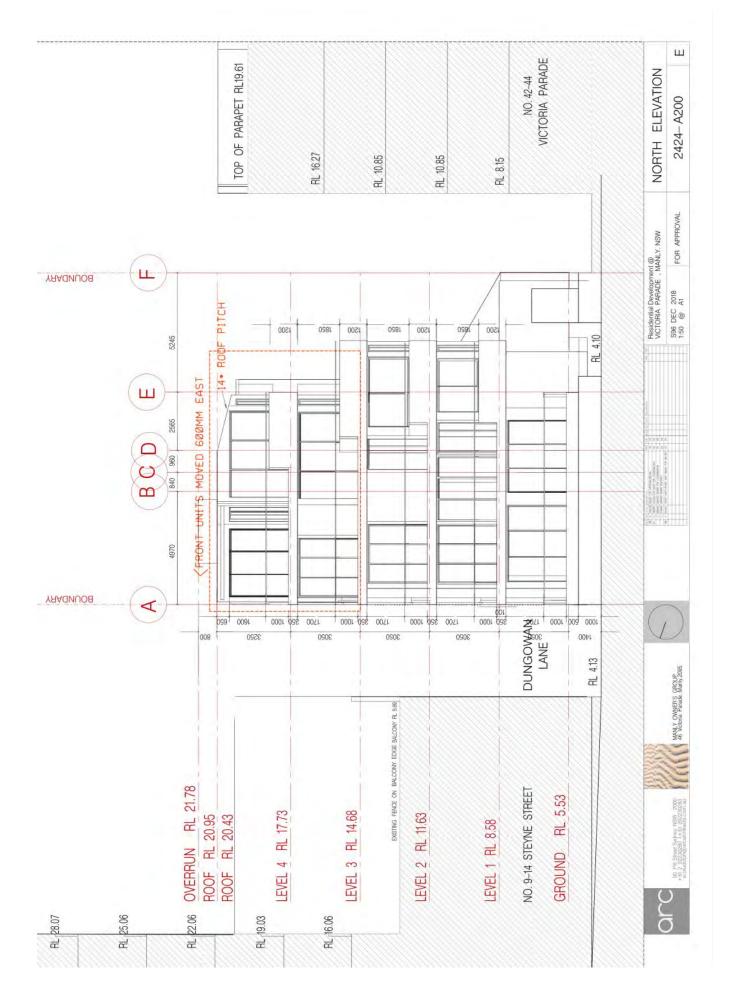
- 1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) of the Manly Development Control Plan.
- 2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan.
- 3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (rear) and Building Separation of the Manly Development Control Plan.
- 4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not in the public interest.



