

# 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 17 JULY 2019**

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



**Peter Robinson**  
**Executive Manager Development Assessment**

**Panel Members**

|               |                          |
|---------------|--------------------------|
| Lesley Finn   | Chair                    |
| Brian Kirk    | Town Planner             |
| Annelise Tuor | Town Planner             |
| John Simmonds | 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 17 July 2019  
in the Council Chambers, Civic Centre, Dee Why  
Commencing at 1.00pm**

|            |  |          |
|------------|--|----------|
| <b>1.0</b> | <b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>  |          |
| <b>2.0</b> | <b>MINUTES OF PREVIOUS MEETING</b>   |          |
| 2.1        | Minutes of Northern Beaches Local Planning Panel held 3 July 2019  |          |
| <b>3.0</b> | <b>DEVELOPMENT APPLICATIONS .....</b>  | <b>5</b> |
| 3.1        | DA2019/0146 - 57 Warriewood Road, Warriewood - Construction of a dwelling house.....   | 5        |
| 3.2        | MOD2019/0051 - 23 Lauderdale Avenue, Fairlight - Modification of Development Consent DA2017/1304 granted for demolition works and construction of 4 attached dwellings and 4 lot torrens title subdivision ..... | 33       |
| 3.3        | DA2018/1886 - 10 Courtley Road, Beacon Hill - Demolition works and construction of a dwelling house .....  | 55       |
| 3.4        | DA2018/1761 - 24 Aitken Avenue, Queenscliff - Demolition works and construction of a residential flat building, and strata subdivision .....   | 83       |

## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 3 JULY 2019**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 3 July 2019 were adopted by the Chairperson and have been posted on Council's website.

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### 3.0 DEVELOPMENT APPLICATIONS

|                    |   |
|--------------------|---|
| ITEM 3.1           | DA2019/0146 - 57 WARRIEWOOD ROAD, WARRIEWOOD -<br>CONSTRUCTION OF A DWELLING HOUSE    |
| AUTHORISING MANGER | DANIEL MILLIKEN   |
| TRIM FILE REF      | 2019/382821   |
| ATTACHMENTS        | 1 <a href="#">↓</a> Assessment Report<br>2 <a href="#">↓</a> Site Plan and Elevations |

#### PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*.

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#### 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. DA2019/0146 for Construction of a dwelling house at Lot 1 DP 1206507, 57 Warriewood Road, Warriewood subject to the conditions and for the reasons set out in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|   |   |
|---|---|
| <b>Application Number:</b>                | DA2019/0146   |
| <b>Assessment by:</b>                     | Natalie Nolan, Nolan Planning Consultants (External Consultant) |
| <b>Land to be developed (Address):</b>    | Lot 1 Deposited Plan 1206507, 57 Warriewood Road, Warriewood    |
| <b>Proposed Development:</b>              | Construction of a Dwelling House                                |
| <b>Zoning:</b>                            | R3 Medium Density Residential                                   |
| <b>Development Permissible:</b>           | Yes   |
| <b>Existing Use Rights:</b>               | No  |
| <b>Consent Authority:</b>                 | Northern Beaches Council  |
| <b>Delegation Level</b>                   | Northern Beaches Local Planning Panel                           |
| <b>Land and Environment Court Action:</b> | No  |
| <b>Owner:</b>                             | Richard and Michelle Elder                                      |
| <b>Applicant:</b>                         | Rawson Homes  |
| <b>Application lodged:</b>                | 19/02/19  |
| <b>Integrated Development</b>             | No  |
| <b>Designated Development</b>             | No  |
| <b>State Reporting Category</b>           | Residential – single new detached dwelling                      |
| <b>Notified:</b>                          | 10/06/19-24/06/19   |
| <b>Advertised:</b>                        | Not Advertised  |
| <b>Submissions:</b>                       | 0   |
| <b>Recommendation:</b>                    | Approval with conditions  |
| <b>Estimated Cost of Works</b>            | \$424,830   |

### EXECUTIVE SUMMARY

An application was received on 19 February 2019 for the construction of a new dwelling. There were no submissions in objection received by Council.

This application has been assessed by an external consultant and is referred to the Northern Beaches Local Planning Panel, as the owner of the site is a member of Council Staff who is principally involved in the exercise of Council's functions under the Environmental Planning and Assessment Act 1979.

The application is recommended for approval subject to 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**

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements  
 Pittwater 21 Development Control Plan - C1.23 Eaves  
 Pittwater 21 Development Control Plan - D16.7 Side and Rear Building Lines  
 Pittwater 21 Development Control Plan - D16.5 Landscaped Area for Newly Created Individual Allotments  
 Pittwater 21 Development Control Plan - D16.13 Building colours and materials

## **SITE DESCRIPTION**

|                                   |   |
|-----------------------------------|---|
| <b>Property Description:</b>      | Lot 1 in Deposited Plan 1206507, 57 Warriewood Road, WARRIEWOOD NSW 2102  |
| <b>Detailed Site Description:</b> | The subject site is identified 57 Warriewood Road (Lot 1 in Deposited Plan 1206507). The subject site is generally rectangular in shape with a total area of 372.6m <sup>2</sup> . The site has a frontage of 16.835m to Warriewood Road. The site is currently vacant, undeveloped land. The site falls from the street frontage towards the rear boundary with a total fall of approximately 1.2m. Areas to the north and east of 29 and 31 Warriewood Road consist of predominantly low-density residential housing. Surrounding the |

|  |   |
|--|---|
|  | subject site there are a number of larger allotments, several of which have been recently subdivided and/or are in the process of being subdivided. |
|--|---|

Map:



## SITE HISTORY

Development Application (N0182/13) for the demolition of existing structures, subdivision of two existing lots to create 40 residential allotments and associated infrastructure was approved by the Land Environment Court on 23 October 2014. This application relates to Lot 1 in the approved subdivision.

An application to modify the above Development Application (N0182/13/S96/1) to modify the s94 contributions and staging of such contributions was approved on 03/08/2015.

A further application (N0182/13/S96/2) to modify the s94 contributions was refused by Council and dismissed by the Land & Environment Court on Appeal on 31/07/2015.

Mod2017/0344 for modification to the staging was lodged with Council on 21/12/2017 and approved by Council on 27/04/2018.

Mod2018/0617 was lodged on 14/11/2018 and sought to reduce the area of the creekline corridor land that was to be dedicated to Council. This application was approved on 12 March 2019.

#### **PROPOSED DEVELOPMENT IN DETAIL**

The proposal seeks approval for the construction of a new two storey dwelling and attached garage.

The new dwelling is to be constructed of a mixture of face brickwork and cladding with a metal roof. The dwelling is to be provided with a setback to the street frontage which ranges from 6.582m. Setbacks of at least 0.95m and 2.362m are provided to the sites eastern and western boundaries, respectively.

The dwelling will comprise of formal entry, kitchen, dining room, family/meals room, powder room, laundry and WC on the ground floor level. The upper level provides for 3 bedrooms, ensuite, study and a bathroom.

Associated landscaping, retaining walls and stormwater drainage works are proposed as part of this application.

In consideration of the application a review of (but not limited to) documents as provided by the applicant in support of the application was taken into account

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

| <b>Section 4.15 Matters for Consideration</b>   | <b>Comments</b>   |
|---|---|
| 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  | The Pittwater Development Control Plan applies to this proposal.  |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement   | None applicable.  |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, enables Council to request additional information. Additional information was not requested.</p> |



| Section 4.15 Matters for Consideration   | Comments   |
|--|--|
|  | <p>Clause 92 of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. The proposal does not require any demolition works and therefore this is not applicable.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>  |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) <b>Environmental Impact</b><br/>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development   | The site is considered suitable for the proposed development.  |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs   | See discussion on “Notification & Submissions Received” in this report.  |
| Section 4.15 (1) (e) – the public interest   | No matters have arisen in this assessment that would justify the refusal of the application in the public interest.  |

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process Council did not receive any submissions.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

| Internal Referral Body             | Comments   |
|------------------------------------|--|
| Biodiversity                       | The proposal has been assessed against Pittwater LEP 7.6 and DCP B4.4. A Landscape Plan was provided (L/01 prepared by A Total Concept dated 20/12/2018). The control requires 60% of plantings to be from the "Lowlands" vegetation type in the Native Gardening booklet available on Council's website. DCP C1.1 required canopy tree planting. The Landscape Plan is supported as it includes a number of native species that are consistent with the Lowlands vegetation type.<br>Recommended for approval   |
| Coastal                            | The subject land has not been included on the Coastal Vulnerability Area Map under State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) and in regard to CM SEPP the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.<br>Recommended for approval  |
| Flood                              | The proposed development generally complies with Council's DCP & LEP.<br>Recommended for approval  |
| Water Management Referral Response | This application is recommended for approval with conditions. The rainwater tank is required to have 25% of volume for OSD storage.<br>"lot based rainwater tanks (3KL for all 40 lots) of which 25% will be utilized as OSD storage" (Page 4, Water Management Report, 29-31 Warriewood Road Iss 2 May 2016)<br>The rainwater tank configuration detail shown on the Site Stormwater Management Layout plan must be updated to comply with this requirement.<br>Sediment and erosion controls must be installed prior to any work on site and maintained until groundcover is re-established. Particular care should be taken to ensure sediment from the site does not enter the street drains or the stormwater pit on the site, as this will impact the bio-retention basin for 29-31 Warriewood Road. |
| Landscape Referral Response        | The landscape component of the proposal is acceptable subject to completion of landscaping and the protection of existing street trees. Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Controls:<br>B4.22 Preservation of Trees and Bushland Vegetation<br>C1.1 Landscaping   |

| Internal Referral Body        | Comments  |
|-------------------------------|---|
|                               | D16.5 Landscaped Area for Newly Created Individual Allotments<br>D16.12 Fences<br>Recommended for Approval        |
| Engineering Referral Response | No objections to the proposed dwelling subject to conditions.<br>Recommended for approval, subject to conditions. |

| External Referral Body | Comments  |
|------------------------|---|
| Ausgrid: (SEPP Infra.) | The proposal was referred to Ausgrid. Ausgrid consents to the development subject to conditions which have been included in the recommendation. |

### 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 vacant for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

#### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 904684S\_02) dated 2 November 2019. A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

#### SEPP (Infrastructure) 2007

##### Ausgrid

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



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

Comment:

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

**PITTWATER LOCAL ENVIRONMENT PLAN 2014**

|  |     |
|--|-----|
| Is the development permissible?  | Yes |
| After consideration of the merits of the proposal, is the development consistent with: |     |
| Aims of the LEP?   | Yes |
| Zone objectives of the LEP?  | Yes |

Principal Development Standards

| Standard            | Requirement | Proposed | Complies |
|---------------------|-------------|----------|----------|
| Height of Buildings | 10.5m       | 6.65m    | Yes      |

Compliance Assessment

| Clause  | Compliance with Requirements |
|---|------------------------------|
| 1.9A Suspension of covenants, agreements and instruments, | Yes                          |
| 4.3 Height of Buildings                                   | Yes                          |
| 5.10 Heritage Conservation                                | Yes                          |
| 6.1 Warriewood Valley Release Area                        | Yes                          |
| 7.1 Acid Sulfate Soils                                    | Yes                          |
| 7.2 Earthworks  | Yes                          |
| 7.3 Flood Planning  | Yes                          |
| 7.6 Biodiversity Protection                               | Yes                          |
| 7.10 Essential Services                                   | Yes                          |

**PITTWATER 21 DEVELOPMENT CONTROL PLAN**

Built Form Controls

| Built Form Control  | Requirement                 | Proposed                             | Variation | Compliance |
|---------------------|-----------------------------|--------------------------------------|-----------|------------|
| Front Building Line | 6.5m to dwelling and garage | 6.5m to wall of dwelling and garage. | N/A       | Yes        |

|                    |   |                            |      |     |
|--------------------|---|----------------------------|------|-----|
|                    | 5.0m to articulation zone               | 5.4m to articulation zone  |      |     |
| Rear Building Line | 4m to ground level<br>6m to upper level | 5.364m                     | N/A  | Yes |
| Side Building Line | 2.5m                                    | 2.362m                     | 7.2% | No  |
|                    | 0.9m                                    | 0.95m                      | N/A  | Yes |
| Landscaped Area    | 45%                                     | 40.5% or 151m <sup>2</sup> | 9.9% | No  |
| Private Open Space | 24m <sup>2</sup>                        | >24m <sup>2</sup>          | N/A  | Yes |

#### Compliance Assessment

| Clause   | Compliance with Requirements | Consistency Aims/Objectives |
|--|------------------------------|-----------------------------|
| A1.7 Considerations before consent is granted                      | Yes                          | Yes                         |
| A4.16 Warriewood Valley Locality                                   | Yes                          | Yes                         |
| A5.1 Exhibition, Advertisement and Notification of Applications    | Yes                          | Yes                         |
| B1.3 Heritage Conservation - General                               | Yes                          | Yes                         |
| B1.4 Aboriginal Heritage Significance                              | Yes                          | Yes                         |
| B3.6 Contaminated Land & Potentially Contaminated Land             | Yes                          | Yes                         |
| B3.11 Flood Prone Land   | Yes                          | Yes                         |
| B3.13 Flood Hazard – Flood Emergency Response Planning             | Yes                          | Yes                         |
| B6.3 Off-Street Vehicle Parking Requirements                       | No                           | Yes                         |
| B8.1 Construction and Demolition - Excavation and Landfill         | Yes                          | Yes                         |
| B8.2 Construction and Demolition - Erosion and Sediment Management | Yes                          | Yes                         |
| B8.3 Construction and Demolition - Waste Minimisation              | Yes                          | Yes                         |
| B8.4 Construction and Demolition - Site Fencing and Security       | Yes                          | Yes                         |
| B8.5 Construction and Demolition – Works in the Public Domain      | Yes                          | Yes                         |
| C1.3 View Sharing  | Yes                          | Yes                         |
| C1.12 Waste and Recycling Facilities                               | Yes                          | Yes                         |
| C1.13 Pollution Control  | Yes                          | Yes                         |
| C1.23 Eaves  | No                           | Yes                         |
| C6.2 Natural Environment and Landscaping Principles                | Yes                          | Yes                         |

| Clause  | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| C6.3 Ecologically Sustainable Development, Safety and Social Inclusion                | Yes                          | Yes                         |
| C6.5 Utilities, Services and Infrastructure Provision                                 | Yes                          | Yes                         |
| D16.1 Character as viewed from a public place   | Yes                          | Yes                         |
| D16.5 Landscaped Area for Newly Created Individual Allotments                         | No                           | Yes                         |
| D16.6 Front Building Line   | Yes                          | Yes                         |
| D16.7 Side and Rear Building Lines  | No                           | Yes                         |
| D16.9 Solar Access  | Yes                          | Yes                         |
| D16.10 Private and Communal Open Space  | Yes                          | Yes                         |
| D16.11 Form of construction including retaining walls, terracing and undercroft areas | Yes                          | Yes                         |
| D16.12 Fences   | Yes                          | Yes                         |
| D16.13 Building Colours and Materials   | No                           | Yes                         |

#### Detailed Assessment

#### **B6.3 Off-Street Vehicle Parking Requirements**

The off-street vehicle parking requirements state that a minimum of 2 vehicle parking spaces are to be provided for a dwelling with 2 or more bedrooms. The proposed double garage measured at 5.5 metre x 5.5 metre. As the control requires that for an enclosed garage the internal dimension be 5.7 metre x 6.0 metre for 2 adjacent vehicles, the proposed double garage is technically non-compliant with this control. The internal dimensions of the double garage do however meet the minimum requirements as established in current Australian Standards. The garage being designed within the built form of the development also addresses the outcomes for safe and convenient parking as well as minimising rainwater runoff. The proposed development is therefore considered to meet the outcomes of this clause and the non-compliance is supported on merit.

#### **C1.23 Eaves**

The proposal provides for a parapet style roof form and therefore eaves have not been provided. However the proposal achieves the requirements for BASIX.

#### **D16.13 Building colours and materials**

The proposed external colours 'Crisp White' and 'Wise Owl' are not authorised. A recommended condition will be placed in order to ensure that the development complies with the requirement for dark and earthy tones under this control.

#### **D16.5 Landscaped Area for Newly Created Individual Allotments**

Required Landscape Area: 45% or 167.67m<sup>2</sup>

Proposed Landscape Area: 40.5% or 151m<sup>2</sup>

Proposed Landscape Area (including all areas where plants, grasses and trees can grow): 55.6% or 207.29m<sup>2</sup>.

The proposed development is technically non-compliant with the control that requires 45% of the total site area to be dedicated for landscaping. The proposal seeks to vary this control with a non-compliance of approximately 16m<sup>2</sup>. The minimum dimensions of 4m for landscaped area under this clause is difficult to achieve due to constraints of the site, notably due to the minimum allotment size. Landscape area as defined under the Pittwater LEP 2014 means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area. When landscaping is calculated on this basis, the total landscaped area is 55.6%. The landscape setting will also be enhanced with native plantings and canopy trees located in the front and rear yard. This will assist in blending the new development into the streetscape and surrounding character of the locality, while also providing for reasonable levels of privacy to be maintained between the development site and neighbouring properties. While there remains a non-compliance, the proposal in this instance is considered to satisfy the outcomes of this clause and is supported on its merits.

The proposal is considered against the Outcomes of the Control as follows:

- *Conservation of significant natural features of the site and contribution to the effective management of biodiversity.*

Comment: The subject site is relatively level and does not comprise any significant vegetation. The proposed development incorporates a landscape plan which incorporates detailed landscaping of the site including 3 canopy trees which can achieve 8m in height. The proposal will improve the landscaped character of the locality.

- *Warriewood Valley achieves a unified and high quality landscape character that contributes to the sense of place.*

Comment: The proposed development incorporates a landscape plan which incorporates detailed landscaping of the site including 3 canopy trees which can achieve 8m in height. Two of these trees are located within the front setback with shrubs located around the perimeter of the site. The proposal will improve the landscaped character of the locality.

- *Landscaping promotes ecologically sustainable outcomes, maintaining and enhancing biological diversity and ecological processes.*

Comment: The subject site is currently vacant and does not support any significant vegetation. The proposal will provide for the landscaping of the site including 3 canopy trees. As a result of the proposed development will enhance the biological diversity of the locality.

- *The area of site disturbance is minimised.*

Comment: The landscaped area (including areas less than 4m in dimension) equates to 55.63% of the site thereby ensuring site disturbance is minimised. The proposal provides for detailed landscaping of the site.

- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

Comment: All collected stormwater will be discharged into the existing easement in accordance with Council controls. The proposed landscaping will prevent soil erosion.

- *Landscaped areas should be predominately areas of deep soil.*

Comment: The proposed landscaped areas are considered to be deep soil, with two large areas provided, one within the rear yard and the other within the front setback. These areas are appropriately landscaped including 3 canopy trees.

- *New development is blended into the streetscape and neighbourhood through the retention and enhancement of vegetation.*

Comment: The subject site is currently vacant and does not comprise any significant vegetation. The proposal incorporates landscaping which will enhance the landscaped character of the locality. The landscaping includes 2 canopy trees within the front setback and an additional tree in the rear yard. This will provide for an appropriate presentation to the streetscape.

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

Comment: The proposal provides for an appropriate level of privacy to the adjoining properties. This has been achieved by locating all high use areas on the ground level with only bedrooms, bathrooms and a study upstairs. The first floor level is provided with increased setbacks to the side boundaries and provides for limited well placed windows on the side elevations. The proposal does not rely on landscaping to provide privacy.

In summary it is considered that the minor non-compliance with the controls of this clause do not result in any adverse impacts and the proposal achieves the outcomes of the clause.

#### **D16.7 Side and Rear Building Lines**

##### Side Building Line

Required: 2.5m to one side and 0.9m to the other.

Proposed Dwelling: 2.362m to one side and 0.95m to the other

The DCP requires a setback of 0.9m to one side boundary and 2.5m to the other side boundary. The proposal provides for a setback of 0.95m to the eastern boundary and 2.362m to the western boundary. Therefore, there is a minor non-compliance of 0.138m to the western boundary. The proposal is considered against the Outcomes of the Control as follows:

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

Comment: It is considered that the desired future character of the Warriewood Valley locality will be achieved. The non-compliance is very minor, being only 138mm for a very small portion of the dwelling with the non-compliance reducing towards the front of the dwelling. The proposal will retain the low-density character and does not result in the removal of any significant vegetation. The proposal complies with the building height controls and colours will harmonise with the natural environment.

- *The area of site disturbance is minimised and soft surface is maximised.*

Comment: The proposed dwelling provides for sufficient area of landscaping to ensure appropriate soft surface.



- *The bulk and scale of the built form is minimised and the impact of the proposed development on the adjoining properties is minimised.*

Comment: The proposed dwelling provides for an appropriate bulk and scale. The proposal presents as a two storey dwelling with a bulk that is compatible with the existing surrounding development. The development is well articulated particularly when viewed from the street. The minor non-compliance with the setback control does not result in a dwelling of unreasonable bulk or scale.

- *To create meaningful breaks between adjoining buildings and regular rhythm of built form, particularly with regard to the built forms presentation to public places.*

Comment: The non-compliance is very minor being only 138mm. A landscape plan has been provided detailing appropriate landscaping on site. The proposal provides an appropriate separation to the potential adjoining built form.

- *To create usable curtilage areas around buildings for viable access, landscaping and open space.*

Comment: There is sufficient area around the dwelling for access to the rear yard, some landscaping and sufficient open space to meet the numerical requirements of Council.

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

Comment: The proposed two storey dwelling does not obstruct any significant views from public or private places.

- *Vegetation and natural features of the site is retained and enhanced within the development site design to screen the visual impact of the built form.*

Comment: The site is currently vacant and does not require the removal of any vegetation. There is sufficient area on site for the provision of landscaping including larger trees.