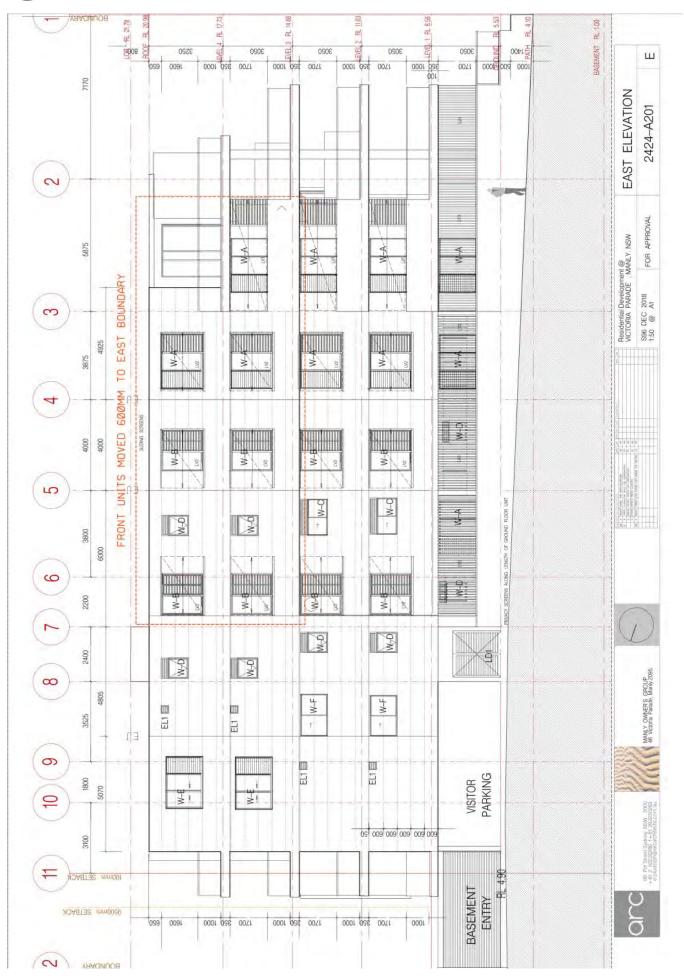




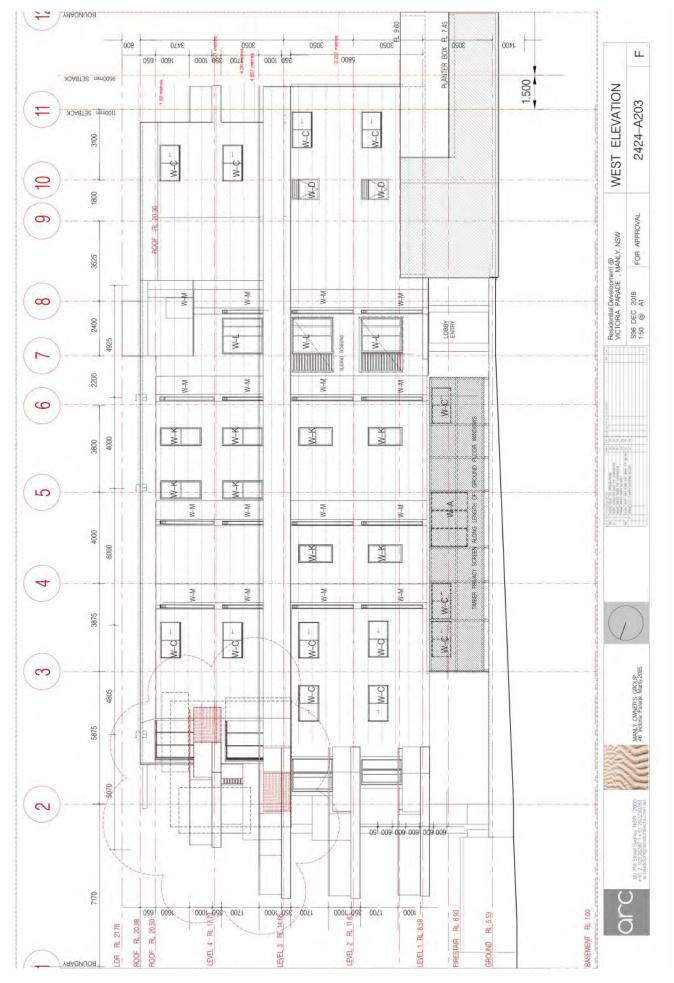
ATTACHMENT 2 Plans ITEM NO. 3.6 - 3 JULY 2019



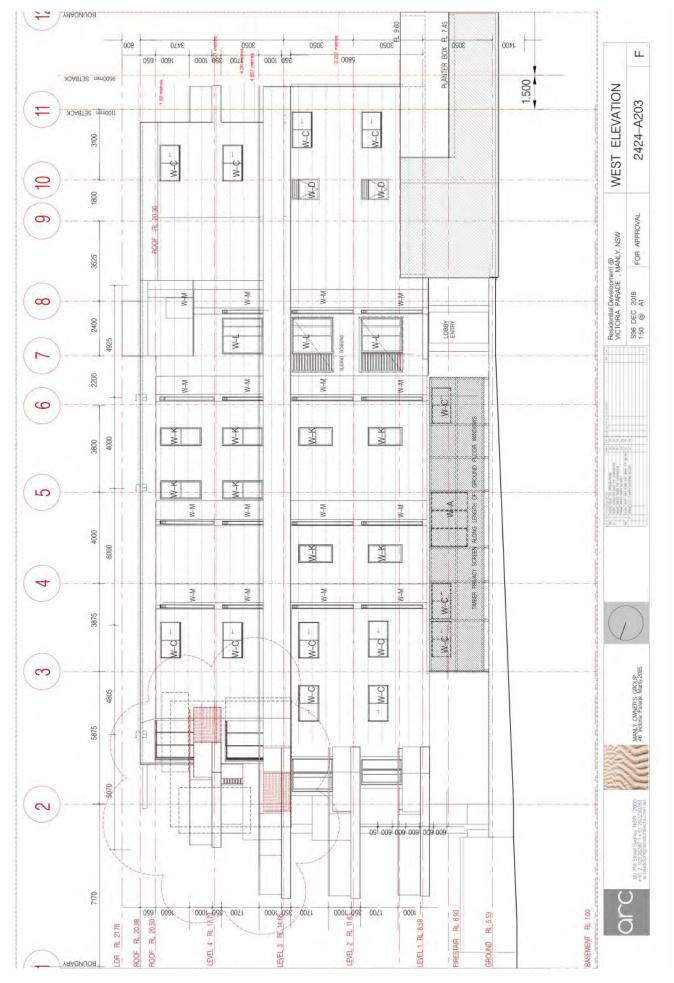














RESIDENTIAL DEVELOPMENT S96 - 46 VITORIA PARADE MANLY

SEPP 65 DESIGN VERIFICATION STATEMENT

DESIGN QUALITY PRINCIPLES PRINCIPLE

PRINCIPLE 1- CONTEXT

Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area. Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.

The proposal is a residential intensification of an existing residential mixed use streetscape in Victoria Street Manly behind the beachfront Sebel Hotel. and commercial strip. The development forms a transition between the commercial zoning and adjacent residential flat buildings.

Victoria Street and the surrounding neighborhood are predominantly multi-unit residential apartments



Site location





Street context

The streetscape looking east to the beach is defined by the mature freestanding Norfolk Pines The building setbacks are consistent and allow for perpendicular parking & pedestrian footpath both sides. The generous street cross section allows for most street facing apartments to look into the tree foliage, some capture a narrow vista of the sea.



The south elevation

The southern part of the site faces an existing low scale substation and residential flat building beyond with a landscaped pool area between.





Adjacent Residential Flat Building to west



Dungowan Lane and Sebel dock to east







Adjacent Commercial Building & Sebel Hotel

PRINCIPLE 2 - BUILT FORM & 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.

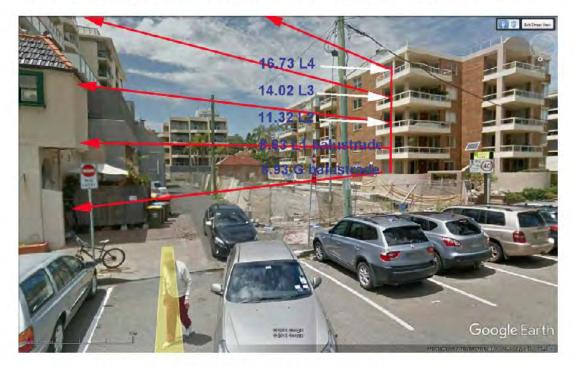
The proposal is within the maximum height limit prescribed in the LEP. The façades are layered and broken up to read as a juxtaposition of various scaled elements both horizontally & vertically. This provides the facades a rhythm an apparent smaller scale which promotes a relationship & dialog with the adjacent residential flat buildings and terraces to the north.



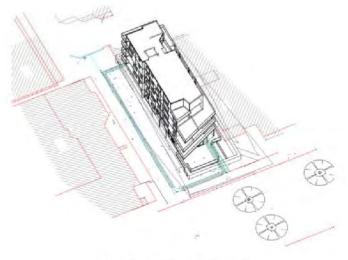
The upper levels are set-back and recessive to minimize the street front scale.



The building envelope has been maintained in accordance with the existing development to retain neighboring sight lines diagonally across the front of the sight. (Ref view analysis report.) The new floor levels have been adjusted to comply with the ADG and match approximately those of this neighboring apartment building



Neighboring sight line to beach matches building setback line.



View plane - aligned balconies



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.