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

Comment: The proposal provides for all high use living areas on the ground floor with only bedrooms and bathrooms on the upper level. The upper level is provided with increased setback to the side boundary (5.366m) which ensures appropriate visual separation. Any views from the proposed windows on the western ground floor elevation which serve the dining and kitchen will be obstructed by standard boundary fencing. The proposal will maintain a reasonable level of privacy to the adjoining properties.

In summary it is considered that the minor non-compliance with the controls of this clause do not result in any adverse impacts and the proposal achieves the outcomes of the clause.

#### **D16.12 Fencing**

The proposed landscape plan depicts 1.8m high lapped and capped boundary fencing along the side and rear boundaries of the site. Consent from adjoining property owners have not been obtained for the construction of boundary fencing. A condition of consent is included in the recommendation requiring the plans to be amended to remove the proposed fencing.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **POLICY CONTROLS**

##### **Pittwater Section 94 Council Contributions Plan for Residential Development**

Not applicable to the proposed development

#### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater 21 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 DA2019/0146 for the construction of a dwelling house on land at Lot 1 in DP 1206507, No. 57 Warriewood Avenue, Warriewood, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. Approved Plans and Supporting Documentation

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

##### a) Approved Plans

| Architectural Plans – Endorsed with Council's stamp |          |              |
|---|----------|--------------|
| Drawing No.   | Dated    | Prepared By  |
| DRWG No. 02, Issue D (Site Plan)                    | 20.06.17 | Rawson Homes |
| DRWG No. 03, Issue D (Ground Floor Plan)            | 20.06.17 | Rawson Homes |
| DRWG No. 04, Issue D (First Floor Plan)             | 20.06.17 | Rawson Homes |
| DRWG No. 05, Issue D (Elevations 1 & 2)             | 20.06.17 | Rawson Homes |
| DRWG No. 06, Issue D (Elevations 3 & 4)             | 20.06.17 | Rawson Homes |
| DRWG No. 07, Issue D (Section)                      | 20.06.17 | Rawson Homes |

| Engineering Plans                                       |          |             |
|---|----------|-------------|
| Drawing No.   | Dated    | Prepared By |
| SW18290-S1, Issue A – Site Stormwater Management Layout | 19.09.18 | ALW Design  |

| Reports / Documentation – All recommendations and requirements contained within: |                 |                          |
|--|-----------------|--------------------------|
| Report No. / Page No. / Section No.  | Dated           | Prepared By              |
| BASIX Certificate No. 904684S_02   | 2 November 2018 | Energy Ratings Australia |
| NatHERS Certificate, 0002482768-01   | 2 November 2018 | Energy Ratings Australia |

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

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

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

| Landscape Plans                   |          |                 |
|-----------------------------------|----------|-----------------|
| Drawing No.                       | Dated    | Prepared By     |
| DWG #L/01 Landscape Plan          | 20.12.18 | A Total Concept |
| DWG #L/02 Landscape Details       | 20.12.18 | A Total Concept |
| DWG #L/03 Landscape Specification | 20.12.18 | A Total Concept |



| Reports / Documentation – All recommendations and requirements contained within: |                  |                  |
|--|------------------|------------------|
| Report No. / Page No. / Section No.  | Dated            | Prepared By      |
| Waste Management Plan  | 28 November 2017 | Rawson Homes P/L |

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

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

## 2. Compliance with other Department, Authority or Service Requirements

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

| Other Department, Authority or Service | EDMS Reference            | Dated         |
|--|---------------------------|---------------|
| Ausgrid                                | Response Ausgrid Referral | 20 March 2019 |

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

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

## 3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited. Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and

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

In this clause, allotment of land includes a public road and any other public place.  
Reason: Legislative Requirement (DACPLB09)

#### 4. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments

Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

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

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

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

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

**FEES / CHARGES / CONTRIBUTIONS****5. Security Bond**

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

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

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

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

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE  
CONSTRUCTION CERTIFICATE****6. Fencing**

The Landscape Plan shall be amended to delete any reference to boundary fencing. Boundary fencing is not approved as part of this application.

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

Reason: To ensure compliance with the Dividing Fences Act.

**7. Rainwater tank OSD**

The rainwater tank configuration detail shown on the Site Stormwater Management Layout plan must be updated to comply with the Water Management Report (Construction Certificate Stage) for 29-31 Warriewood Road Issue No. 2 May 2016, which states that: "source control includes...lot based rainwater tanks (3KL for all 40 lots) of which 25% will be utilized as OSD storage" (Page 4).

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

Reason: To reduce flooding impacts

**8. Stormwater Disposal**

Engineering Plans in accordance with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2:1998 - Stormwater Drainage – Acceptable solutions are to be submitted and certified by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate



adjacent catchments. Stormwater shall be conveyed from the site to the interallotment drainage easement.

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

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

#### 9. Compliance with Standards

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

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

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

#### 10. External Colours and Materials

The external colours and materials shall be dark and earthy tones, non-glare and of low reflectivity. White, light coloured, red or orange roofs and walls are not permitted. The external finish to the roof shall have a medium to dark (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted. A satisfactory specification which achieves this shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate in the form of a Schedule of Finishes.

Reason: To ensure the external colours and materials comply with Council's requirements

#### 11. 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](http://www.sydneywater.com.au) for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

#### 12. Structural Adequacy and Excavation Work

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

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

**13. 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

**14. 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.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

**15. 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**

**16. Street tree protection**

A) All existing street trees shall be retained during the works, including any street tree within the estate,

B) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,
- ii) each street tree along Warriewood Rd shall be protected by the installation of tree guards consisting of 4 h/w posts and top and mid rails, with shade cloth wrapping attached,

- iii) existing tree guards in place shall be maintained in good condition for the duration of the works,
- iv) to minimise the impact on street trees to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of any street tree required to be retained.

Reason: to retain and protect tree planting on development sites.

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

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prepared by Rawson Homes 20 June 2017, with particular attention paid to protecting the existing stormwater pit on the property.

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

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

**18. Building materials, sedimentation**

No building materials or other materials are to be placed on or enter areas of bushland, wetland, saltmarsh, seagrass or foreshore vegetation. Appropriate sediment fencing is to be installed.

Reason: Environmental Protection

**19. Road Reserve**

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

Reason: Public Safety.

**20. Vehicle Crossings**

The provision of one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ Normal and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

**21. 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.

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

**22. Landscape works**

Landscaping shall be completed in accordance with the Landscape Plan(s) L/01 and L/02 as prepared by ATC Landscape Architects, inclusive of the following requirements:

- i) the nominated tree planting shall be planted at minimum 75 litre size. Each tree planted is to have a minimum area of 3 metres x 3 metres contained wholly within the site. Canopy trees are to be located a minimum of 5 metres from existing and proposed built structures,
- ii) plant specie selection is to be installed as per the nominated planting schedule,
- iii) fencing is not permitted forward of the front building line. Boundaries between public and private land shall be delineated by vegetation such as low hedges, garden beds or the like,

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

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

**23. Weed Removal and Management**

No weeds are to be imported on to the site. All invasive and priority weeds on the site are to be removed and managed continuously, in accordance with the Biosecurity Act 2015.

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

Reason: Weed management and biosecurity

**24. House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: Proper identification of buildings.

**25. Post-Construction Road Reserve Dilapidation Report**

The applicant must bear the cost of all restoration works to Council's property damaged during the course of this development. All building work must have been carried out in accordance with the provisions of the Building Code of Australia Note: Where by Council is not the Principal Certifying Authority, Refund of the trust fund deposit will also be dependent upon receipt of a final Occupation Certificate by the Principal Certifying Authority, Post Construction Dilapidation Report and infrastructure inspection by Council.

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

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

**26. Landscape maintenance**

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



materials/components and species to maintain the landscape theme of the landscape plan, and associated conditions.

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

**27. No Planting Environmental Weeds**

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

Reason: Weed management.

**28. 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.

In signing this report, declare that I do not have a Conflict of Interest.

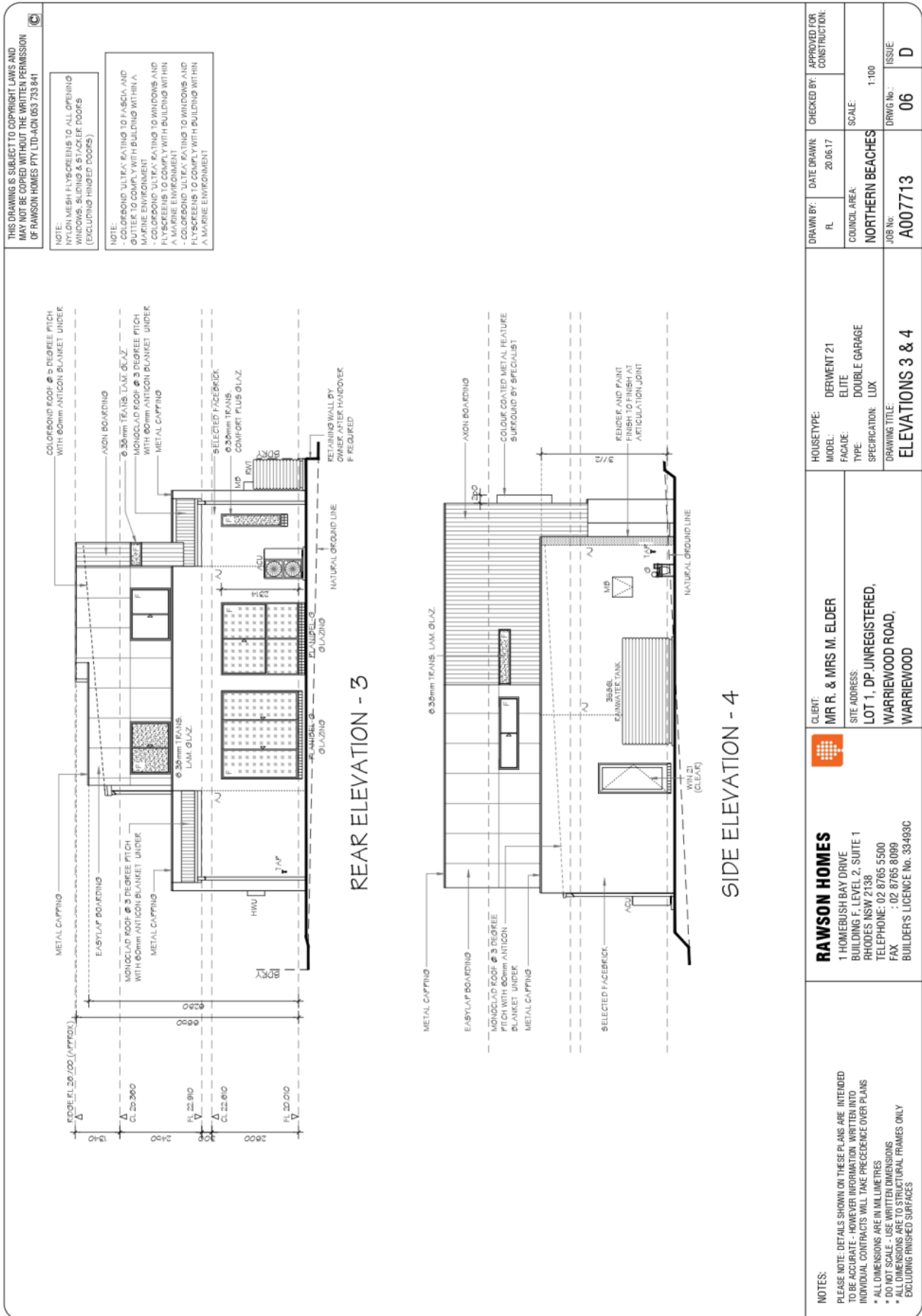
**Signed**

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**Natalie Nolan, External Consultant**







**ITEM 3.2**

**MOD2019/0051 - 23 LAUDERDALE AVENUE, FAIRLIGHT -  
MODIFICATION OF DEVELOPMENT CONSENT DA2017/1304  
GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION  
OF 4 ATTACHED DWELLINGS AND 4 LOT TORRENS TITLE  
SUBDIVISION**

**AUTHORISING MANAGER     STEVE FINDLAY**

**TRIM FILE REF                2019/382843**

**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 or decision made by a local planning panel.

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**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. MOD2019/0051 for Modification of Development Consent DA2017/1304 granted for demolition works and construction of 4 attached dwellings and 4 lot Torrens Title subdivision at Lot 1 DP 168846 & Lot 1 DP 1087552, 23 Lauderdale Avenue, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.

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## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

|                            |              |
|----------------------------|--------------|
| <b>Application Number:</b> | Mod2019/0051 |
|----------------------------|--------------|

|   |   |
|---|---|
| <b>Responsible Officer:</b>               | Thomas Prosser  |
| <b>Land to be developed (Address):</b>    | Lot 1 DP 1087552, 25 Lauderdale Avenue FAIRLIGHT NSW 2094<br>Lot 1 DP 168846, 23 Lauderdale Avenue FAIRLIGHT NSW 2094                                     |
| <b>Proposed Development:</b>              | Modification of Development Consent DA2017/1304 granted for demolition works and construction of 4 attached dwellings and 4 lot torrens title subdivision |
| <b>Zoning:</b>                            | Manly LEP2013 - Land zoned R1 General Residential<br>Manly LEP2013 - Land zoned R1 General Residential  |
| <b>Development Permissible:</b>           | Yes   |
| <b>Existing Use Rights:</b>               | No  |
| <b>Consent Authority:</b>                 | Northern Beaches Council  |
| <b>Delegation Level:</b>                  | NBLPP   |
| <b>Land and Environment Court Action:</b> | No  |
| <b>Owner:</b>                             | Ann Maree Hreszczuk   |
| <b>Applicant:</b>                         | Ewhen Hreszczuk<br>Ann Maree Hreszczuk  |

|                                  |                              |
|----------------------------------|------------------------------|
| <b>Application lodged:</b>       | 14/02/2019                   |
| <b>Integrated Development:</b>   | No                           |
| <b>Designated Development:</b>   | No                           |
| <b>State Reporting Category:</b> | Residential - New multi unit |
| <b>Notified:</b>                 | 14/03/2019 to 01/04/2019     |
| <b>Advertised:</b>               | Not Advertised               |
| <b>Submissions Received:</b>     | 3                            |
| <b>Clause 4.6 Variation:</b>     | 4.3 Height of buildings: %   |
| <b>Recommendation:</b>           | Approval                     |

### EXECUTIVE SUMMARY

This report is submitted to the Local Planning Panel for the consideration of Modification Application No. MOD2019/0051 for four attached dwellings at 23 Lauderdale Avenue, Fairlight.

The site is known as 23 Lauderdale, Fairlight and has a total area of 472.6m<sup>2</sup>. The sites currently have a surveyed area of 472.6m<sup>2</sup> at 23 Lauderdale Avenue and 454.6m<sup>2</sup> at 25 Lauderdale Avenue.



The proposed dwellings are "attached dwellings" as defined under the Manly Local Environmental Plan (MLEP) 2013 and are permissible with consent in the R1 - General Residential zone. The proposed development has been assessed against the applicable planning controls for the site including the relevant provisions of the Manly LEP and DCP 2013.

The modified design provides a stepping in height so as to maintain a significant view corridor over the west of the subject site from 42 Lauderdale Avenue.

In the circumstances, the development provides an appropriate height for the attached dwellings and result in a positive outcome for the streetscape and locality. Therefore, the non-compliance with the building height development standard is not considered unreasonable and the variation does not result in any unreasonable impacts to adjoining and surrounding properties.

The application has also been assessed against the planning controls of the MDCP 2013, and whilst there is a further minor variations to the wall height control, this are found to be consistent with the relevant objectives and requirements. In this regard, the built form will integrate into the landscape, streetscape and will relate positively to adjoining and surrounding residential buildings.

The proposed development was notified and three submissions were received (in relation to views, amenity, aesthetic value, streetscape and access) which have been addressed in this report.

The assessment concludes that the proposed design is appropriate for the site and would not have any unreasonable impacts on views or any other unreasonable amenity or visual impact.

Therefore, it is recommended that the application be approved subject to conditions.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly 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)

## SITE DESCRIPTION

|                                   |   |
|-----------------------------------|---|
| <b>Property Description:</b>      | <p>Lot 1 DP 1087552 , 25 Lauderdale Avenue FAIRLIGHT NSW 2094</p> <p>Lot 1 DP 168846 , 23 Lauderdale Avenue FAIRLIGHT NSW 2094</p>  |
| <b>Detailed Site Description:</b> | <p>The subject site consists of 2 allotments located on the southern side of Lauderdale Avenue.</p> <p>The two lots form an irregular shape with a frontage of 11.885m along Bollingbroke Parade, 24.595m along Lauderdale Avenue and 44.925m along Arlington Drive. The sites currently have a surveyed area of 472.6mm<sup>2</sup> at 23 Lauderdale Avenue and 454.6m<sup>2</sup> at 25 Lauderdale Avenue.</p> <p>The site is located within the R1 General Residential zone and currently accommodates a 1-2 storey dwelling on each site.</p> <p>The site has a slope of 1- 2 metres from Bollingbroke Parade down to Arlington Drive.</p> <p>Each site has exiting vegetation scattered across the properties.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by a mix of residential dwellings and flat buildings.</p> |

Map:





## **SITE HISTORY**

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- DA5240/92- Alterations and additions determined by Council on 6 April, 1992. (23 Lauderdale Avenue, Fairlight.)
- DA2017/1304- The proposal is for demolition of the existing dwellings and construction of four attached dwellings with 4 lots subdivided under Torrens title subdivision along with landscaping and fencing approved by NBLPP 1 August 2018.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposed modification involves change in levels, increased height of the dwellings and reconfiguration of vehicular access to Unit 1. In detail, the change in levels results in the following height increases:

- Unit 1- Increase in height by 600mm
- Unit 2- Increase in height by 400mm
- Unit 3- Increase in height by 200mm
- Unit 4- No change in height

## **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 DA2017/1304, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

| <b>Section 4.55(1A) - Other Modifications</b>   | <b>Comments</b> |
|---|-----------------|
| A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the |                 |

| <b>Section 4.55(1A) - Other Modifications</b>  | <b>Comments</b>   |
|--|---|
| regulations, modify the consent if:  |   |
| (a) it is satisfied that the proposed modification is of minimal environmental impact, and   | <b>Yes</b><br>The modification, as proposed in this application, is considered to be of minimal environmental impact.   |
| (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and  | 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 DA2017/1304.   |
| (c) it has notified the application in accordance with:<br><br>(i) the regulations, if the regulations so require, or<br><br>(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, Manly Local Environment Plan 2013 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 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

| <b>Section 4.15 'Matters for Consideration'</b>                                      | <b>Comments</b>  |
|--|--|
| 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   | <u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of |

| Section 4.15 'Matters for Consideration'   | Comments  |
|--|---|
| Regulation 2000 (EP&A Regulation 2000)   | <p>development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) <b>Environmental Impact</b><br/>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>  |
| Section 4.15 (1) (c) – the suitability of the site for the development   | The site is considered suitable for the proposed development.   |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs   | See discussion on “Notification & Submissions Received” in this report.   |
| Section 4.15 (1) (e) – the public interest   | No matters have arisen in this assessment that would  |

| Section 4.15 'Matters for Consideration' | Comments   |
|--|--|
|  | justify the refusal of the application in the public interest. |

### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

### NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 3 submission/s from:

| Name:                             | Address:                                    |
|-----------------------------------|---|
| Mrs Alison Bishop                 | 42 Lauderdale Avenue FAIRLIGHT NSW 2094     |
| Ms Andrea Margaret Hurzeler Cingi | 25 Woodland Road TERRIGAL NSW 2260          |
| Philp Hayward                     | 5 / 4 Fairlight Crescent FAIRLIGHT NSW 2094 |

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

- Views and amenity
- Aesthetic Value and Streetscape character
- Access to Arlington drive during construction and request construction vehicles are not parked in Arlington Drive

The matters raised within the submissions are addressed as follows:

- Views and amenity  
Comment:  
The maintenance in the approved height of unit 4 to retain the significant view corridor in this location and the higher slope in which dwellings are located on to the north-west, ensure that the proposal would not have an unreasonable impact on views. This has been further assessed in this report with consideration of the Land and Environment Court established planning principle for views.
- Aesthetic Value and Streetscape character  
Comment:  
As a result of existing landscaping, sufficient building modulation and setbacks from the street, the addition of height will not have an unreasonable impact in terms of presentation to the street or other aesthetic value.

- Access to Arlington drive during construction and request construction vehicles are not parked in Arlington Drive  
Comment:  
A Construction Traffic Management Plan was submitted with the original application. This document remains a part of this consent. This provides reasonable mitigation of impacts caused by Construction and Associated vehicles.

## REFERRALS

| Internal Referral Body         | Comments   |
|--------------------------------|--|
| NECC (Development Engineering) | The application proposed to raise the level of the building. Development Engineering has no objection to the application. No additional engineering condition is required. |

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

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

### SEPP 55 - Remediation of Land

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

### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 888671M\_02).

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

### 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 Buildings: | 8.5m        | 8.5m     | 9.1m     | N/A         | No (see comments) |

#### Compliance Assessment

| Clause                                 | Compliance with Requirements |
|--|------------------------------|
| Part 1 Preliminary                     | Yes                          |
| Part 4 Principal development standards | Yes                          |
| 4.3 Height of buildings                | No                           |
| 6.2 Earthworks                         | Yes                          |
| 6.4 Stormwater management              | Yes                          |
| 6.9 Foreshore scenic protection area   | Yes                          |
| 6.12 Essential services                | Yes                          |

#### Detailed Assessment

##### 4.3 Height of buildings

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 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 of 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 4.55 modification applications. Nevertheless, an assessment in relation to the related objectives of the variation is as follows:

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

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

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

Comment:

The proposal involves building bulk that is well separated and buffered from the surrounding streets to ensure the development is in keeping with the character of the area. Given the similar proposed building height as surrounding development and the varied roof forms for surrounding development, the

non-compliance with the building height development standard would not result in a undesirable outcome for the streetscape.

The development satisfies this objective.

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

Comment:

The proposed dwellings have an in-built garage with access to Arlington Drive and each dwelling has two levels above this garage. The top level is set further back from the street than the lower levels and balconies and planter boxes provide a visual buffer between the bulk of the development and the street. This provides a situation in which the additional height would not provide an unreasonable bulk and scale.

The development satisfies this objective.

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

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

Comment:

As a result of the topography of the surrounding land which involves a higher slope to the north-west, views for dwellings to the north-west are retained over the subject site. This is further contributed to by the maintenance in the approved height of unit 4 as a significant view corridor exists over the top of this unit.

The development satisfies this objective.

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

Comment:

The proposed modulation of the dwelling and adequate setbacks result in a circumstance in which the proposal would have no unreasonable impact on solar access. Additionally, there is no change to the proposed height of unit 4 so that there would be no unreasonable impact to the neighbouring dwelling at 14 Bollingbroke Parade.

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

Comment:

Not applicable

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with

the underlying objectives of the <insert zone> zone.

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

Comment:

The proposed development is for a residential use and is consistent with the objectives above.

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:

In this circumstance, providing flexibility to the building height development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the street context.

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

Comment:

It is appropriate to allow flexibility in this circumstance as an addition in building height can be made to the dwelling without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

### Manly Development Control Plan

#### Built Form Controls

| Built Form Controls - Site Area:<br>927.2m <sup>2</sup> (23 and 25 Lauderdale<br>Avenue); Lot 1: 248.2m, Lot 2: 208.7m,<br>Lot 3: 214.8m & Lot 4: 255.5m | Requirement                                     | Approved | Proposed | Complies              |
|--|---|----------|----------|-----------------------|
| 4.1.2.1 Wall Height  | North-East: 7.1m<br>(based on gradient<br>1:10) | 8.3m     | 8.9m     | No (see<br>comments)  |
|  | South-West: 6.9m<br>(based on gradient<br>1:15) | 7.9m     | 7.9m     | No (but no<br>change) |
| 4.1.2.3 Roof Height  | Height: 2.5m                                    | 1m       | 1.2m     | Yes                   |

#### 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                         |
| 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)  | Yes                          | Yes                         |
| 3.4.1 Sunlight Access and Overshadowing  | Yes                          | Yes                         |
| 3.4.2 Privacy and Security   | Yes                          | Yes                         |
| 3.4.3 Maintenance of Views   | Yes                          | Yes                         |
| 3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design) | Yes                          | Yes                         |
| 3.7 Stormwater Management  | Yes                          | Yes                         |
| 3.8 Waste Management   | Yes                          | Yes                         |
| 3.10 Safety and Security   | Yes                          | Yes                         |
| Part 4   | Yes                          | Yes                         |
| 4.1 Residential Development Controls   | Yes                          | Yes                         |
| 4.1.1.1 Residential Density and Dwelling Size  | Yes                          | Yes                         |
| 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)                     | No                           | Yes                         |
| 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)                                 | Yes                          | Yes                         |
| 4.1.7 First Floor and Roof Additions   | Yes                          | Yes                         |
| 5.4.1 Foreshore Scenic Protection Area   | Yes                          | Yes                         |

#### Detailed Assessment

#### **3.4.3 Maintenance of Views**

##### Merit consideration:

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

*Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

##### Comment:

The proposal is in a location in which views can be obtained to the south toward the harbor. As a result of the reasonable setbacks provided by the development and the location of the property, being down slope from dwellings to the north-west, the proposal provides an adequate outcome for view sharing.

*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 and in relation to the views at 42 Lauderdale Avenue,

Fairlight 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 views available are toward the harbour, over the top of the existing subject site. The views in this direction are partially obscured by existing development and three pine trees. Views either side of the subject side are more significantly obscured (as a result of taller buildings).

*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 are obtained from front balconies that are off living areas to the front of the property. Views can also be obtained from living room windows in these areas and from an upstairs study room window. The views from the upstairs area can be obtained from standing and sitting position. The views at the lower level can be obtained from a standing position but become more oblique from a sitting position.

*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:

As a result of the retention of the views from the upstairs area and the corridor of view retained over 'Unit 4,' the proposed impact is assessed as being minor.

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

Comment:

The proposal maintains a compliant building height for unit 4 within the development. At this location is where the significant view corridor for 42 Lauderdale Avenue exists. As a result of the retention of this corridor, the maintained opportunity to access views from the top level and minor impact, the proposal



is considered to be reasonable in terms of view sharing.

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

Comment:

The proposal provides a flat roof for each unit and maintains a reasonable corridor for views over the top of unit 4. As a result, the proposal provides appropriate minimisation in the loss of views.

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

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

Description of non-compliance

The proposal does not comply with the control for wall height at the north-eastern boundary. In this regard, the proposal provides a wall height of 8.9m and the numerical requirement for wall height in this location is 7.1m.

It is noted that the approved wall height is 8.3m and this also does not comply with the control.

Merit consideration:

With regard to the consideration for the variations, the development is considered against the underlying Objectives Height of building for the Manly LEP (as are stated are particularly relevant) of the controls as follows:

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

Comment:

The proposal involves building bulk that is well separated and buffered from the surrounding streets to ensure the development is in keeping with the character of the area. Given the similar proposed building height as surrounding development and the varied roof forms for surrounding development, the non-compliance with the building height development standard would not result in a undesirable outcome for the streetscape.

The development satisfies this objective.

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

Comment:

The proposed dwellings have an in-built garage with access to Arlington Drive and each dwelling has two levels above this garage. The top level is set further back from the street than the lower levels and balconies and planter boxes provide a visual buffer between the bulk of the development and the street.

This provides a situation in which the additional height would not provide an unreasonable bulk and scale.

The development satisfies this objective.

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

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

Comment:

As a result of the topography of the surrounding land which involves a higher slope to the north-west, views for dwellings to the north-west are retained over the subject site. This is further contributed to by the maintenance in the approved height of unit 4 as a significant view corridor exists over the top of this unit.

The development satisfies this objective.

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

Comment:

The proposed modulation of the dwelling and adequate setbacks result in a circumstance in which the proposal would have no unreasonable impact on solar access. Additionally, there is no change to the proposed height of unit 4 so that there would be no unreasonable impact to the neighbouring dwelling at 14 Bollingbroke Parade.

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

Comment:

Not applicable

The proposed development satisfies the underlying objectives of the clause.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **POLICY CONTROLS**

##### **Manly Section 94 Development Contributions Plan**

S94 Contributions are not applicable to this application.

## CONCLUSION

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

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

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

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

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

### Conclusions on the Assessment of the Application

The assessment of the proposed development against the provisions of MLEP 2013 found that the proposal does not comply with the 'Height of Building' Development Standard of 8.5m.

In this case, the four attached dwellings provide a design that provide height that appropriately maintains views and is consistent in style with existing form in the street. Furthermore, an assessment against the objectives of the clause have found the proposal to be reasonable.

In addition, the assessment of the proposed development against the provisions of the Manly DCP 2013 found that the proposal would result in a greater non-compliance to the wall height control at the north-east. Given the the character of the area and amenity outcome, assisted by a design which steps down to maintain views, some flexibility in applying this control is warranted. It is considered that the non-compliance will not have unreasonable amenity impacts for adjoining properties and are consistent with the streetscape character of the Locality.

Three (3) submissions were raised in response to the public notification and these were addressed in the section for 'Submissions.'

### Recommendation

In summary, the proposal should be approved as the design is reasonable for the site and locality by virtue of the supportable non-compliances that do not create any unreasonable amenity impacts. The proposed dwellings will integrate with the streetscape and the increase in height would not result in an

unreasonable view sharing outcome.

Therefore, the application is recommended for approval.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes the proper and orderly planning for the site or the locality.  
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0051 for Modification of Development Consent DA2017/1304 granted for demolition works and construction of 4 attached dwellings and 4 lot torrens title subdivision on land at Lot 1 DP 1087552, 25 Lauderdale Avenue, FAIRLIGHT, Lot 1 DP 168846, 23 Lauderdale Avenue, FAIRLIGHT, 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

| <b>Architectural Plans - Endorsed with Council's stamp</b> |              |                             |
|--|--------------|-----------------------------|
| <b>Drawing No.</b>   | <b>Dated</b> | <b>Prepared By</b>          |
| A004- Demo & Excavation Plan- Rev D                        | Feb 2019     | Mark Hurcum Design Practice |
| A101- Basement Floor Plan- Rev G                           | Feb 2019     | Mark Hurcum Design Practice |
| A102- Ground Floor Plan- Rev G                             | Feb 2019     | Mark Hurcum Design Practice |
| A103- First Floor Plan- Rev G                              | Feb 2019     | Mark Hurcum Design Practice |
| A104- Roof Plan- Rev G                                     | Feb 2019     | Mark Hurcum Design Practice |
| A106- Basement Floor Plan- Rev B                           | Feb 2019     | Mark Hurcum Design Practice |
| A201- Elevations - Rev H                                   | Feb 2019     | Mark Hurcum Design Practice |
| A202- Elevations - Rev E                                   | Feb 2019     | Mark Hurcum Design Practice |
| A203- Elevation Diagram - Rev C                            | Feb 2019     | Mark Hurcum Design Practice |
| A221- Section A-A & B-B - Rev E                            | Feb 2019     | Mark Hurcum Design Practice |
| A222- Site Section - Rev D                                 | Feb 2019     | Mark Hurcum Design Practice |

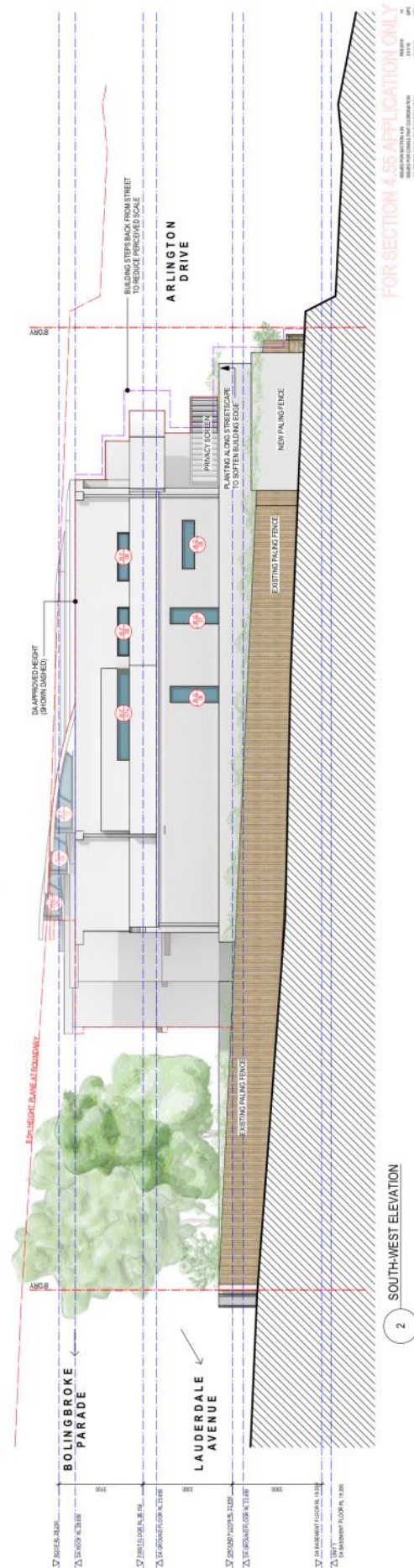
Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.







1 SOUTH-EAST ELEVATION



2 SOUTH-WEST ELEVATION

## ELEVATIONS

"RICHMOND TERRACES" A201 H  
1:100 @ A2  
JULY 2017  
23 - 25 LAUDERDALE AVENUE FAIRLIGHT

[illegible]





**ITEM 3.3****DA2018/1886 - 10 COURTLEY ROAD, BEACON HILL -  
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING  
HOUSE****AUTHORISING MANAGER ANNA WILLIAMS****TRIM FILE REF 2019/382856****ATTACHMENTS**  
**1** [↓](#) **Assessment Report**  
**2** [↓](#) **Site Plan and Elevations****PURPOSE**

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is a Member of Parliament (either the Parliament of NSW or Parliament of the Commonwealth).

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**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. DA2018/1886 for Demolition works and construction of a dwelling house at Lot 7 DP 238331, 10 Courtley Road, Beacon Hill subject to the conditions and for the reasons set out in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|   |   |
|---|---|
| <b>Application Number:</b>                | DA2018/1886   |
| <b>Responsible Officer:</b>               | Nick England  |
| <b>Land to be developed (Address):</b>    | Lot 7 DP 238331, 10 Courtley Road BEACON HILL NSW 2100    |
| <b>Proposed Development:</b>              | Demolition works and construction of a dwelling house     |
| <b>Zoning:</b>                            | Warringah LEP2011 - Land zoned R2 Low Density Residential |
| <b>Development Permissible:</b>           | Yes   |
| <b>Existing Use Rights:</b>               | No  |
| <b>Consent Authority:</b>                 | Northern Beaches Council                                  |
| <b>Delegation Level:</b>                  | NBLPP   |
| <b>Land and Environment Court Action:</b> | No  |
| <b>Owner:</b>                             | Frederick John Nile                                       |
| <b>Applicant:</b>                         | Planning Approvals  |
| <b>Application lodged:</b>                | 29/11/2018  |
| <b>Integrated Development:</b>            | No  |
| <b>Designated Development:</b>            | No  |
| <b>State Reporting Category:</b>          | Residential - Single new detached dwelling                |
| <b>Notified:</b>                          | 10/05/2019 to 24/05/2019                                  |
| <b>Advertised:</b>                        | Not Advertised  |
| <b>Submissions Received:</b>              | 3   |
| <b>Clause 4.6 Variation:</b>              | Nil   |
| <b>Recommendation:</b>                    | Approval  |
| <b>Estimated Cost of Works:</b>           | \$ 965,949.00   |

The application has been referred to the Northern Beaches Local Planning Panel (NBLPP) as the applicant is a member of Parliament (New South Wales).

The proposal consists of the demolition of the existing dwelling and the erection of a new dwelling, at No.10 Courtley Road, Beacon Hill.

Two (2) submissions were received during the first notification, raising issues of: privacy; overshadowing; visual impact; soil stability; and land contamination.

Amended plans were received from the applicant in response to correspondence sent to the applicant by Council on 18 February 2019. Council did not support the application for the reasons of: landscaped open space; rear setback; and privacy.



In the second notification period, one (1) submission was received, raising issue with privacy and overshadowing.

The amended plans have now addressed the relevant assessment issues to Council's satisfaction (as detailed in the report), with the exception of the impact of visual privacy. However, a condition of consent is recommended, to make minor amendments to the proposal to ensure this impact is mitigated to a reasonable degree. Approval of the application is therefore recommended.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Warringah Development Control Plan - B7 Front Boundary Setbacks  
Warringah Development Control Plan - B9 Rear Boundary Setbacks  
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
Warringah Development Control Plan - D6 Access to Sunlight  
Warringah Development Control Plan - D8 Privacy

## **SITE DESCRIPTION**

|                                   |  |
|-----------------------------------|--|
| <b>Property Description:</b>      | Lot 7 DP 238331 , 10 Courtley Road BEACON HILL NSW 2100  |
| <b>Detailed Site Description:</b> | <p>The subject site consists of one (1) allotment located on the southern side of Courtley Road, Beacon Hill.</p> <p>The site is irregular in shape with a surveyed area of 557.4m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p> |

The site has a north-easterly aspect with a slight slope towards the frontage.

Adjoining and surrounding development is characterised by dwelling houses with an irregular shaped allotment pattern, adjoining six (6) properties.

Map:



#### **SITE HISTORY**

The application is being referred to NBLPP as the applicant is a Member of the NSW Parliament.

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

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

#### **PROPOSED DEVELOPMENT IN DETAIL**

The application consists of the demolition of an existing dwelling house and the erection of a new two-storey dwelling house.

Correspondence was forwarded to the applicant on 18 February 2019, outlining Council's reasons for not supporting the application, based on the following matters:

- non-compliance with the minimum landscape open space controls under WDCP 2011;
- non-compliance with the minimum rear setback control under WDCP 2011; and
- adverse impact on the visual privacy of the adjoining dwelling at No.12 Courtley Road.

This correspondence also invited the applicant to provide amended plans, within 14 days of the date of the letter.

Amended plans were received on 16 April 2019. The amendments consisted of:

- deletion of the balcony from the east (side) elevation;
- relocation of Bedroom 1 and 3;
- minor re-arrangement of bathrooms and en-suites;
- new 1<sup>st</sup> floor balcony on east and south elevations;
- roof over rear patio; and
- additional landscaping adjoining the south and west elevations of the site.

### 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  | The <i>Warringah Development Control Plan 2011</i> (WDCP) applies to this proposal.   |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement   | None applicable.  |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, permits Council to request additional information and as a result considered the number of days taken in this assessment in light of this clause within the Regulations. Correspondence was forwarded to the applicant on 18 February 2019, outlining Council's reasons for not supporting the application. This correspondence also invited the applicant to provide amended plans, within 14 days of the date of the letter. The applicant has provided amended plans, which were provided on 16 April 2019.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is addressed via a condition of consent.</p> |

| Section 4.15 Matters for Consideration'  | Comments   |
|--|--|
|  | <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter is addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) <b>Environmental Impact</b><br/>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>  |
| Section 4.15 (1) (c) – the suitability of the site for the development   | The site is considered suitable for the proposed development.  |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs   | See discussion on "Notification & Submissions Received" in this report.  |
| Section 4.15 (1) (e) – the public interest   | No matters have arisen in this assessment that would justify the refusal of the application in the public interest.  |

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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



relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

| Name:                       | Address:   |
|-----------------------------|--|
| Mr Ru Jiang Wang            | C/- Henry Zhang 24 Barnes Avenue EARLWOOD NSW 2206 |
| Kenneth Bruce Smith         | 12 Courtley Road BEACON HILL NSW 2100              |
| Dennis Wong & Co Solicitors | PO Box 1552 CHATSWOOD NSW 2067                     |

The application was first notified during the periods of 5 December 2018 and 11 January 2019. Two (2) submissions were received during this notification period.

The second notification period was between 6 May 2019 and 24 May 2019. One (1) submission was received during this notification period.

The following issues were raised in all of the submissions and each have been summarised and addressed as below:

- *The proposal will have an adverse impact on the privacy of the adjoining dwelling at No. 14 Courtley Road.*

Comment: The property at No. 14 Courtley Road adjoins the subject site on the eastern (side) boundary, with its area of rear private open space adjoining this boundary. The amended plans have deleted the balcony on the south elevation, however the balcony for the relocated Bedroom 1 on the 1<sup>st</sup> floor will still be located on the east elevation. This balcony has a close proximity to the rear yard (2.3m) and its elevation above the rear yard (at least 5m), is likely to result in an adverse impact on the visual privacy of the property at No. 14 Courtley Road. Hence, a condition of consent is recommended, to reduce the length of the balcony and mitigate the impact on the visual and acoustic privacy of the adjoining property at No. 14 Courtley Road.

- *The proposal will have an adverse impact on the privacy of the adjoining dwelling at No. 12 Courtley Road.*

Comment: The submission received from this property was in relation to the original proposal, with no submission received in regard to the amended plans. The amended plans have now deleted the balcony on the east elevation which was in close proximity to the private open space of the property at No. 14 Courtley Road. Based on the amendments, no adverse impact on the visual privacy of the adjoining property at No. 12 Courtley Road is likely.

- *The proposal will have an adverse visual impact when viewed from the adjoining dwelling at No. 12 Courtley Road.*

Comment: In regard to the built form controls that would apply to the elevation that is visible from No. 12 (the east elevation), the proposal is generally compliant, with the exception of the landscaped open space control in WDCP 2011. This non-compliance is significant and would impede the objective of the controls which relates to mitigating the visual impact of new buildings. Therefore, this issue is considered valid and is included in the reasons of refusal of the application.



- *No details are provided of how the impacts of the demolition of the existing house will be managed.*

Comment: In the event that the application is approved, a condition of development consent would apply that would require the proponent to undertake the demolition of the existing house in accordance with the relevant Australian Standard for demolition. This standard would specify all required measures to manage the impact of demolition works.

- *The difference in existing ground levels adjacent the boundaries of No.10 and 12 Courtley Road requires a retaining wall to manage the earthworks for the proposed works.*

Comment: The application provides no detail in regard to any retaining wall adjoining the eastern boundary, hence it cannot be assumed that any structure is proposed. The applicant may choose to exercise their rights to undertake these works as "exempt" development in the future.

- *The proposal will create an unacceptable level of overshadowing to the adjoining properties at No.12 and No. 14 Courtley Road.*

Comment: The shadow diagrams lodged with the application demonstrate that the proposal will be able to achieve the minimum solar access requirements to adjoining properties, specified in WDCP 2011. Therefore, this issue does not warrant inclusion in recommended reasons of refusal of the application.

- *The site has a history of land contamination (heating oil disposed of by previous owners) which affects No.12 Courtley Road. This should be rectified during the demolition of the existing house.*

Comment: This matter has been referred to Council's Environmental Investigation Unit for comment. The advice received states that the site is unlikely to be contaminated, as the geo-technical investigation undertaken for the application included borehole testing and contamination would have been evident in these samples. A condition of consent is recommended so that further investigation be undertaken, in the event that the application is approved.