The proposal complies with the floor space ratio provisions of the LEP and separation distances outlined in the ADG and council DCP set back provisions. The design responds to the shape and opportunities of the site and has consideration to adjacent development. The yield of 13 units (DA) reduced to 11 (s96) custom designed owner occupier apartments with a greater proportion of family sized apartments. The scale and density is appropriate given the surrounding residential typology which extends through to the Manly Corso commercial village, high rise hotel accommodation and serviced apartments facing the surf beach. This density has characterized the South Steyne and Harbor Ferry interchange precinct for half a century and continues to be a tourism and recreational destination for greater Sydney..

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 live ability 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.

The building is designed to embrace the principles of Environmentally Sustainable Design and to meet the targets set out in the Building and Sustainability Index (BASIX). This involves the careful selection of electrical appliances, light fittings, sanitary fittings, building materials, design of window openings, orientation and shading. The proposal meets the solar access & ventilation targets set-out in the ADG. Allowance has been made for solar array construction at roof level for Body Corporate adoption in the future.

PRINCIPLE 5 - LANDSCAPE

Good design recognizes 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 neighborhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimizes usability, privacy and opportunities for social interaction, equitable access, respect for neighbors' amenity, provides for practical establishment and long term management.

The building has been designed to provide landscaping at the footpath level and entry for ground floor privacy consistent with street character and northern outlook. At higher levels , balcony screening between adjoining neighbors to the west is built in for serviceability by the relevant strata owners...minimizing body corporate maintenance.

The landscape design to the ground level communal area is largely directional to the lift lobby and provides privacy to the ground level apartment



PRINCIPLE 6 - AMENITY

Good design positively influences internal and external amenity for residents and neighbors. 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.

Where possible, apartment layouts have been designed with the living areas directly on the façade with a north facing balcony. This maximizes the opportunity for solar access & natural light.

The proposal achieves the targets of the Rule of Thumb in the Apartment Design Guide: for 9 of 11 units

Amenity item	Achieved	ADG Rule of Thumb
Cross flow ventilation	80%	60%
Solar access of 2 hours	81%	70%
in mid-winter		

Individual apartments have been configured to achieve the separation distances between buildings as described within the ADG. Furniture layouts have been included on the plans that show that each room has ample space for the designated function. Built in storage has been provided in each unit and is measured and illustrated on the unit plans and is in accordance with the ADG. A maximum of 50% of external storage is provided in the basement divided up into 11 cages of approx. 10.0m3 cubic metres each . There is direct lift access to each floor including the basements and common lobby areas. 2 adaptable car spaces (20%) have been provided as previously approved. A visitor bicycle rack is located off the main residential entry. A spreadsheet of unit sizes, bedrooms, parking numbers shows the compliance with SEPP65 issues of solar access, cross-flow ventilation, balcony size and storage. The design meets or exceeds the minimum sizes for apartments, living room widths, bedroom areas & robe sizes.

PRINCIPLE 7 – SAFETY

Good design optimizes 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 maximize 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.

The proposed layouts of the building apartments and balconies have been designed to provide natural passive surveillance of both the public domain to Dungowan Lane and Victoria Parade. Surveillance of common lobby, visitor parking, driveway ramp and open spaces will be under CCTV record. An appropriate security access system will be incorporated within the entry lobbies and basement parking level. Pedestrian areas have good clear lines of sight to minimize hiding places for potential attack. Vehicular access is via ramps from Dungowan Lane and have a security roller shutter separated from basement parking.



PRINCIPLE 8 - SOCIAL DIMENSIONS

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.

The site is well located near public and community services and transport and can offer a life style that can be reasonably free from vehicles. The proposal is for 11 x one bedroom units, 69 x two bedroom units and 8 x three bedroom units which will compliment and extend the diversity of accommodation within the area. Parking requirements are well catered for with bicycles, motorcycles and cars. 20% of apartments are adaptable in accordance with council's DCP; post-adaption layouts are included in the submission and have been reviewed by a suitable consultant to meet the Australian Standard. This allows a wide range of diverse lifestyles to be accommodated.

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.

The proposal creates a well-mannered building with materials and details that are an integral part of the aesthetic whilst maintaining a dialog with the adjacent built form and context. It reduces the scale of the proposal with the stepping of the façade balcony line. The upper setbacks and the distinct indentation are integrated into the form to create a layered façade which is then reinforced with a careful restrained selection of materials.

Mark Armstrong Principal and Director Registered Architect 18953