## REFERRALS

| Internal Referral Body                       | Comments   |
|--|--|
| Environmental Health<br>(Contaminated Lands) | <p><b>General Comments</b></p> <p>A search of Council records reveal no evidence of land contamination.</p> <p>The Geo tech report supplied has used two boreholes on site that would have investigated and reported significant land pollution.</p> |

| Internal Referral Body         | Comments   |
|--------------------------------|--|
|                                | <p>recommend standard condition</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to condition</p>  |
| NECC (Development Engineering) | Development Engineer has no objection to the application subject to the following conditions of consent. |

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

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\***

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

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

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

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

##### **SEPP 55 - Remediation of Land**

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

A submission has been received from an adjoining property owner that claims that the site is contaminated. The source of contamination appears to be along the eastern (side) boundary and relates to heating oil that it is claimed was disposed of by the previous owners of the land.

Comment was sought Council's Environmental Investigation Unit in relation to this issue. It was advised that the site is unlikely to be contaminated, as the geo-technical investigation undertaken for the application included borehole testing and contamination would have been evident in these samples, if present.

A standard condition of consent was recommended, which requires that any new information revealed during demolition or excavation works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal

Certifying Authority. However, this condition of consent is not relevant, given that refusal is recommended.

In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No.968521S dated 24 October 2018).

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

| Commitment      | Required Target | Proposed |
|-----------------|-----------------|----------|
| Water           | 40              | 40       |
| Thermal Comfort | Pass            | Pass     |
| Energy          | 50              | 51       |

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

#### **SEPP (Infrastructure) 2007**

##### Ausgrid

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

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

##### Comment:

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

#### **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: | 8.5m        | 8.4m     | N/A         | Yes      |

#### Compliance Assessment

| Clause                          | Compliance with Requirements |
|---------------------------------|------------------------------|
| 2.7 Demolition requires consent | Yes                          |
| 4.3 Height of buildings         | Yes                          |
| 6.4 Development on sloping land | Yes                          |

#### Warringah Development Control Plan

##### Built Form Controls

| Built Form Control                                  | Requirement | Proposed                 | % Variation* | Complies |
|---|-------------|--------------------------|--------------|----------|
| B1 Wall height                                      | 7.2m        | 6.3m                     | N/A          | Yes      |
| B3 Side Boundary Envelope                           | 4m (east)   | No breach                | N/A          | Yes      |
|   | 4m (west)   | No breach                | N/A          | Yes      |
| B5 Side Boundary Setbacks                           | 0.9m (east) | 0.9 - 2.8m               | N/A          | Yes      |
|   | 0.9m (west) | 1.1 - 3.2m               | N/A          | Yes      |
| B7 Front Boundary Setbacks                          | 6.5m        | 5m                       | 23           | No       |
| B9 Rear Boundary Setbacks                           | 6m          | 0.9 - 11.7m              | 85           | No       |
| D1 Landscaped Open Space (LOS) and Bushland Setting | 40%         | 177m <sup>2</sup> or 32% | 20           | No       |

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

#### Compliance Assessment

| Clause                        | Compliance with Requirements | Consistency Aims/Objectives |
|-------------------------------|------------------------------|-----------------------------|
| 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    | No                           | Yes                         |
| B9 Rear Boundary Setbacks     | No                           | Yes                         |
| C2 Traffic, Access and Safety | Yes                          | Yes                         |
| C3 Parking Facilities         | Yes                          | Yes                         |

| Clause  | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| C4 Stormwater                                   | Yes                          | Yes                         |
| C5 Erosion and Sedimentation                    | Yes                          | Yes                         |
| C7 Excavation and Landfill                      | Yes                          | Yes                         |
| C8 Demolition and Construction                  | Yes                          | Yes                         |
| C9 Waste Management                             | Yes                          | Yes                         |
| D1 Landscaped Open Space and Bushland Setting   | No                           | Yes                         |
| D2 Private Open Space                           | Yes                          | Yes                         |
| D6 Access to Sunlight                           | Yes                          | Yes                         |
| D7 Views  | Yes                          | Yes                         |
| D8 Privacy                                      | No                           | No                          |
| D9 Building Bulk                                | Yes                          | Yes                         |
| D10 Building Colours and Materials              | Yes                          | Yes                         |
| D11 Roofs                                       | Yes                          | Yes                         |
| D12 Glare and Reflection                        | Yes                          | Yes                         |
| D14 Site Facilities                             | Yes                          | Yes                         |
| D20 Safety and Security                         | Yes                          | Yes                         |
| D21 Provision and Location of Utility Services  | Yes                          | Yes                         |
| E1 Preservation of Trees or Bushland Vegetation | Yes                          | Yes                         |
| E10 Landslip Risk                               | Yes                          | Yes                         |

#### Detailed Assessment

#### **B7 Front Boundary Setbacks**

##### Description of non-compliance

The garage of the dwelling is located at a distance of 5m from the front boundary of the site. This represents a 23% variation with the control.

##### Merit consideration:

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

- *To create a sense of openness.*

Comment: An unusual circumstance of the site is the adjoining road reserve in Courtley Road, which has a variable width between the front boundary of the site and the kerb of the roadway, of up to 13 metres. This has the effect of accentuating the building setback from the public domain, in contrast with other adjoining dwellings. Under these circumstances, the 5m front setback is more than adequate to provide an adequate sense of openness.

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



Comment: The section of Courtley Road where the site is located demonstrates a considerable variation in front building setbacks, due to the irregular shaped road reserve and existing allotment pattern. However, the 5m front setback is considered an adequate response to this existing pattern. Hence, the development is consistent with this objective.

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

Comment: For the reasons put forward in the comments on the previous objectives, the proposed 5m setback is an appropriate response to the context of the existing streetscape and will act to protect and retain its visual quality. Hence, the proposal is consistent with this objective.

- *To achieve reasonable view sharing.*

Comment: There will be no adverse loss of any views from adjoining properties as a result of the proposed non-compliance with the front boundary setback control.

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

## **B9 Rear Boundary Setbacks**

### Description of non-compliance

The proposed dwelling is setback from the rear (southern) boundary at a distance as close as 0.9m, on the south-west corner of the proposed dwelling.

This represents a variation of up to 85% with the minimum control.

### Merit consideration:

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

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

Comment: The amended plans have increased the areas of deep soil landscape areas, from 10% as originally proposed, to 32% across the site. Greater areas within the rear setback have been provided. Hence, the proposal achieves this objective.

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

Comment: The site is constrained in regard to its unusual shape and dimensions. The site is shallow on its western boundary, only having a length of 19.8 metres. This makes full compliance with the numerical requirements of WDCP 2011, in particular the setback controls, difficult. The footprint of the house has been designed to provide a varied setback, which at its furthest distance is 11.7 metres from the rear boundary. The average setback of the proposal is

6.3 metres, which is compliant with the minimum rear setback. In this regard, an adequate sense of openness is provided and the development is consistent with this objective.

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

Comment: The dwelling has been designed adequately to minimise privacy impact to adjoining dwellings. The amended plans have increased the area of landscaped open space on the site which promotes greater opportunities for landscaping to mitigate visual impact and overlooking. The development is hence consistent with this objective.

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

Comment: An existing visual continuity and pattern of rear setbacks is difficult to establish given the irregular shaped allotments in the vicinity of the site. The adjoining property at No.6 Kadigal Place has a setback of as close as 2 metres from the adjoining rear boundary. In this context, the proposed rear setback of 0.9m is sufficient to achieve this objective.

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

Comment: Despite the non-compliance with the controls, the windows on the 1<sup>st</sup> floor of the proposed dwelling are not considered to cause any adverse privacy impacts to adjoining properties, based on their size and orientation.

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

## **D1 Landscaped Open Space and Bushland Setting**

### Description of non-compliance

The application provides a total of 177m<sup>2</sup>, or 32% of the site, as landscaped open space.

This represents a 20% variation with the minimum requirement.

### Merit consideration

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

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

Comment: Despite the variation proposed, the non-compliance does not compromise this objective. The circumstances of the site in relation to the adjoining road reserve and allotment pattern is discussed elsewhere in this report. In summary, the provision of landscaping adjoining the northern (front) boundary of the site is adequate to maintain and enhance the streetscape.

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

Comment: The amount of the landscaped open space proposed will generally satisfy the established benchmark for habitat and biodiversity benefits established in this control. Therefore, the application achieves this objective.

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

Comment: Adequate areas of landscaped open space are provided for this objective to be achieved.

- *To enhance privacy between buildings.*

Comment: A privacy impact on adjoining dwellings is discussed elsewhere in this report. In the context of this impact, the application will achieve this objective, subject to condition.

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

Comment: Despite the non-compliance, sufficient area is provided to achieve this objective.

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

Comment: Despite the non-compliance, sufficient area is provided to achieve this objective.

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

Comment: Despite the non-compliance, sufficient area is provided to achieve this objective.

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

## **D6 Access to Sunlight**

The proposed development will cast shadow over the following adjoining properties:

- No.12 Courtley Road;
- No.14 Courtley Road;
- No.6 Kadigal Place; and
- No.7 Kadigal Place.

The shadow diagrams provided by the applicant demonstrate that the extent of the shadow cast by the proposed development over these affected properties will satisfy the solar access requirements of WDCP 2011.

Specifically, the development needs to achieve Requirement 2 of Part D6, which states:

*At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of*

*sunlight between 9am and 3pm on June 21.*

The reference to the "required area of private open space" means the minimum 60m<sup>2</sup> specified for dwelling houses in Part D2 of WDCP 2011. In effect, Part D6 requires that all new development must provide the private open space of adjoining dwellings with at least 30m<sup>2</sup> of solar access in midwinter.

An analysis of the shadow diagrams provided with the application demonstrates that the extent of the shadow cast by the proposed development will permit the private open space of adjoining properties to receive this minimum provision of solar access.

### D8 Privacy

The balcony for Bedroom 1 on the 1<sup>st</sup> floor of the proposed dwelling will have an adverse impact on the privacy of the adjoining dwelling at No.14 Courtley Road, which adjoins the eastern (side) boundary of the site. The balcony is located on both the southern and eastern elevation of the proposed dwelling, primarily orientated to the southern (rear) boundary.

The proximity of this balcony to the rear private open space of this property (approximately 2.3m from the boundary) and its elevation above this area (at least 5m), will result in an adverse visual privacy impact. The impact is from the eastern elevation of the balcony and not the southern elevation, as this is located at an appropriate distance to ensure no adverse impact on adjoining properties.

Under these circumstances, the application fails Requirement 3 of Part D8, which states:

*The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*

In turn, this fails the following Objective of Part D8, which is:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

However, given that the balcony in effect "wraps" around to the east elevation and is primarily orientated to the southern rear boundary, it is recommended that a condition of consent be applied to ensure the impact is minimised to an acceptable level. This will entail reducing the length of the balcony by 2.2 metres from its eastern edge, to achieve a setback that is consistent with the rest of the east elevation on the 1st floor.

### 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 \$ 965,949 |           |          |
| Contributions  | Levy Rate | Payable  |
| Total Section 7.12 Levy                                      | 0.95%     | \$ 9,177 |
| Section 7.12 Planning and Administration                     | 0.05%     | \$ 483   |



|       |    |          |
|-------|----|----------|
| Total | 1% | \$ 9,659 |
|-------|----|----------|

## 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 site is constrained by three significant factors: a relatively small size; an unusual shape; and an adjoining allotment pattern that is irregular and contains buildings in close proximity to the proposed dwelling. In particular, the shallow depth of the allotment makes compliance with the front and rear setback difficult whilst also achieving a reasonable building footprint for a new dwelling.

The applicant has amended the proposal since lodgement, to both reduce the non-compliances with WDCP 2011 and mitigate the amenity impacts to adjoining properties that adjoin the eastern boundary (Nos.12 and 14 Courtley Road). Whilst the impact to No.12 is now acceptable, the impact to No.14 Courtley Road is not acceptable in regard to visual privacy. Hence, a condition of consent is recommended to delete part of the balcony adjoining Bedroom 1.

The amended proposal has now demonstrated adequate compliance with the objectives of WDCP 2011 and approval is recommended.

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



## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2018/1886 for Demolition works and construction of a dwelling house on land at Lot 7 DP 238331, 10 Courtley Road, BEACON HILL, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

| Architectural Plans - Endorsed with Council's stamp |               |                  |
|---|---------------|------------------|
| Drawing No.   | Dated         | Prepared By      |
| 01 Revision L                                       | 25 March 2019 | Charleston Homes |
| 01A Revision L                                      | 25 March 2019 | Charleston Homes |
| 01B Revision L                                      | 25 March 2019 | Charleston Homes |
| 01C Revision L                                      | 25 March 2019 | Charleston Homes |
| 01H Revision L                                      | 25 March 2019 | Charleston Homes |
| 02 Revision L                                       | 25 March 2019 | Charleston Homes |
| 02A Revision L                                      | 25 March 2019 | Charleston Homes |
| 03 Revision L                                       | 25 March 2019 | Charleston Homes |
| 04 Revision L                                       | 25 March 2019 | Charleston Homes |
| 04 Revision L                                       | 25 March 2019 | Charleston Homes |
| 06A Revision L                                      | 25 March 2019 | Charleston Homes |

| Engineering Plans |                 |                          |
|-------------------|-----------------|--------------------------|
| Drawing No.       | Dated           | Prepared By              |
| C1 Issue D        | 30 October 2018 | ACOR Consultants Pty Ltd |
| C2 Issue D        | 30 October 2018 | ACOR Consultants Pty Ltd |
| C3 Issue D        | 30 October 2018 | ACOR Consultants Pty Ltd |
| C4 Issue D        | 30 October 2018 | ACOR Consultants Pty Ltd |

| Reports / Documentation – All recommendations and requirements contained within: |               |                    |
|--|---------------|--------------------|
| Report Title / No.   | Dated         | Prepared By        |
| BASIX Certificate No.968521S_02  | 15 April 2019 | Planning Approvals |
|  |               |                    |

|  |                      |                         |
|--|----------------------|-------------------------|
| Geotechnical Investigation<br>No.22184/0072D | September 2018       | STS<br>GeoEnvironmental |
| Aboricultural Impact Assessment              | 18 September<br>2018 | arboreport              |

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

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

| Landscape Plans |               |             |
|-----------------|---------------|-------------|
| Drawing No.     | Dated         | Prepared By |
| L - 01          | 22 March 2019 | ecodesign   |

| Waste Management Plan |                  |                    |
|-----------------------|------------------|--------------------|
| Drawing No/Title.     | Dated            | Prepared By        |
| Waste Management Plan | 21 November 2018 | Planning Approvals |

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.

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

- The balcony off "Bed 1" is to be reduced in size, by reducing the length of the balcony by 2.2m. This is to be achieved by increasing the setback of the balcony from the southern boundary adjoining No.14 Courtley Road and to ensure the balcony is consistent with the setback of the south elevation of the 1<sup>st</sup> floor.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

3. **Prescribed Conditions (Crown Land Only)**

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

Reason: Legislative Requirement (DACPLB09)

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent

unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

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

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

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

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. 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 \$965,949.00 |           |         |
| Contributions  | Levy Rate | Payable |
| Total Section 7.12 Levy  | 0.95%     | \$      |

|  |       |             |
|--|-------|-------------|
|  |       | 9,176.52    |
| Section 7.12 Planning and Administration | 0.05% | \$ 482.97   |
| Total                                    | 1%    | \$ 9,659.49 |

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

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

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

#### 6. **Security Bond**

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

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

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

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

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

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

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

An On-site Stormwater Detention system must be designed and constructed in accordance with Northern Beaches Council's current WARRINGAH WATER MANAGEMENT POLICY PL850 and generally in accordance with the concept drainage plans prepared by Acor Consultants, drawing number CC180513, dated 30/10/2018.

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

- i) underground storage system must be constructed from reinforce concrete, prefabricated units or proprietary systems provide ease of maintenance and ensure for safety for the proprietor.



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

8. **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.

9.

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

- The balcony off "Bed 1" is to be reduced in size, by reducing the length of the balcony by 2.2m. This is to be achieved by increasing the setback of the balcony from the southern boundary adjoining No.14 Courtley Road and to ensure the balcony is consistent with the setback of the south elevation of the 1<sup>st</sup> floor.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

10. **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.

11. **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](http://www.sydneywater.com.au) for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

**12. 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****13. 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.

**14. Vehicle Crossings**

The provision of one vehicle crossing 4.5 metres wide at kerb and 5.5 metres wide at boundary in accordance with Northern Beaches Council Drawing No A4-3330/6 MH 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.

**15. Requirement to Notify about New Contamination Evidence**

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

Reason: To protect human health and the environment.

(DACHPEDW5)

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE  
OCCUPATION CERTIFICATE****16. 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.

17. **Registration of Encumbrances for On-site Stormwater Detention**

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

18. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council.

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

Reason: To ensure stormwater disposal is constructed to Council's satisfaction. (DACENF10)

19. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

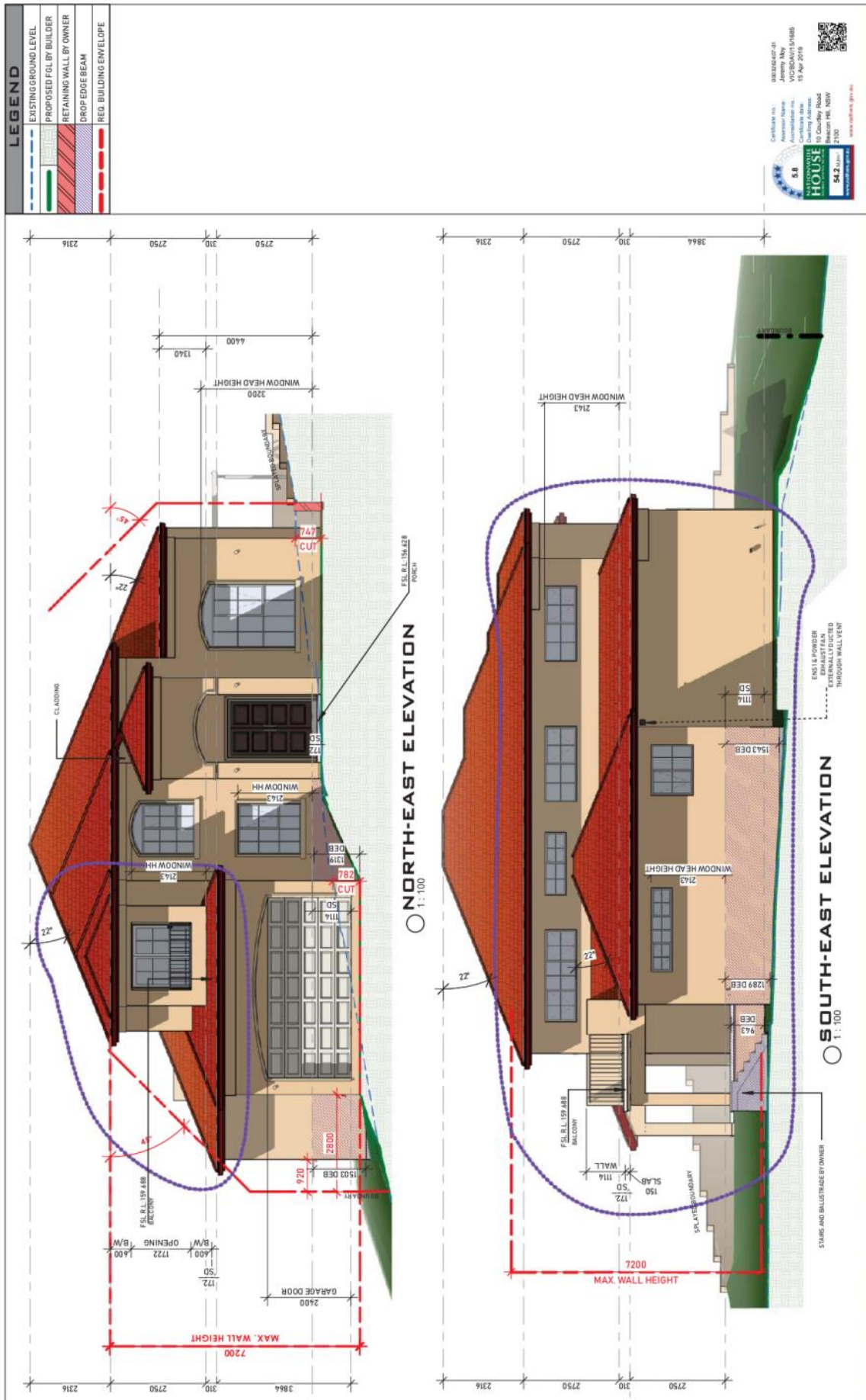
A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.







| AMENDMENTS |          |           |                            | DESIGN                        |                               |             |                          |
|------------|----------|-----------|----------------------------|-------------------------------|-------------------------------|-------------|--------------------------|
| Rev.       | Date     | Issued by | Description                | Trinity (Modified)            | Rev. Hon. Fred Nile           | DATE:       | 04                       |
| I          | 14.11.18 | R8        | Adjustments for Compliance | Rev. Hon. Fred Nile           | Rev. Hon. Fred Nile           | SCALE:      | As indicated             |
| J          | 18.01.19 | OC        | Room Details               | 10 Courtney Road, Beacon Hill | 10 Courtney Road, Beacon Hill | DRAWN BY:   | Robert Bago              |
| K          | 18.03.19 | R8        | Revision #06 / #07         | Lot 71 D38331                 | Lot 71 D38331                 | COUNCIL:    | Northern Beaches Council |
| L          | 25.03.19 | R8        | Revision #08               | Lot 71 D38331                 | Lot 71 D38331                 | DIA OR BDR: | DA                       |
|            |          |           |                            | LOT/ D.P                      | LOT/ D.P                      | JOB NO:     | NIL53618                 |
|            |          |           |                            | LOT/ D.P                      | LOT/ D.P                      | JOB NO:     | L                        |





**ITEM 3.4****DA2018/1761 - 24 AITKEN AVENUE, QUEENSCLIFF -  
DEMOLITION WORKS AND CONSTRUCTION OF A  
RESIDENTIAL FLAT BUILDING, AND STRATA SUBDIVISION****AUTHORISING MANAGER ANNA WILLIAMS****TRIM FILE REF 2019/382866****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 development to which *State Environmental Planning Policy No 65 – Design Quality of Residential. Apartment Development* applies and is 4 or more storeys in height.

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**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. DA2018/1761 for Demolition works and construction of a residential flat building, and strata subdivision at Lot CP SP 30021, 24 Aitken Avenue, Queenscliff subject to the conditions and for the reasons set out in the Assessment Report.

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## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                            |             |
|----------------------------|-------------|
| <b>Application Number:</b> | DA2018/1761 |
|----------------------------|-------------|

|   |  |
|---|--|
| <b>Responsible Officer:</b>               | Renee Ezzy   |
| <b>Land to be developed (Address):</b>    | Lot CP SP 30021, 24 Aitken Avenue QUEENSCLIFF NSW 2096                                   |
| <b>Proposed Development:</b>              | Demolition Works and construction of a residential flat building, and strata subdivision |
| <b>Zoning:</b>                            | Warringah LEP2011 - Land zoned R2 Low Density Residential                                |
| <b>Development Permissible:</b>           | Yes, under Existing Use Rights.  |
| <b>Existing Use Rights:</b>               | Yes  |
| <b>Consent Authority:</b>                 | Northern Beaches Council   |
| <b>Delegation Level:</b>                  | NBLPP  |
| <b>Land and Environment Court Action:</b> | No   |
| <b>Owner:</b>                             | The Owners of Strata Plan 30021  |
| <b>Applicant:</b>                         | Manly Developments 2016 Pty Ltd  |

|                                  |                              |
|----------------------------------|------------------------------|
| <b>Application lodged:</b>       | 30/10/2018                   |
| <b>Integrated Development:</b>   | No                           |
| <b>Designated Development:</b>   | No                           |
| <b>State Reporting Category:</b> | Residential - New multi unit |
| <b>Notified:</b>                 | 17/11/2018 to 01/12/2018     |
| <b>Advertised:</b>               | 17/11/2018                   |
| <b>Submissions Received:</b>     | 12                           |
| <b>Clause 4.6 Variation:</b>     | 4.3 Height of buildings: %   |
| <b>Recommendation:</b>           | Approval                     |

|                                 |                 |
|---------------------------------|-----------------|
| <b>Estimated Cost of Works:</b> | \$ 2,908,959.21 |
|---------------------------------|-----------------|

### Executive Summary

This application seeks consent for demolition of the existing residential flat building (RFB) containing three (3) apartments and construction of a new RFB containing four (4) apartments, basement carpark and strata subdivision.

The proposed development is defined as a residential flat building and is prohibited within the R2 Low Density Residential zone under the provisions of Warringah Local Environmental Plan 2011. The site benefits from existing use rights and assessed on its merits is found to be acceptable.

Public Exhibition of the of application resulted in eight (8) individual submissions, of which seven (7) raise concerns with the proposed development and one (1) submission is in support. The issues raised

in the submissions predominantly relate to the redevelopment of an RFB on the site, scale of the development and amenity impacts. The issues raised in the submissions are addressed in detail within the 'Public Notification' section of this report. The development has a CIV of \$2.9 million and eight (8) submissions.

The application was referred to the Development Determination Panel (DDP) on the basis that the building height control does not apply to the development due to 'existing use rights'. The DDP concluded that they did not have the authority to determine the application as buildings where SEPP 65 applies and are four or more storeys should be determined by the Northern Beaches Local Planning Panel (NBLPP). It is recommended that the NBLPP approve the proposed development.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Development Control Plan - D6 Access to Sunlight  
Warringah Development Control Plan - D7 Views  
Warringah Development Control Plan - D8 Privacy

## **SITE DESCRIPTION**

|                                   |  |
|-----------------------------------|--|
| <b>Property Description:</b>      | Lot CP SP 30021 , 24 Aitken Avenue QUEENSCLIFF NSW 2096  |
| <b>Detailed Site Description:</b> | <p>The subject site consists of one (1) allotment located on the north-eastern side of Aitken Avenue, Queenscliff.</p> <p>The site is regular in shape with a frontage of 13.005m along Aitken Avenue and an average depth of 40.44m. The site has a surveyed area of 525.8m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential</p> |



zone and accommodates an existing three (3) storey residential flat building.

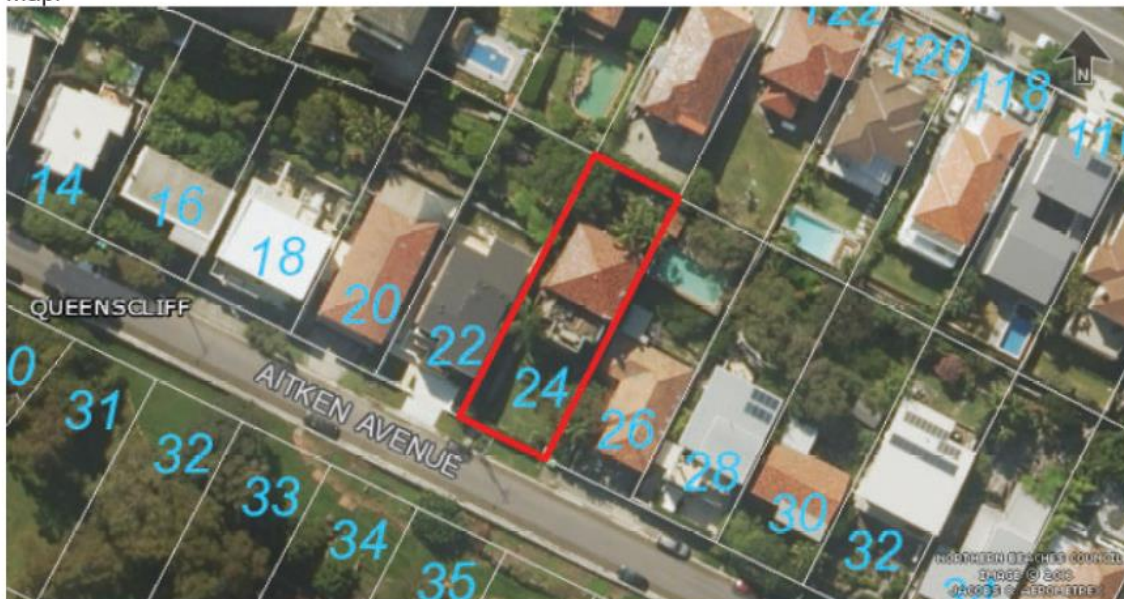
The site has a cross fall from back to front of approximately 15.3m which equates to 37.7%.

The site currently contains seven (7) trees greater than 5m in height. These include a Jacaranda, Cocos Palm and a number of Bangalow Palms all of which are proposed to be removed and replaced.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by 2-3 storey dwelling houses immediately adjoining on Aitken Avenue with a number of other larger residential flat buildings within close vicinity to the north and similar sized (3 apartments) residential flat buildings to the north-east fronting Queenscliff Road.

Map:



#### **SITE HISTORY**

A search of Council's records found the following relevant history for the subject site:

No record of the original building consent is available due to a fire which destroyed Council's records. Aerial photo records indicate that the building was built c1940-1943.

Council records did provide a rates card from 1949 which confirms the building was considered a residential flat building containing 3 flats.

On 20 August 1985, Warringah Council certified a strata subdivision of the site



Development Application No. DA1996/151 for the addition of rear decks established that the site benefited from existing use rights.

**Pre-Lodgement meeting (PLM2018/0055)**

A pre-lodgement meeting was held on 17 April 2018 to discuss the demolition and construction (under existing use rights) of a residential flat building. In principle the proposal was supported subject to the proposal addressing the following matters:

- Amend the basement design to provide the minimum number of parking spaces as required to reduce the extent of excavation (reduction of 3 spaces)
- Provide an increase in landscaping onsite including 6m within the rear setback, garden bed depths of 1.0m or greater for the roof terrace and all planting beds.
- Compliance with the 6m rear setback requirement
- Provide a compliant front setback (6.5m) to the face of Apartment 1 (5.0m proposed)
- Reduce the height non-compliance by reducing the size of Apartment 4 and reducing the balcony and roof overhang
- Ensure the driveway ramp, turning paths and bay sizes comply with the Australian Standards.

**Development Application No. DA2018/1761**

The applicant lodged amended plans for the basement on 2 April 2019 to address traffic and stormwater issues raised by Council. This assessment report is based on the plans as amended.

**PROPOSED DEVELOPMENT IN DETAIL**

The proposed development includes demolition of the existing residential flat building and construction of a new residential flat building and strata subdivision. Specifically, the development includes:

**Basement Level (RL7.560)**

Parking for seven (7) vehicles including one (1) visitor space  
Mechanical plant  
OSD and rainwater tanks  
Bulky goods/waste storage  
Bicycle storage  
Fire pump room  
Bin storage (accessed from the street)  
Lift access  
Car turntable

**Ground Level - Apartment 1 and 2 (RL11.160)**

Apartment 1

3 Bedrooms, Bedroom 1 with ensuite  
Western courtyard (approx. 39m<sup>2</sup>)  
Study  
Laundry  
Bathroom  
Kitchen, living and dining  
South facing balcony (approx. 19m<sup>2</sup>)  
South-western non-trafficable roof garden  
Planter box along frontage (1.2m deep)

#### Apartment 2

Bedroom 3 with ensuite and western courtyard (approx. 15m<sup>2</sup>)  
Internal stair access to First Floor Level

#### **First Floor Level**

##### Apartment 2

Bedroom 1 with ensuite  
Bedroom 2  
Study  
Bathroom  
Laundry  
Kitchen, living and dining  
South facing balcony (approx. 21.3m<sup>2</sup> plus an additional 8.5m<sup>2</sup> for planter)

##### Apartment 3

Bedroom 3 with ensuite  
Internal stair access to Second Floor Level

#### **Second Floor Level (RL17.660)**

##### Apartment 3

Bedroom 1 with ensuite  
Bedroom 2  
Study  
Bathroom  
Laundry  
Kitchen, living and dining  
South facing balcony (21.2m<sup>2</sup> plus an additional 8.4m<sup>2</sup> for planter)

##### Apartment 4

Bedroom 3 with ensuite  
Internal stair access to Third Floor Level

#### **Third Floor Level (RL20.19)**

##### Apartment 4

Bedroom 1 and 2 with ensuite  
Bathroom  
Laundry  
Kitchen, living and dining  
South facing balcony (21.7m<sup>2</sup> plus a further 9.0m<sup>2</sup> of planter)

#### **Roof Terrace (RL24.160)**

Terrace (21.1m<sup>2</sup>)

### **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) –               | See discussion on "Environmental Planning Instruments" in this report. |

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

| Section 4.15 Matters for Consideration'  | Comments   |
|--|--|
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) <b>Environmental Impact</b><br/>The environmental impacts of the proposed development on the natural and built environment are addressed under the relevant sections within the existing use rights and Warringah Development Control Plan sections in this report.</p> <p>Given the form of development within the streetscape and the scale of surrounding development the proposed development under existing use rights is not considered to result in an unacceptable impact on the visual and scenic quality of the site, locality, streetscape and surrounding development. The proposed development presents a design with a high level of architectural merit and includes quality finishes. The minor impacts resulting from the proposal on balance are considered satisfactory.</p> <p>(ii) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the residential character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed residential land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development   | The site is considered suitable for the proposed development.  |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs   | See discussion on "Notification & Submissions Received" in this report.  |
| Section 4.15 (1) (e) – the public interest   | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. While the development is greater in scale and intensity than the immediately adjoining neighbouring properties, it is considered consistent with other developments in close proximity to the site. The development represents an improved quality of accommodation within the Queenscliff area.   |

## EXISTING USE RIGHTS

### Section 4.11 of the Environmental Planning and Assessment Act, 1979

Development for the purpose of a residential flat building is prohibited within the R2 – Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011.

Notwithstanding such a prohibition, if "Existing Use Rights" can be satisfactorily established for the land affected by the proposed development, then the consent authority may approve a development application. However, the proposal must meet the relevant requirements applying to existing uses under Sections 4.65 to 4.70 of the Environmental Planning and Assessment Act 1979, the Environmental Planning and Assessment Regulation 2000, and considering the impacts of the proposal

through a merit assessment.

- **Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the 'Act')?**

Section 4.65 of the Act defines an existing use as meaning:

*"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and*

*(b) the use of a building, work or land:*

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered.

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The applicant has provided evidence in the form of a Council historical records search which indicates that the existing residential flat building was built in 1949. At this time, the site would have been subject to the Local Government Act 1919 and is pre the Cumberland Planning Scheme Ordinance 1951. The site was strata subdivided on 20 February 1985 as three (3) units under Strata Plan No. 30021 when the Warringah Planning Scheme Ordinance 1963 was still in effect.

The existing use rights status of the subject property was further acknowledged by Council in the assessment of other more recent assessments and determinations, which are listed in the site history section of this report.

Based on the above history, Council can be satisfied that the site has continued to be used as an apartment building since at least 1949 to the present day without abandonment, and can be considered to have commenced as a lawful purpose prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

2. Was the use of the building / work / land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

A Residential Flat Building first became prohibited on the site under the former Warringah Local Environmental Plan 1985 when the site was zoned Residential 2A. However, when the former Warringah Local Environmental Plan 2000 was gazetted the site was unzoned and fell within the G8



Queenscliff Locality and the use was defined as "housing" which was a permissible use. Since then, the current Warringah Local Environmental Plan 2011 came into force on 9 December 2011 making the Residential Flat Building prohibited again.

- **What is "the land on which the existing use was carried out" for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: "that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose".

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question (a residential flat building) and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights. This Planning Principle states that the provisions of Environmental Planning Instruments (and DCP's) that derogate or detract from the benefit endowed on a site by existing use rights do not apply to the assessment of applications on sites where existing use rights apply. Thus, zone objectives and planning controls that limit the size of a proposal (i.e. floor space ratio, height, setbacks) have no application if existing use rights apply. This includes qualitative provisions as well as quantitative provisions.

The following four principles adopted by the court in this case will have general application in dealing with Development Applications that rely on existing use rights:

**1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?**

*While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.*

Comment:

Planning Principle 1 makes it clear that, whilst an existing use rights development cannot be assessed against numerical controls governing bulk and scale, such controls still need to be taken into account in order to gain an informed understanding of the future context of the character of surrounding development.

The judgement indicates that care must be taken in this assessment to avoid any de facto application of these standards and that failure to comply with these standards cannot be a consideration in the assessment. The focus of the assessment therefore, is to draw a comparison between the bulk and

scale of the development and the bulk and scale of development in the surrounding area and what is likely to occur in the vicinity in the future, based on the applicable planning controls.

### **Surrounding Development**

The site is immediately adjoined to the east and west by one, two and three storey dwelling houses, and to the north by a variety of dwelling houses and residential flat buildings. The site is currently occupied by a three (3) storey walk-up apartment building containing three (3) units, top floor with a large balcony. The existing building is prominent in height within the streetscape but is dwarfed by the much larger residential flat buildings located to the north-west of the site on Queenscliff Road. On the opposite (southern) side of Aitken Avenue is Manly Lagoon Reserve.

### **Building Height**

The maximum height control for the R2 Low Density Residential zone including the subject site is 8.5m, which is measured from the existing ground level. The maximum height of the existing building is approximately 11.7m at RL 28.230. The proposed development has a maximum height of RL25.025 which equates to approximately 12.3m, this is located 3.205m lower than the maximum height RL28.230 of the existing building.

An assessment of the proposed building height is addressed within the report. Essentially, an increase in height above the existing height breach (RL28.230) would not be supported. The proposed development provides a building height overall lower than the existing height but over a greater footprint of the site.

### **Front Setback**

The minimum front setback control that applies to the R2 Low Density Residential Zone, which includes the subject site is 6.5m. The existing building provides a setback of approximately 14m which is an anomaly within this streetscape.

### **Side Setback**

The minimum side setback for the site is 900mm however, this control is intended for low density residential dwellings. The normal setback requirement for a residential flat building under WDCP 2011 is 4.5m.

The existing building provides side setbacks of 1.5m to the west and 1.4m to the east. The proposed building will provide 0.8m setback to the excavated basement level and approximately 3.0m to the western boundary and 2.9m to the eastern boundary.

When viewed from Aitken Avenue and the adjoining lagoon reserve, the height difference and scale of the existing building with the immediately adjoining buildings is discernible in its elevated position on the site.

The proposed development includes a new building with four (4) levels above the basement which aligns with the front boundary of the site and is closer at ground level to the side boundaries and adjoining properties which will make it more visually prominent when viewed from the street and lagoon reserve.

While the proposed height of the development cannot be 'hidden' by landscaping, the development incorporates planting areas at each level which will provide adequate softening of the hard form of the development.

While the development is larger than the adjoining dwelling houses, the design of the building is considered to sit sensitively within the setting and is not inconsistent with surrounding development to the north. Accordingly, the size and scale of the building beyond the building envelope and front

setback is supported.

## 2. What is the relevance of the building in which the existing use takes place?

*Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.*

### Comment:

There is no change of use proposed for the site, the new development will remain a residential flat building.

## 3. What are the impacts on adjoining land?

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

### Comment:

The proposal involves demolition and rebuild as a residential flat building. An analysis of the impacts is provided below:

### **Views**

This issue is addressed with a more detailed analysis within Clause D7 - Views of WDCP 2011 within this report. In summary, the purported view loss is considered minor.

### **Overshadowing**

This issue has been addressed under Clause D6 - Access to Sunlight of WDCP 2011 within this report. The site is a steeply sloping parcel with a south-facing aspect. While some additional overshadowing will result from the proposed development, the impact given these constraints is considered acceptable.

### **Privacy**

This issue has been addressed under Clause D8 - Privacy of WDCP 2011 and subject to specific conditions relating to screening and planting the proposal is considered acceptable in terms of privacy.

## 4. What is the internal amenity?

*Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

### Comment:

While the site by virtue of its location is oriented south, south-west, the design of the new apartments seeks to capture light and sunlight into the main living areas of each apartment. The internal amenity of the development is considered in detail in the SEPP 65 section of this report. In summary, the internal

amenity is considered satisfactory with regard to solar access, natural ventilation and acoustic quality.

## **Conclusion**

The use has been approved under a previous EPI (Constructed while the Local Government Act 1919 was in force and strata subdivided while the Warringah Planning Scheme Ordinance in force) and therefore, is a lawful use. Subsequently, the use can be retained under the current EPI (WLEP 2011).

## **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

## **NOTIFICATION & SUBMISSIONS RECEIVED**

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

As a result of the public exhibition process council is in receipt of 12 submission/s from:

| <b>Name:</b>  | <b>Address:</b>                           |
|---|---|
| Danielle Deegan                                     |   |
| Ms Dulcie Frances Chaseling                         | 126 Queenscliff Road QUEENSCLIFF NSW 2096 |
| Geoffrey Gordon Cumming                             | 26 Aitken Avenue QUEENSCLIFF NSW 2096     |
| Quant Shop Pty Ltd                                  | 30 Aitken Avenue QUEENSCLIFF NSW 2096     |
| Mr David Anthony Brian Addington                    | 32 Aitken Avenue QUEENSCLIFF NSW 2096     |
| Mrs Andrea Turner<br>David Turner                   | 28 Aitken Avenue QUEENSCLIFF NSW 2096     |
| Mrs Linde Arden Macpherson                          | 38 Aitken Avenue QUEENSCLIFF NSW 2096     |
| Kenneth George Hird                                 | 20 Aitken Avenue QUEENSCLIFF NSW 2096     |
| Mrs Claudia Eugenie North<br>Mr Wayne Francis North | 36 Aitken Avenue QUEENSCLIFF NSW 2096     |
| Mary-Anne Addington                                 | 32 Aitken Avenue QUEENSCLIFF NSW 2096     |
| Ms Mary-Anne Armstrong                              | 6 Aitken Avenue QUEENSCLIFF NSW 2096      |
| Larry Shepherd                                      | 30 Aitken Avenue QUEENSCLIFF NSW 2096     |

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

- **Sandstone excavation:**  
*Excess excavation (up to 16m)*  
*Risk of Silicosis from dust and houses being covered*  
*Destabilisation of foundations and damage to adjoining dwellings*  
*Damage to existing sewer pipe*  
*Construction traffic management -street access and truck movements.*

Comment:

In relation to concerns of elevated risk of Silicosis from the excavation of the site, this activity is



controlled by safework NSW which has industry standards and codes of practice for managing any risks or unacceptable exposure to dust from rock excavation. These industry requirements provide various methods for addressing potential dust emissions on the site during excavation and rock cutting. The applicant has in their supporting documentation identified a number of methods intended to be applied to suppress dust from the site. These include wet saw cutting, hosing and spraying of water on the excavation area and installation of mesh screening around the boundary of the site for further physical separation. In addition, the Geotechnical Report prepared by Geo-Environmental dated 17 October 2018, addresses the best methods for excavation on the site. Subject to the developments compliance with the recommendations of the Geotechnical Report, Safework NSW and industry requirements for these works, it is not considered that there should be any unacceptable level of risk in relation to Silicosis.

Concerns related to the risk of destabilisation of adjoining property foundations has been identified and addressed within the Geotechnical Report submitted with the application. This concern has been addressed through the imposition of a condition of consent requiring pre and post construction/excavation works dilapidation reports.

All works on site require the developer to locate any services on the site. While there are no sewer lines indicated on the survey plan or on Council's records, any sewerage infrastructure will be subject to Sydney Water requirements.

The applicant has provided a Construction Traffic Management Plan with the application which outlines truck movements during each phase of the construction timetable. This plan will form part of any consent. The issues raised relating to excavation and construction on the site are not sustained and do not warrant refusal of the application.

- **Loss of income**

Comment:

The proposed development is to be undertaken within the boundaries of the site. Concerns relating to the noise associated with the excavation and construction phases of the development are an issue which is regulated by the approved construction hours on the consent. Construction related noise during the approved construction hours is not considered unacceptable. This issue does not hold determining weight.

- **Loss of winter sun access**

Comment:

Overshadowing of the two adjoining properties, Nos 22 and 26 Aitken Avenue has been raised as a concern. Impacts on overshadowing during the winter equinox are as follows:

*No. 22 Aitken Avenue*

Shadow montages of the property at No. 22 were provided. This property is to the south-west of the subject site and is currently overshadowed by the existing building. The new development will result in some minor additional overshadowing to the rear north-eastern corner of the dwelling and some increased overshadowing to the eastern facade which is currently partly impacted by shadow. The changes to the shadow impact affects two windows at first floor level however it also results in a minor reduction of shadows at 9am to the south-eastern corner of the first floor balcony. The pre and post development shadow impacts on this property do not change further after 10am.

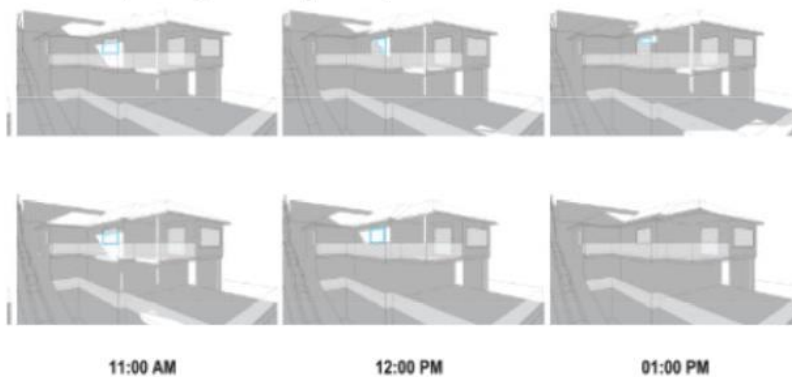
*No. 26 Aitken Avenue*

This property is on the south-eastern side of the development site. There is no change to the shadow impacts on this site until midday where this is some minor additional overshadowing to



the western side of the ground floor roof terrace. By 3pm, the shadow impact is at its worst falling across the roof and front of this dwelling.

The west facing first floor window in this dwelling receives greater sunlight exposure between 11am and 12 midday and is in shadow for the rest of the day. The other impact on sunlight access occurs from 1pm when the sunlight access reaching both ground and first floor south facing terraces are impacted. The west facing sliding doors recessed under the roof line do not receive any sunlight from 2pm to 4pm.



**Figure 1** - Shadow impacts 11am to 1pm on No. 26 Aitken Avenue - top existing, bottom line proposed (source: Breakspeare Architects Shadow Diagrams)



**Figure 2** - Shadow impacts 2pm to 4pm on No. 26 Aitken Avenue - top existing, bottom line proposed (source: Breakspeare Architects Shadow Diagrams)

On balance, the extent of impact on the adjoining properties given their orientation to the south and the steep topography is considered minor and acceptable. While the south facing areas on both properties will receive varying impacts on their sunlight access, these spaces are not considered the primary private open space within either dwelling as each property contains spaces at the rear of the dwelling for this purpose. These areas are valued for their outlook across to the lagoon given their orientation. The overshadowing impacts from the proposed development is not considered to result in unreasonable loss of amenity to the adjoining properties.

- **Traffic and Parking:**

*The additional parking spaces within the development will move parking for the residents onto the site but will provide more available parking for people from Queenscliff Road.*

*Increased traffic and visitor parking  
Loss of car access during construction*

Comment:

The proposed basement parking area provides compliant parking to service four (4) apartments on the site with a total of seven (7) parking spaces including a visitor space. The current site provides no on-site parking and will result in the loss of one (1) on street parking space to allow for a new driveway crossing. The subject site has no control over who uses the on-street parking within Aitken Avenue.

The application was supported by a Traffic and Parking Assessment prepared by Colston Budd Rogers and Kafes Pty Ltd and is considered acceptable in terms of traffic and parking generation.

The construction period for this development should not create unacceptable access for the surrounding developments. The Construction Traffic Management Plan in conjunction with conditions of consent should adequately address this concern. This issue does not warrant refusal of the application.

- **Building Design:**

*Proposed building will be incongruous in Aitken Avenue.  
Not in keeping with the character*

Comment:

The proposed development seeks to replace an existing three storey apartment building with a four storey apartment building under existing use rights. The proposed contemporary design incorporates large terraces projecting toward the street which is reflective of a number of properties within Aitken Avenue with similar features. The surrounding area does not provide a consistent character of development exhibiting a range of architectural styles and ages in addition to a range of dwelling types from single dwellings, dual occupancy and multi unit apartment complexes. The proposed built form while larger in size than the immediately adjoining properties is designed to reflect the more contemporary styles appearing throughout Queenscliff. The development provides a superior level of Architectural detailing and design and offers an improved level of lifestyle for the future occupants. This issue does not warrant further amendment or refusal of the application.

- **Precedent:**

*Approval of this application will bring other developers into the street to build more units.*

Comment:

The subject site is an anomaly within Aitken Avenue as it contains an existing residential flat building with existing use rights. The development of this site under this provision will not create a precedent for similar development as residential flat buildings are prohibited within the R2 low density residential zone. As there are no other residential flat buildings within Aitken Avenue, there is unlikely to be any other claim which can demonstrate existing use rights, therefore this proposal will not set any precedent in this regard.

- **Size of the development:**

*Proposal is much larger than other properties on Aitken Avenue.  
Proposed 4 x 3 bedroom units (currently 3 x 2 bedroom units)*

Comment:

The increase in the number and size of the apartments on the site has been addressed with the Existing Use Rights section of this report. This issue does not hold determining weight.

- **Compliance with LEP:**

*Proposal not compliant with WLEP and WDCP in terms of light, views, landscaped open space*

*and privacy.*

*Loss of landscaped front setback (use of roof planting)*

*Building Height*

*Wall Heights*

*Side boundary envelope and setbacks*

*Front and rear setbacks*

Comment:

As explained within the existing use rights section of this report, the NSW Land and Environment Court adopted a Planning Principle in the judgement by Senior Commissioner Roseth in *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71. This Planning Principle states that the provisions of Environmental Planning Instruments (and DCP's) that derogate or detract from the benefit endowed on a site by existing use rights do not apply to the assessment of applications on sites where existing use rights apply. Thus, zone objectives and planning controls that limit the size of a proposal (i.e. floor space ratio, height, setbacks) have no application if existing use rights apply. This includes qualitative provisions as well as quantitative provisions. The application has therefore been considered on its merits and not against the requirements of WLEP or WDCP. This issue does not hold determining weight.

- **Amenity:**

*Loss of quiet enjoyment due to excessive noise during construction and more outdoor living areas.*

*Visually dominating*

*View loss*

*Privacy loss*

Comment:

These issues have been addressed within the assessment report. The proposed development is not considered to result in unacceptable amenity impacts.

- **Submission in support:**

*Resident for over 50 years verifying the subject site has been continuously uses as 3 flats for that period of time.*

Comment:

This submission is noted and verifies the applicants existing use rights position.

- Existing use rights not clearly established

Comment:


The documentation submitted with the application has been reviewed and assessed as sufficient. This issue does not hold determining weight.

## REFERRALS

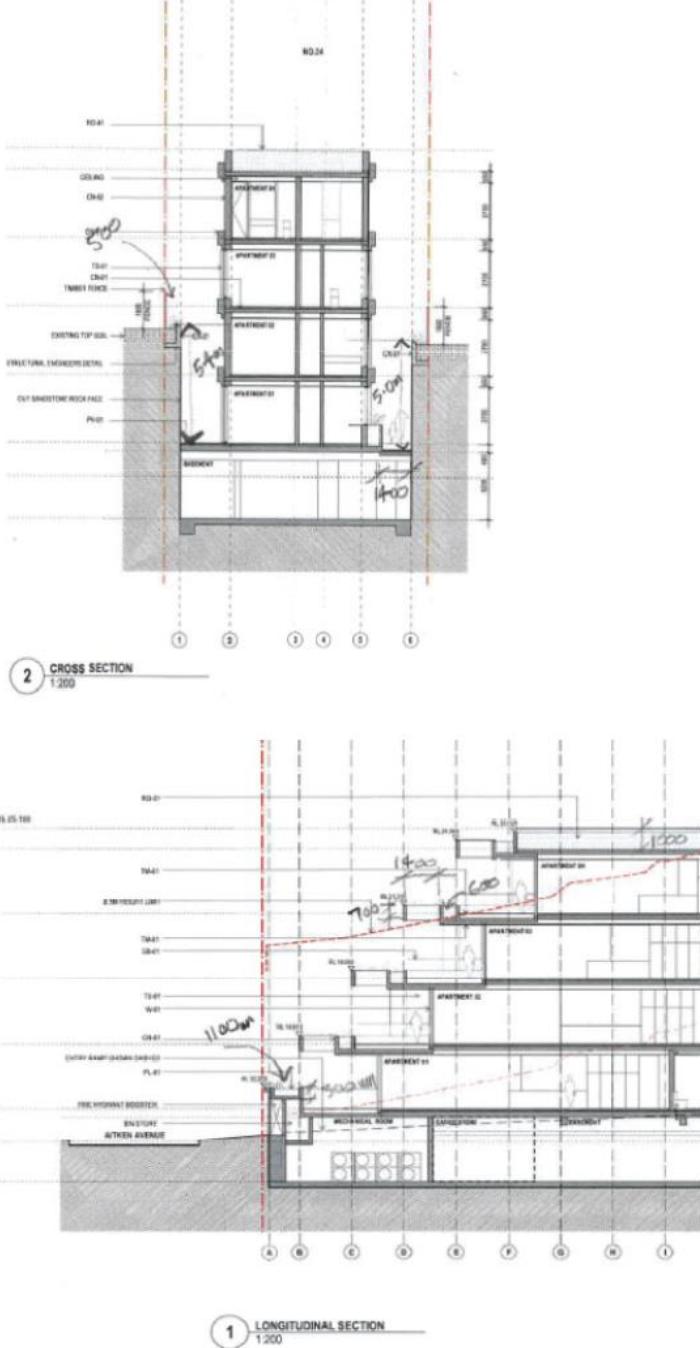
| Internal Referral Body                             | Comments  |
|--|---|
| Building Assessment - Fire and Disability upgrades | The application proposes demolition of existing buildings, construction of a new residential development and strata subdivision.<br>The development generally comprises four (4) units over five (5) storeys, inclusive of a basement level and the building classification relevant to the proposed use is Class 2 and 7a with Type A construction applicable. |

| Internal Referral Body                       | Comments  |
|--|---|
|  | <p>There are concerns that the proposal does not meet a number of areas contained within the Building Code of Australia (BCA) relating to Fire Safety. However, a report has been provided by the applicant that identifies a number of areas of non-compliance and indicates design intent to modify the design or demonstrate compliance with the Performance Requirements of the BCA. The design as proposed may be capable of complying with the BCA without recourse to a Modification, and will be subject to Construction Certificate documentation that provides appropriate details to demonstrate compliance .</p> <p>Whilst these performance based solutions are yet to be designed and developed, it would appear that the solutions should not impact on the current design so as to necessitate recourse to a Modified Consent. Therefore no objections subject to conditions.</p> <p><b>Supported</b></p> |
| Environmental Health<br>(Contaminated Lands) | <p>Council's Environmental Health team have reviewed the proposed development and submission received in relation to the proposed Sandstone excavation.</p> <p>Health impacts caused by Crystalline Silica is generally associated with occupational exposure and is regulated by Safework NSW. The risk to Public Health is considered low, however, it can be mitigated via relevant conditions, regulation of Safework requirements or compliance and enforcement action under the Protection of the Environment Operations Act 1997 (POEO) should the proponent of the development fail to prevent pollution incidences from occurring.</p> <p>Our Team recommends approval of the application subject to the imposition of conditions.</p> <p><b>Supported, subject to conditions.</b></p>   |
| Landscape Officer                            | <p>It is noted that this application requires resolution of planning issues relating to existing use rights, the site being in the R2 Zone Low density residential.</p> <p>As such, it is difficult to assess against the planning controls as a residential flat building is very different in nature to a residential dwelling.</p> <p>The following comments are made in relation to the proposal as submitted for your consideration.</p> <p>If however, the proposal is to be approved, conditions have been included.</p> <ul style="list-style-type: none"> <li>• The cross sections provided indicate that considerable wall heights are proposed along the boundaries as the building extends further into the site. Two narrow planters are</li> </ul>  |



| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <p>proposed along the boundary, above the finished ground level.</p> <p>These planters are only 500mm wide and provide little by way of amenity to either the occupants or the adjoining residences and it is unclear how these are to be maintained given the height above ground and narrowness of the planters.</p> <ul style="list-style-type: none"> <li>• The resultant spaces at the finished ground level are well below surrounding ground level, resulting in poor amenity and little opportunity for plant establishment in the resultant deep canyon like spaces. The entrance lobby of the building is located deep within the site along the eastern boundary, requiring residents and guests to access through these spaces.</li> <li>• A planter is indicated across the front of the site over the basement. The sections indicate a depth of planter of only 300mm, which is not considered adequate to sustain planting of any substance. The planters located within the balcony overhang requires a soil depth of at least 600mm.</li> </ul>  |



| Internal Referral Body           | Comments  |
|----------------------------------|---|
|                                  |  <p><b>Supported, subject to conditions.</b></p> |
| NECC (Bushland and Biodiversity) | The proposal has been assessed against Warringah DCP E4. An Indicative Planting list is provided. Cupaniopsis (Tuckeroo) are on     |

| Internal Referral Body                      | Comments   |
|---|--|
|   | <p>Councils exempt list and the planting of this species is not supported. A condition will be imposed to replace these with locally native species. Biodiversity raises no further issues with the proposal.</p> <p><b>Supported, subject to conditions.</b></p>  |
| NECC (Coast and Catchments)                 | <p>The proposed development is supported without condition and has been assessed to comply with SEPP Coastal Management. It is not likely to alter coastal processes to the detriment of the environment or other land and is not likely to reduce public amenity or existing access to and use of the foreshore.</p> <p><b>Supported.</b></p>   |
| NECC (Development Engineering)              | <p>Reference is made to Development Engineering Referral Response dated 01/02/19 and additional information provided by the Applicant.</p> <p><u>Stormwater:</u><br/>Sub-surface seepage flows from the excavation/basement area are required to be directly connected to Council's road drainage system through a kerb inlet pit. This will require stormwater drainage works within Aitken Avenue, and shall be appropriately conditioned.</p> <p><b>Supported, subject to conditions.</b></p>   |
| NECC (Riparian Lands and Creeks)            | <p>No objection to the proposal and is approved subject to conditions. The proposed development does lie within the mapped waterways and riparian land boundary and a waterways impact statement would be required. However given the distance from Manly Lagoon (45m) and the 35m of turf and riparian vegetation between the southern curb and gutter boundary of Aitken Ave, Council is willing to wave this requirement. The applicant had provided a Sediment and Erosion Control Plan but the details of the methodology are still to be developed as mentioned in the plan. The applicant will need to provide this detail to Council prior to commencement of works. The applicant must also develop a sediment and erosion control maintenance plan and this will need to be complied with over the course of the build and landscaping phases.</p> <p><b>Supported, subject to conditions.</b></p> |
| Strategic and Place Planning (Urban Design) | <p>The proposed development application is generally supported.</p> <p><b>APPLICATION OF CONTROLS</b><br/>General Comments<br/>The proposed development demonstrates an increase in overall floor areas to the top three level apartments which have been extended southward with 1.5 – 7 metres of length to the top three level apartments. The increased projections of the balconies have the sense of creating additional bulk to the overall form and mass of the built form. The result of these changes to the floor area have resulted in a breach of the height control. Refer also height of buildings control comments below.</p>  |

| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <p><b>1. Built Form Controls</b></p> <p><b>WLEP 2011</b><br/> <i>Aims of the WLEP in relation to residential development, are to:</i><br/> <i>i. protect and enhance the residential use and amenity of existing residential environments, and</i><br/> <i>ii. promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, . . .</i></p> <p><b>4.3 Height of Buildings</b><br/> <i>(1) The objectives of this clause are as follows:</i><br/> <i>(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</i><br/> <i>(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,</i><br/> <i>(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,</i><br/> <i>(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.</i><br/> <i>(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</i></p> <p><b>RESPONSE</b><br/> We note the upper level accommodation and rooftop terrace has been deleted with landscape area represented on the drawings. The extended/increased floor plate of this upper level, given the requirement to form the roof slab of the apartment below has resulted in the following effects.<br/> As mentioned above the increase in floor area of the upper level apartments has the resultant effect of breaching the building height control by virtue of the balconies pushing further out to the south and the nature of the topography across the site falling quite dramatically across the site. As such the height control is breached.</p> <p>As previously discussed in the pre-lodgement meeting the roof typology is markedly different, from a hip to parapet type roof. The increased bulk at this upper level exacerbated by the increased floor plates at upper levels and the reduced front setback, not so much from the ground level car park entry but by the increased bulk and scale toward the front of the site, still presents as an over development which will have impacts relevant to the surrounding sites and expected future development. See comments below regarding reduction of floor plates at upper levels.</p> <p><b>WDCP 2011</b><br/> <b>B1 – Wall Height</b><br/> <b>Objectives</b><br/> • <i>To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.</i></p> |

| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <ul style="list-style-type: none"> <li>• To ensure development is generally beneath the existing tree canopy level.</li> <li>• To provide a reasonable sharing of views to and from public and private properties.</li> <li>• To minimise the impact of development on adjoining or nearby properties.</li> <li>• To ensure that development responds to site topography and to discourage excavation of the natural landform.</li> <li>• To provide sufficient scope for innovative roof pitch and variation in roof design.</li> </ul> <p><b>1 Requirements</b><br/>1. Walls are not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building (excluding habitable areas wholly located within a roof space).</p> <p><b>2 Exceptions</b><br/>This control may be varied on sites with slopes greater than 20% within the building footprint (measured at the base of the external walls), provided the building:</p> <ul style="list-style-type: none"> <li>• does not exceed the 8.5 metre height development standard;</li> <li>• is designed and located to minimise bulk and scale; and</li> <li>• has a minimal visual impact when viewed from the downslope sides of the land.</li> </ul> <p><b>RESPONSE</b><br/>Non compliance with the wall height control of 7.2m is noted, along with the consideration of the nature of the sloping site. Measures to address minimisation of bulk and scale, visual impacts and sharing of views from adjoining properties should be demonstrated. A reduction in the increase of the upper level floor plates could address the increased bulk at the upper levels.</p> <p><b>B7 – Front Boundary Setback</b><br/><b>Requirements</b><br/>1. Development is to maintain a minimum setback to road frontages.<br/>2. The front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences.</p> <p><b>RESPONSE</b><br/>Noting the alignment of the ground level with the existing street building lines the general arrangement and planning across the site is supported.<br/>It is however noted that there are service doors that open outward onto the public pedestrian path and exceed the boundary line.<br/>It is recommended the building line be pulled back so as doors open onto entirely within the boundary line. Citing the existing building lines/garages as the precedent it is noted that these are vertical roller doors and do not encroach on the public area.</p> <p><b>B9 – Rear Boundary Setbacks</b><br/><b>Objectives</b><br/>• To ensure opportunities for deep soil landscape areas are</p> |



| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <p><i>maintained.</i></p> <ul style="list-style-type: none"> <li>• <i>To create a sense of openness in rear yards.</i></li> <li>• <i>To preserve the amenity of adjacent land, particularly relating to privacy between buildings.</i></li> <li>• <i>To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.</i></li> <li>• <i>To provide opportunities to maintain privacy between dwellings.</i></li> </ul> <p><i>Requirements</i></p> <ol style="list-style-type: none"> <li>1. <i>Development is to maintain a minimum setback to rear boundaries.</i></li> <li>2. <i>The rear setback area is to be landscaped and free of any above or below ground</i></li> </ol> <p><b>RESPONSE</b></p> <p>In consideration of the rooftop apartment being removed in the proposed development the subsequent reduction in bulk as viewed from the northern part of the site with a reduced setback of 5.2m can be supported.</p> <p><b>Supported</b></p>  |
| Traffic Engineer       | <p>The proposal is for the demolition of the existing apartment building and construction of a residential flat building with four apartments. Vehicular access would be provided from Aitken Avenue.</p> <p><b>Traffic:</b></p> <p>The site is anticipated to generate approximately 4 vehicles in the peak. This is considered negligible on the road network.</p> <p><b>Car Park Layout:</b></p> <p>The previous comments have been addressed. However the submitted vertical clearance swept path has identified that the height clearance is not fully compliant. They will be required to amend the plans showing 2.2m clearance along the full length of the driveway ramp.</p> <p><u>Previous Comments</u></p> <p><b>Car Park Layout:</b></p> <p>The layout appears compliant. Clearances from walls and obstructions are in accordance with AS2890.1:2004. The turntable addresses the ability for vehicles to enter and exit in a forward direction.</p> <p>Concerns are raised regarding the 1:5.7 grade transition. Grade Transitions are to be 1:8 for at least 2.0m. This section is not compliant. The applicant has not demonstrated that vehicles will be able to drive along this section without scraping or bottoming.</p> <p>Based on the non-compliance and lack of supporting evidence, the Traffic Team cannot support the application in its current form.</p> <p><b>Parking:</b></p> <p>Parking has been provided in accordance with the DCP requirements.</p> |

| Internal Referral Body | Comments   |
|------------------------|--|
|                        | <p>However the applicant is requesting that all basement parking spaces are to be for residents. This is not acceptable. The visitor space must be provided onsite. As such, 6 spaces will be allocated to the residents and 1 spaces is to be allocated as the visitor space.</p> <p><b>Planning Comment:</b><br/>The Applicant on 5 June 2019, provided further amendments to the driveway access. Drawing 1 - B99 Vertical Clearance Check dated 21 March 2019 demonstrates the vertical clearance for the swept path complying with the 2.2m requirement. The application is considered acceptable.</p> <p><b>Supported.</b></p> |
| Waste Officer          | <p>The application was reviewed by Council's Waste Officer who raised no objection subject to conditions.</p> <p><b>Supported.</b></p>   |

| External Referral Body     | Comments   |
|----------------------------|--|
| Ausgrid: (SEPP Infra.)     | <p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>  |
| Aboriginal Heritage Office | <p>The application was referred to the Aboriginal Heritage Office who provided the following comments:</p> <p><i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i></p> <p><i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i></p> <p><i>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted.</i></p> |

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and

LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

#### **SEPP 55 - Remediation of Land**

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

#### **SEPP 65 - Design Quality of Residential Apartment Development**

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
- (iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a four (4) storey residential flat 'housing' development plus basement car parking for the provisions of four(4) self-contained apartments.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

## DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel.

## DESIGN QUALITY PRINCIPLES

### Principle 1: Context and Neighbourhood Character

*Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.*

*Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.*

#### Comment:

The subject site is located within an established area consisting of various period and styles of architecture. Development forms range from single dwelling houses up to 2 -3 storeys and residential flat buildings. The site is located within a cul-de-sac with no through access and is opposite Manly Lagoon and Aitken Reserve to the south.

The proposed development has been designed to maximise the outlook across Manly Lagoon providing private outdoor open space for each apartment facing Aitken Avenue, a detail which has been incorporated into most if not all properties along Aitken Avenue.

While the scale of the development is greater than the existing building, the built form integrates with the character established by the neighbouring properties with garage and terraces constructed to the front boundary. This location contains a variety of development including residential flat buildings of 3, 4, 7, 15, 18 and 38 apartments (nos. 118 and 112, 130, 108, 132 and 106 Queenscliff Road) all within the same R2 low density residential area.

The proposed development satisfies this principle.

### Principle 2: Built Form and Scale

*Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.*

*Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.*



*Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*

Comment:

The built form, height and scale of the development is considered to provide a consistency and connection to the varying forms of development surrounding the site. The facade of the development addressing the Aitken Avenue streetscape provides a strong horizontal articulation with deep balconies to provide visual connections with the adjoining residential dwelling forms and a terraced form receding from the street to minimise the impact at street level.

The proposed garage entrance at the front boundary provides a podium form which is representative of numerous properties within this streetscape and is in part a result of the topography of these sites.

The location of the bulk of the development provides a more gentle terracing up the site with greater setbacks to the side building facades than the existing setbacks. (Refer Figure 1, 2 and 3). The design maximises the south-westerly orientation of the site enabling sought after sun and light penetration into the internal living spaces and terraces providing a desirable outlook to the adjoining lagoon reserve.



**Figure 1 - South Elevation**

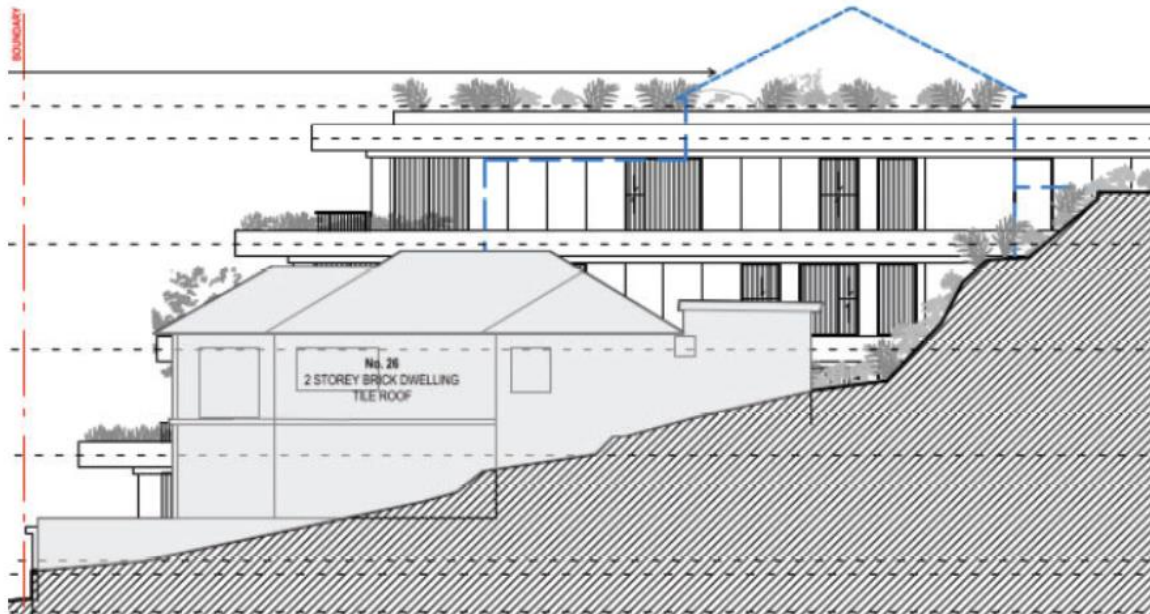


Figure 2 - East Elevation



Figure 3 - West Elevation (Figure 1, 2 and 3 - source: Breakspear Architects DA Plans)

### Principle 3: Density

*Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.*

*Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.*

Comment:

While WLEP 2011 does not provide a density development standard for the R2 Low Density Residential Zone, the development with four (4) apartments on a site measuring 525.8m<sup>2</sup> results in density of 1 dwelling per 131.5m<sup>2</sup>, slightly less than the existing situation with three (3) apartments providing a density of 1 dwelling/175.3m<sup>2</sup>.

The proposed density is not considered to be contrary to the future or existing regional context, the availability of infrastructure, public transport, community facilities or environmental quality. The subject site benefits from existing use rights and seeks to increase the density by one (1) apartment to four (4). This increase is considered consistent with the densities within the suburb of Queenscliff. The development satisfies this Principle.

**Principle 4: Sustainability**

*Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.*

Comment:

The environmental performance of the development is guided by the provisions of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. In this regard, a BASIX certificate has been submitted for the proposed development which demonstrates the building meets the NSW Government requirements for sustainability. The development meets the water and energy performance targets and achieves a pass for thermal comfort.

The development satisfies this Principle.

**Principle 5: Landscape**

*Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.*

*Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.*

Comment:

Due to the steep topography of the site, provision of suitable parking requires excavation from the street level. The proposed development has focused the primary landscaped areas away from the adjoining side neighbours through the use of generous planters at each terrace level and providing a level area at the rear of the site which connects to a common area roof terrace and non-trafficable planted roof area. These areas are not considered to unnecessarily create adverse impacts on the neighboring properties and maintains a green corridor and setback through the rear of the site which is not dissimilar to the existing setbacks to the current terrace area.

The individual landscaped terrace areas and the communal landscaped area at the highest rear of the



site provides secure and well functioning spaces which will present a softened impact through the planting areas within the built form.

The proposed development is considered to satisfy this Principle.

#### **Principle 6: Amenity**

*Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.*

*Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.*

##### Comment:

The primary emphasis of this design principle is to create a pleasant living environment for future occupants, both within the individual dwellings and the overall development. In this regard, the development demonstrates that the stepped design of the front of the development and configuration of the apartment layouts are capable of achieving satisfactory levels of amenity in terms of natural ventilation, access to sunlight, views and outlooks for individual dwellings in accordance with the requirements of the Residential Flat Design Code (discussed later in this report).

The general location, shape and configuration while restricted by the orientation of the site provides for appropriate levels of amenity for future residents, in terms of cross ventilation, storage areas and the provision of individual areas of private open space. Accordingly, the proposal is considered capable of achieving sufficient sustainability provisions for a development of this type. Therefore, the proposal is considered to satisfy the objectives of this principle.

#### **Principle 7: Safety**

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

##### Comment:

The proposed development is considered to provide improved levels of security beyond what is currently available to the existing development with secured basement parking and secured entry to each apartment. In addition, each apartment provides balconies which overlook the street providing improved passive surveillance to the street and the adjoining reserve and well lit, defined paths accessing the communal lobby.

The proposal is considered to adequately achieve safety and security for future occupants of the development, providing good casual surveillance of both public and private domains. The proposal satisfies this Principle.

#### **Principle 8: Housing Diversity and Social Interaction**

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.



Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:

The proposed development includes one (1) additional apartment on the site providing four (4) x three (3) bedroom apartments in total. The proposed finishes and features of the development are considered to be consistent with the quality and size of development in this area providing improved design and amenity in close proximity to Manly Beach, public transport and numerous community facilities. The development is considered to satisfy this Principle.

**Principle 9: Aesthetics**

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

The development application was accompanied by a photo-montage of the proposed development and a schedule of colours and finishes to demonstrate the aesthetics of the design. The development, as proposed, will provide an upgrade in the quality of the building on the site to achieve a more contemporary appearance and improved internal amenity suited to modern living.

The overall aesthetic appearance of the development, particularly as viewed from Aitken Avenue is a terraced design intended to appear 'embedded in the landscape'. The design provides horizontal articulation and use of light natural finishes providing texture and warmth further softened by planter beds at each level integrating vegetation within the balcony roof overhang into the overall appearance. The architecture is considered to be consistent with the requirement of this design principle.

**APARTMENT DESIGN GUIDE**

The following table is an assessment against the criteria of the 'Apartment Design Guide' as required by SEPP 65.

| Development Control                  | Criteria / Guideline   | Comments   |
|--------------------------------------|--|--|
| <b>Part 3 Siting the Development</b> |  |  |
| <b>Site Analysis</b>                 | Does the development relate well to its context and is it sited appropriately?                                   | <b>Complies</b><br>The proposed development is considered consistent with development in the surrounding area. |
| <b>Orientation</b>                   | Does the development respond to the streetscape and site and optimise solar access within the development and to | <b>Complies</b><br>The site orientates to the south western boundary   |

|                                       | neighbouring properties?   | with a south facing slope. The building width in the east/west direction is minimised with 3m boundary setbacks to maximise solar access to all apartments and minimise overshadowing to neighbouring properties.   |                    |                                 |  |  |  |  |
|---------------------------------------|--|---|--------------------|---------------------------------|--|--|--|--|
| <b>Public Domain Interface</b>        | Does the development transition well between the private and public domain without compromising safety and security?<br><br>Is the amenity of the public domain retained and enhanced?   | <b>Complies</b>   |                    |                                 |  |  |  |  |
| <b>Communal and Public Open Space</b> | Appropriate communal open space is to be provided as follows:<br><br>1. Communal open space has a minimum area equal to 25% of the site<br>2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) | Site area = 525.8m <sup>2</sup><br>25%= 131.45m <sup>2</sup><br>Communal open space = 92.41m <sup>2</sup><br><br>There is no communal open space provided on the site is due to the small lot size. The proposal provides large balconies with Apartment 4 having access to the open space area located at the rear of the development which is also the highest part of the site.<br><br>The site benefits from its proximity to the reserve adjoining Manly Lagoon which is on the opposite side of Aitken Avenue and provides an extensive open space area with recreation facilities offering a supplement to the balcony areas and opens space on the site which are restricted due to topography and orientation. |                    |                                 |  |  |  |  |
| <b>Deep Soil Zones</b>                | Deep soil zones are to meet the following minimum requirements:<br><table border="1" data-bbox="491 1870 1023 1973"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td></td><td></td><td></td></tr> </tbody> </table>                              | Site area   | Minimum dimensions | Deep soil zone (% of site area) |  |  |  | The deep soil zone on this site which is less than 650m <sup>2</sup> is located with the communal open space area within the rear setback of the site. The |
| Site area                             | Minimum dimensions   | Deep soil zone (% of site area)   |                    |                                 |  |  |  |  |
|                                       |  |   |                    |                                 |  |  |  |  |

|   | <table> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr> </table>   | Less than 650m <sup>2</sup> | -                             | 7%                  | 650m <sup>2</sup> – 1,500m <sup>2</sup> | 3m        | Greater than 1,500m <sup>2</sup> | 6m                      | Greater than 1,500m <sup>2</sup> with significant existing tree cover | 6m   | <p>deep soil area is approximately 24m<sup>2</sup> in area.</p> <p>While the site provides approximately 4.5% as deep soil, the ADG provides the following:</p> <p><i>"Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structures".</i></p> <p>The stormwater management on the site has been assessed by Council's Development Engineers as acceptable. The design includes numerous planters located at each level to provide additional planting areas for the development. These planters have been detailed to provide a depth of 1.0m which is considered suitable to sustain adequate plant growth.</p> <p>The proposal is acceptable in this regard.</p> |     |    |  |
|---|--|-----------------------------|-------------------------------|---------------------|---|-----------|----------------------------------|-------------------------|---|------|--|-----|----|--|
| Less than 650m <sup>2</sup>   | -  | 7%                          |                               |                     |   |           |                                  |                         |   |      |  |     |    |  |
| 650m <sup>2</sup> – 1,500m <sup>2</sup>                               | 3m   |                             |                               |                     |   |           |                                  |                         |   |      |  |     |    |  |
| Greater than 1,500m <sup>2</sup>                                      | 6m   |                             |                               |                     |   |           |                                  |                         |   |      |  |     |    |  |
| Greater than 1,500m <sup>2</sup> with significant existing tree cover | 6m   |                             |                               |                     |   |           |                                  |                         |   |      |  |     |    |  |
| <b>Visual Privacy</b>   | <p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> <tr> <td><b>Up to 12m (4 storeys)</b></td><td><b>6m</b></td><td><b>3m</b></td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> | Building height             | Habitable rooms and balconies | Non-habitable rooms | <b>Up to 12m (4 storeys)</b>            | <b>6m</b> | <b>3m</b>                        | Up to 25m (5-8 storeys) | 9m  | 4.5m | Over 25m (9+ storeys)  | 12m | 6m | <p>The following setbacks are proposed to the three (3) adjoining residential properties:</p> <p>Rear - North (124 Queenscliff Rd) - 14m<br/>Side - East (26 Aitken Ave) - 3.9m<br/>Side - West (22 Aitken Ave) - 5m</p> <p>In order to comply with the building separation requirements, the new development would be</p> |
| Building height   | Habitable rooms and balconies  | Non-habitable rooms         |                               |                     |   |           |                                  |                         |   |      |  |     |    |  |
| <b>Up to 12m (4 storeys)</b>  | <b>6m</b>  | <b>3m</b>                   |                               |                     |   |           |                                  |                         |   |      |  |     |    |  |
| Up to 25m (5-8 storeys)   | 9m   | 4.5m                        |                               |                     |   |           |                                  |                         |   |      |  |     |    |  |
| Over 25m (9+ storeys)   | 12m  | 6m                          |                               |                     |   |           |                                  |                         |   |      |  |     |    |  |

|                                      |  |   |
|--------------------------------------|--|---|
|                                      | <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p> | <p>required to be setback to such a degree that the site could not be developed in an orderly manner that would be consistent with the streetscape.</p> <p>The development has been designed to step each apartment away from the street which has moved each balcony area within the development back accordingly. As a result, the only balcony that fully aligns with the neighbour at No.22 is Apartment 3.</p> <p>This apartment has a balcony at RL17.660 which is 1.17m higher than the adjacent balcony at RL16.49. The setback to the neighbour is approximately 5.0m and the balcony contains a 1.8m long screen extending from the face of the building. It is recommended that this screen be extended for a length of 2.5m to provide additional protection.</p> <p>The proposal is considered acceptable.</p> |
| <b>Pedestrian Access and entries</b> | <p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>   | <p><b>Complies</b></p> <p>The pedestrian entry is located on the eastern side of the site and is accessible from the front boundary.</p> <p>This entry is considered to meet the requirements of the ADG.</p>   |
| <b>Vehicle Access</b>                | <p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>   | <p><b>Complies</b></p> <p>The vehicle access point to the basement carpark is located on the opposite side of the site to the pedestrian access. The</p>  |



|                                      |  |  |
|--------------------------------------|--|--|
|                                      |  | <p>driveway access has been reviewed by Council's Traffic Engineer and is considered satisfactory in terms of safety.</p> <p>The appearance of the basement entry provides an improved aesthetic response within the streetscape.</p>  |
| <b>Bicycle and Car Parking</b>       | <p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p> | <p><b>Complies</b></p> <p>The proposed development provides adequate provision for bicycle and car parking in accordance with the requirements of WDCP 2011.</p>   |
| <b>Part 4 Designing the Building</b> |  |  |
| <b>Amenity</b>                       |  |  |
| <b>Solar and Daylight Access</b>     | <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>   | <p><b>Complies</b></p> <p>The ADG compliance report provided by the Architect of the development identifies that 75% of the apartments meet the requirement for a minimum of 2 hours direct sunlight between 9am and 3pm to living rooms and private open space. All apartments receive at least 1 hour of sunlight access.</p> <p>It is noted that each</p> |

|                                |   | apartment balcony includes an operable awning which are used to shade the summer sun and vertical timber screens are proposed to the east and west facades.   |  |                 |      |               |      |                         |  |              |   |                                |  |   |
|--------------------------------|---|---|--|-----------------|------|---------------|------|-------------------------|--|--------------|---|--------------------------------|--|---|
|                                | <ul style="list-style-type: none"><li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</li></ul>  | N/A   |  |                 |      |               |      |                         |  |              |   |                                |  |   |
| Natural Ventilation            | <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"><li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</li></ul>   | <p><b>Complies</b></p> <p>There are no single aspect apartments and each apartment provides openings to three sides of the apartment and all habitable spaces.</p> <p>It is noted that the site is a south facing sloping site and is therefore constrained in terms of providing a northern orientation. The development satisfies the objectives of the part.</p> |  |                 |      |               |      |                         |  |              |   |                                |  |   |
|                                | <ul style="list-style-type: none"><li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li></ul>  | Each apartment measures 6.4m in width from east to west.  |  |                 |      |               |      |                         |  |              |   |                                |  |   |
| Ceiling Heights                | <p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor<br/>2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table> | Minimum ceiling height  |  | Habitable rooms | 2.7m | Non-habitable | 2.4m | For 2 storey apartments | 2.7m for main living area floor<br>2.4m for second floor, where its area does not exceed 50% of the apartment area | Attic spaces | 1.8m at edge of room with a 30 degree minimum ceiling slope | If located in mixed used areas | 3.3m for ground and first floor to promote future flexibility of use | <p><b>Complies</b></p> <p>All habitable rooms within the development contain full height windows.</p> |
| Minimum ceiling height         |   |   |  |                 |      |               |      |                         |  |              |   |                                |  |   |
| Habitable rooms                | 2.7m  |   |  |                 |      |               |      |                         |  |              |   |                                |  |   |
| Non-habitable                  | 2.4m  |   |  |                 |      |               |      |                         |  |              |   |                                |  |   |
| For 2 storey apartments        | 2.7m for main living area floor<br>2.4m for second floor, where its area does not exceed 50% of the apartment area  |   |  |                 |      |               |      |                         |  |              |   |                                |  |   |
| Attic spaces                   | 1.8m at edge of room with a 30 degree minimum ceiling slope   |   |  |                 |      |               |      |                         |  |              |   |                                |  |   |
| If located in mixed used areas | 3.3m for ground and first floor to promote future flexibility of use  |   |  |                 |      |               |      |                         |  |              |   |                                |  |   |
| Apartment Size and             | Apartments are required to have the following   | <b>Complies</b>   |  |                 |      |               |      |                         |  |              |   |                                |  |   |

| Layout   | minimum internal areas:  | All apartments are three (3) bedrooms and exceed the minimum internal areas required by the ADG. |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
|--|--|--|-----------------------|---------------|-------------------|-----------------|------------------|----------------------|------------------|-----------|------------------|--|--|---|
|  | <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table>   | Apartment type   | Minimum internal area | Studio        | 35m <sup>2</sup>  | 1 bedroom       | 50m <sup>2</sup> | 2 bedroom            | 70m <sup>2</sup> | 3 bedroom | 90m <sup>2</sup> |  |  |   |
|  | Apartment type   | Minimum internal area  |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
|  | Studio   | 35m <sup>2</sup>   |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
|  | 1 bedroom  | 50m <sup>2</sup>   |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
|  | 2 bedroom  | 70m <sup>2</sup>   |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
|  | 3 bedroom  | 90m <sup>2</sup>   |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
|  | The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m <sup>2</sup> each.<br><br>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m <sup>2</sup> 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.   | Complies   |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
|  | Habitable room depths are limited to a maximum of 2.5 x the ceiling height.  | 2.5 x 2.7m = 6.75m. No habitable room depths exceed 6.75m.                                       |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
| In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.   | The maximum room depth is no greater than 6.75m  |  |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
| Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).   |  |  |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
| Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.                                       | All bedrooms provide at least 3.0m in dimension.   |  |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
| Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"><li>3.6m for studio and 1 bedroom apartments</li><li>4m for 2 and 3 bedroom apartments</li></ul> | The internal width of the combined living /dining area is 6.75m.   |  |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
| The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts  | The internal width of the apartments is 6.4m.  |  |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
| Private Open Space and Balconies   | <p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td></td><td></td><td></td></tr></table> | Dwelling Type  | Minimum Area          | Minimum Depth | Studio apartments | 4m <sup>2</sup> | -                | 1 bedroom apartments | 8m <sup>2</sup>  | 2m        |                  |  |  | <p><b>Complies</b></p> <p>The primary balcony for each apartment provide an area measuring approximately 23m<sup>2</sup>.</p> |
| Dwelling Type  | Minimum Area   | Minimum Depth  |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
| Studio apartments  | 4m <sup>2</sup>  | -  |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
| 1 bedroom apartments   | 8m <sup>2</sup>  | 2m   |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |
|  |  |  |                       |               |                   |                 |                  |                      |                  |           |                  |  |  |   |

|                                      | <table><tr><td>2 bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m.</p>  | 2 bedroom apartments  | 10m <sup>2</sup>    | 2m                | 3+ bedroom apartments | 12m <sup>2</sup>     | 2.4m            |                      |                 |                       |                  |  |
|--------------------------------------|--|---|---------------------|-------------------|-----------------------|----------------------|-----------------|----------------------|-----------------|-----------------------|------------------|--|
| 2 bedroom apartments                 | 10m <sup>2</sup>   | 2m  |                     |                   |                       |                      |                 |                      |                 |                       |                  |  |
| 3+ bedroom apartments                | 12m <sup>2</sup>   | 2.4m  |                     |                   |                       |                      |                 |                      |                 |                       |                  |  |
| <b>Common Circulation and Spaces</b> | The maximum number of apartments off a circulation core on a single level is eight.  | The development provides access to a single apartment at each level of the lift core.   |                     |                   |                       |                      |                 |                      |                 |                       |                  |  |
|                                      | For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.  | N/A   |                     |                   |                       |                      |                 |                      |                 |                       |                  |  |
| <b>Storage</b>                       | <p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td></tr><tr><td>1 bedroom apartments</td><td>6m<sup>2</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>2</sup></td></tr><tr><td>3+ bedroom apartments</td><td>10m<sup>2</sup></td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p> | Dwelling Type   | Storage size volume | Studio apartments | 4m <sup>2</sup>       | 1 bedroom apartments | 6m <sup>2</sup> | 2 bedroom apartments | 8m <sup>2</sup> | 3+ bedroom apartments | 10m <sup>2</sup> | <b>Complies</b><br>Each apartment is larger than the minimum floor area required under the ADG and therefore contains additional space within each footprint for storage. Apartments 1, 2 and 3 contain an additional room available for storage or a study nook. Each apartment contains a space within the basement garage for bulky goods/bike storage. |
| Dwelling Type                        | Storage size volume  |   |                     |                   |                       |                      |                 |                      |                 |                       |                  |  |
| Studio apartments                    | 4m <sup>2</sup>  |   |                     |                   |                       |                      |                 |                      |                 |                       |                  |  |
| 1 bedroom apartments                 | 6m <sup>2</sup>  |   |                     |                   |                       |                      |                 |                      |                 |                       |                  |  |
| 2 bedroom apartments                 | 8m <sup>2</sup>  |   |                     |                   |                       |                      |                 |                      |                 |                       |                  |  |
| 3+ bedroom apartments                | 10m <sup>2</sup>   |   |                     |                   |                       |                      |                 |                      |                 |                       |                  |  |
| <b>Acoustic Privacy</b>              | Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.  | <b>Complies</b>   |                     |                   |                       |                      |                 |                      |                 |                       |                  |  |
| <b>Noise and Pollution</b>           | Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.  | <b>Complies</b><br>The development site is located toward the end of a no through road opposite a lagoon and reserve. The building design has focused active living areas at the front of the apartments facing the street. |                     |                   |                       |                      |                 |                      |                 |                       |                  |  |



| <b>Configuration</b>           |   |  |
|--------------------------------|---|--|
| <b>Apartment Mix</b>           | Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.  | <b>Complies</b><br>The development is for only four (4) apartments, each being three (3) bedrooms. Apartments 1, 2 and 3 include an additional small space suitable for a study. The apartment mix is considered suitable for this location.   |
| <b>Ground Floor Apartments</b> | Do the ground floor apartments deliver amenity and safety for their residents?  | <b>Complies</b><br>The ground floor apartments are on an elevated podium approximately 1.6m above street level and are considered to provide adequate amenity and safety.  |
| <b>Facades</b>                 | Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.  | <b>Complies</b><br>The proposed building facade incorporates horizontal cantilevered and planted balconies at each level terracing back up the site to reduce the perceived bulk and scale of the building.<br><br>The materials palette includes off form concrete structural elements, natural hardwood timber screening and compressed fibre cement cladding with generous planter beds providing articulation to the facade and a complimentary reflection of the natural space opposite the site within the lagoon reserve. |
| <b>Roof Design</b>             | Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.<br>Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top. | <b>Complies</b><br>The proposed roof is to incorporate a deep soil roof garden.  |
|                                |   |  |

| Landscape Design       | Was a landscape plan submitted and does it respond well to the existing site conditions and context.  | Complies  |   |                   |             |                           |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |
|------------------------|---|---|---|-------------------|-------------|---------------------------|-----------|-------------|---|-------------------|---------|-------------------------|--------------|---|------------------|---------|-----------------------|-------------|--|-----------------|-------|---------------------------|--------|--|--|-----------|--|--------------|--|--|-----------|--|------|--|--|-------|--|
| Planting on Structures | When planting on structures the following are recommended as minimum standards for a range of plant sizes:  | Complies<br>The proposed roof planter and the planters at each level balcony provide a minimum of 1.0m soil depth suitable for supporting medium sized vegetation commensurate with the scale of planting referenced in the drawings and photomontages. |   |                   |             |                           |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |
|                        | <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m<sup>3</sup></td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m<sup>3</sup></td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m<sup>3</sup></td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table> |   | Plant type                                      | Definition        | Soil Volume | Soil Depth                | Soil Area | Large Trees | 12-18m high, up to 16m crown spread at maturity | 150m <sup>3</sup> | 1,200mm | 10m x 10m or equivalent | Medium Trees | 8-12m high, up to 8m crown spread at maturity | 35m <sup>3</sup> | 1,000mm | 6m x 6m or equivalent | Small trees | 6-8m high, up to 4m crown spread at maturity | 9m <sup>3</sup> | 800mm | 3.5m x 3.5m or equivalent | Shrubs |  |  | 500-600mm |  | Ground Cover |  |  | 300-450mm |  | Turf |  |  | 200mm |  |
|                        | Plant type  |   | Definition                                      | Soil Volume       | Soil Depth  | Soil Area                 |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |
|                        | Large Trees   |   | 12-18m high, up to 16m crown spread at maturity | 150m <sup>3</sup> | 1,200mm     | 10m x 10m or equivalent   |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |
|                        | Medium Trees  |   | 8-12m high, up to 8m crown spread at maturity   | 35m <sup>3</sup>  | 1,000mm     | 6m x 6m or equivalent     |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |
|                        | Small trees   |   | 6-8m high, up to 4m crown spread at maturity    | 9m <sup>3</sup>   | 800mm       | 3.5m x 3.5m or equivalent |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |
|                        | Shrubs  |   |   |                   | 500-600mm   |                           |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |
|                        | Ground Cover  |   |   |                   | 300-450mm   |                           |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |
| Turf                   |   |   | 200mm   |                   |             |                           |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |
| Universal Design       | Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features   | Complies<br>The plans submitted with the application identify Apartment 2 (DA203-A) as universally designed Liveable Housing Unit.  |   |                   |             |                           |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |
| Adaptable Reuse        | New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.   | N/A   |   |                   |             |                           |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |
| Mixed Use              | Can the development be accessed through public transport and does it positively contribute to the public domain?<br><br>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.   | N/A   |   |                   |             |                           |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |
|                        |   |   |   |                   |             |                           |           |             |   |                   |         |                         |              |   |                  |         |                       |             |  |                 |       |                           |        |  |  |           |  |              |  |  |           |  |      |  |  |       |  |

|  |   |   |
|--|---|---|
| <b>Awnings and Signage</b>               | Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.<br><br>Signage must respond to the existing streetscape character and context. | N/A   |
| <b>Performance</b>                       |   |   |
| <b>Energy Efficiency</b>                 | Have the requirements in the BASIX certificate been shown in the submitted plans?   | <b>Complies</b><br>The applicant has submitted a set of plans containing the Assessor certification with a NatHers rating of 6.0 stars and ABSA accreditation.  |
| <b>Water Management and Conservation</b> | Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?  | <b>Complies</b><br>The application has been reviewed by Council's Development Engineers who have raised no objections subject to conditions in relation to stormwater and drainage.   |
| <b>Waste Management</b>                  | Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?  | <b>Complies</b><br>The plans provide adequate waste and recycling storage areas accessed from street level. This area has been endorsed by Council's Waste Services.  |
| <b>Building Maintenance</b>              | Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?   | <b>Complies</b><br>The construction and facade materials selected for the development are of an adequate durability to ensure the longevity of the building provided reasonable building maintenance occurs for the duration of the buildings life. |

#### **STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT**

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the

consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

**Note.** The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Comment:

The proposal satisfies the design criteria above and is recommended for approval subject to conditions.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 4.15(2) of the Act applies.

**Note.** The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.

Comment:

Adequate regard has been given to the matters raised under subclause (2) and the application is recommended for approval subject to conditions.

**SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 964998M dated 26 October 2018). The BASIX Certificate indicates that the development will achieve the following:

| Commitment      | Required Target | Proposed |
|-----------------|-----------------|----------|
| Water           | 40              | 40       |
| Thermal Comfort | Pass            | Pass     |
| Energy          | 35              | 35       |

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



## **SEPP (Infrastructure) 2007**

### Ausgrid

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

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

### Comment:

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

## **Warringah Local Environmental Plan 2011**

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

### Principal Development Standards

| Standard             | Requirement | Proposed | % Variation | Complies |
|----------------------|-------------|----------|-------------|----------|
| Height of Buildings: | 8.5m        | 12.25m   | 44.7        | No       |

### Compliance Assessment

| Clause                                  | Compliance with Requirements              |
|---|---|
| 2.6 Subdivision - consent requirements  | Yes                                       |
| 2.7 Demolition requires consent         | Yes                                       |
| 4.3 Height of buildings                 | No<br>(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

## Warringah Development Control Plan

### Built Form Controls

| Built Form Control                                  | Requirement | Existing Building       | Proposed   | % Variation*               | Complies |
|---|-------------|-------------------------|--|----------------------------|----------|
| B1 Wall height                                      | 7.2m        | 10m                     | 10.9m (east)<br>9.9m (west)  | 3.7m (50%)<br>2.7m (37.5%) | No       |
| B3 Side Boundary Envelope                           | East - 5m   | 2.8m - 3.3m             | Up to 4.61m  | N/A                        | No       |
|   | West - 5m   | 1.0m - 2.85m            | Up to 4.15m  | N/A                        | No       |
| B5 Side Boundary Setbacks                           | 0.9m        | 1.5m                    | 0.8m to basement<br>3.0m to building   | 0.1m (11%)                 | No       |
|   | 0.9m        | 1.4m                    | 0.8m to basement<br>3.0m to building   | 0.1m (11%)                 |          |
| B7 Front Boundary Setbacks                          | 6.5m        | 14m                     | <b>Basement</b> - Nil<br><b>Ground</b> - Nil to planter<br>5.32m to face of building<br><b>First Floor</b> - 1.7m to planter<br>7.72m to face of building<br><b>Second Floor</b> - 4.1m to planter<br>10.1m to face of building<br><b>Third Floor</b> - 6.5m to planter<br>12.5m to face of building<br><b>Roof</b> - 8.9m | N/A                        | No       |
| B9 Rear Boundary Setbacks                           | 6m          | 4.9m                    | 5.26m  | 0.71m (8.5%)               | No       |
| D1 Landscaped Open Space (LOS) and Bushland Setting | 40%         | 245m <sup>2</sup> (46%) | 19% excluding roof and planters<br>52% including roof and planters   | N/A                        | No       |

### Part B Built Form Controls

The Land and Environment Court Planning Principle established in the judgement by Senior Commissioner Roseth in *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71, confirms that the provisions of Environmental Planning Instruments (and DCP's) that derogate or detract from the benefit endowed on a site by existing use rights do not apply to the assessment of applications on sites where existing use rights apply. Therefore, zone objectives and planning controls that limit the size of a proposal (i.e. floor space ratio, height, setbacks) have no application if existing use rights apply.

This includes qualitative provisions as well as quantitative provisions. In view of the above, the built form controls as contained in the WDCP compliance table are not relevant to the assessment of the

Application and is, therefore, only included as a record to identify how the proposed development measures up against the applicable controls that would otherwise relate to the subject site, if existing use rights did not apply to this site. In this regard, no further assessment is provided in this report regarding the non-compliances as identified in the Built Form Controls table above. Instead, this report includes a merit based assessment having regard to the matters for consideration set out under Section 4.15 of the EPA Act.

#### Compliance Assessment

| <b>Clause</b>                                   | <b>Compliance with Requirements</b> | <b>Consistency Aims/Objectives</b> |
|---|-------------------------------------|------------------------------------|
| A.5 Objectives                                  | Yes                                 | Yes                                |
| C2 Traffic, Access and Safety                   | Yes                                 | Yes                                |
| C3 Parking Facilities                           | Yes                                 | Yes                                |
| C4 Stormwater                                   | Yes                                 | Yes                                |
| C5 Erosion and Sedimentation                    | Yes                                 | Yes                                |
| C7 Excavation and Landfill                      | Yes                                 | Yes                                |
| C8 Demolition and Construction                  | Yes                                 | Yes                                |
| C9 Waste Management                             | Yes                                 | Yes                                |
| D1 Landscaped Open Space and Bushland Setting   | Yes                                 | No                                 |
| D2 Private Open Space                           | Yes                                 | Yes                                |
| D3 Noise  | Yes                                 | Yes                                |
| D6 Access to Sunlight                           | Yes                                 | Yes                                |
| D7 Views  | Yes                                 | Yes                                |
| D8 Privacy                                      |                                     |                                    |
| D9 Building Bulk                                | Yes                                 | No                                 |
| D10 Building Colours and Materials              | Yes                                 | Yes                                |
| D11 Roofs                                       | Yes                                 | Yes                                |
| D12 Glare and Reflection                        | Yes                                 | Yes                                |
| D14 Site Facilities                             | Yes                                 | Yes                                |
| D20 Safety and Security                         | Yes                                 | Yes                                |
| D21 Provision and Location of Utility Services  | Yes                                 | Yes                                |
| E1 Preservation of Trees or Bushland Vegetation | Yes                                 | Yes                                |
| E6 Retaining unique environmental features      | Yes                                 | Yes                                |
| E10 Landslip Risk                               | Yes                                 | Yes                                |

#### Detailed Assessment

##### **D6 Access to Sunlight**

#### Merit consideration

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

- *To ensure that reasonable access to sunlight is maintained.*

Comment:

Based on the shadow analysis submitted with the application, the extent of overshadowing impact on the adjoining properties is considered minor and reasonable in the circumstances.

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

Comment:

The proposed development has excavated into the site in order to minimise any additional height or bulk of the development as it extends down the site to the south. The overall building form while extending for more of the site is lower than the existing building height resulting in some minor improvements to overshadowing in some places on the adjoining properties.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

Comment:

The existing and proposed shadow analysis provided by the Applicant demonstrates that due to the steep south facing topography of the site and its adjoining properties, the extent of impact from the development is predominantly in the afternoon where the first floor west facing windows at the front of the dwelling lose the small amount of sunlight currently available from midday.

- *To promote passive solar design and the use of solar energy.*

Comment:

The proposed development has maximised where possible the principles of passive solar design offering multi aspect apartments oriented towards the views of the lagoon and reserve with full height glazing to habitable rooms.

- *To minimise the need for artificial lighting.*

Comment:

The internal design of the apartments seek to use internal reflective light off light coloured internal finishes.

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

**D7 Views**Merit consideration

Following notification of the application, submissions were received from two (2) properties raising concerns of view loss from the proposal. The impact of the development on the properties at No. 126 Queenscliff Road and No. 22 Aitken Avenue is considered against the underlying Objectives of the Control as follows:

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

Comment:

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

**1. Nature of the views affected**

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

Comment to Principle 1:

**126 Queenscliff Road**

This property adjoins the north-west (rear) corner of the subject site. The site currently enjoys views from the rear, first floor balconies across the top of the subject site and the adjoining property at No. 22 Aitken Avenue. The view includes a section of Manly Lagoon and Reserve and district views.



**Photograph 1** - Existing view across the subject site (source: Breakspear Architects)

**22 Aitken Avenue**

This property is adjacent to the subject site to the south-west and currently has views from the



front first floor terrace and living area to the south across Manly Lagoon and Reserve.

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

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

### Comment to Principle 2:

Both properties have views from terraces (rear at No. 126 Queenscliff Road and front at No. 22 Aitken Avenue). Views are available from a sitting and standing positions.

## 3. Extent of impact

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

### Comment to Principle 3:

#### **126 Queenscliff Road**

The view impact from the property at No. 126 Queenscliff Road is arguably reduced with the proposed development. While the building is moving slightly further west, the finished height of the new works is approximately 3.2m lower than the existing ridge line. Accordingly, the extent of impact in this instance is considered reduced and on balance negligible.



**Photograph 2** - View from 126 Queenscliff Road with proposed building (source: Breakspear Architects)

## 22 Aitken Avenue

This property currently contains a large entertaining deck on the front southern facade of the house adjoining the living, dining and kitchen. This deck is at RL16.49 and is approximately 1.5m from the side boundary with the subject site and approximately 5.1m from the front boundary. It is noted that this deck was originally approved with a privacy screen along the entire eastern end which was later removed through a modification.

The proposed development includes a terrace at first floor level (RL14.410) and a roof over hang at RL 17.31 that provides a setback of approximately 4.1m. The roof terrace will provide a minor interruption into the view lines from this deck to the east. The view impact from the eastern side of the deck will be a reduction from a 180 degree view of the lagoon to approximate 168 degree view. The overall impact of the development on this property is considered minor to negligible.

## 4. Reasonableness of the proposal that is causing the impact

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

### Comment to Principle 4:

Given the site benefits from 'existing use rights' the assessment of the proposed development against the numerical planning controls for this zone conflicts with the the Planning Principle which states *"the provisions of Environmental Planning Instruments (and DCP's) that derogate or*

*detract from the benefit endowed on a site by existing use rights do not apply to the assessment of applications on sites where existing use rights apply."*

The application has been assessed on its merits and the proposed form is not considered to result in anything other than a minor to negligible impact on the eastern periphery of the existing view corridor from No. 22 Aitken Avenue. Accordingly, the overall impact on views of surrounding properties is considered negligible.

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

Comment:

The proposed design is considered to provide a high level of architectural integrity and improved quality of materials and finishes. The design is considered acceptable in terms of this requirement.

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

Comment:

There are no trees impact by this development for the retention of views.

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

## D8 Privacy

### Merit consideration

The submissions received following notification of the proposed development raised concerns with privacy impacts resulting from windows, courtyards and balconies along the western side of the development. Accordingly, The development is considered against the underlying Objectives of the Control as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

Concerns relating to the potential for noise impacts from the Ground Floor Level side courtyards is considered unfounded. This area adjoins bedrooms and not high traffic living spaces. Its shape and size is not conducive for use to entertain. This space is not considered a likely source of noise impacts.+

The building design includes the use of timber screens to all windows located on the eastern and western elevations. These screens are considered to adequately protect sight lines to and from bedrooms located in these positions. The same screening detail is incorporated along the edge of the trafficable balcony areas. The only location in where this is considered to be an area of potential overlooking is at Apartment 3 on the western elevation. While the development provides a separation of approximately 4.5m balcony to balcony, the finished level of this apartment is approximately 1.17m above the finished level of the balcony at No. 22 Aitken Avenue. The screen element appears to end short of the full depth of the balcony which is

considered to result in potential for overlooking from this unit across to the balcony at No. 22. It is recommended that this screen be extended to the southern end of the trafficable balcony section and be a fixed structure.

The balcony areas for each apartment are located at the southern frontage of the building with a setback of 3.0m to the boundary in order to maximise the available view amenity from this aspect. This detail is repeated by almost every property within Aitken Avenue and is a detail which could be incorporated into a single dwelling up to 0.9m from the side boundaries. Subject to this specific condition the proposed development is considered to provide appropriate visual and acoustic privacy.

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

Comment:

The proposed development provide maximum amenity to all apartments despite its steep, south facing constraints.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposed development will provide secure vehicle and pedestrian access into the site.

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

## THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

## CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

## POLICY CONTROLS

### Northern Beaches Council Contributions Plan 2018

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

The following monetary contributions are applicable:

| Northern Beaches Council Contributions Plan 2018               |           |           |
|--|-----------|-----------|
| Contribution based on a total development cost of \$ 2,908,959 |           |           |
| Contributions  | Levy Rate | Payable   |
| Total Section 7.12 Levy  | 0.95%     | \$ 27,635 |



|  |       |           |
|--|-------|-----------|
| Section 7.12 Planning and Administration | 0.05% | \$ 1,454  |
| Total                                    | 1%    | \$ 29,090 |

## CONCLUSION

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

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

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

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

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

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

### Description of non-compliance:

|                                      |                 |
|--------------------------------------|-----------------|
| Development standard:                | Building Height |
| Requirement:                         | 8.5m            |
| Proposed:                            | 12.25m          |
| Percentage variation to requirement: | 44.7%           |

### Assessment of request to vary a development standard:

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

### Clause 4.6 Exceptions to development standards:



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

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

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

Comment:

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

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

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

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

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

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

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Comment:

The Applicant has not provided a written request to demonstrate that the objectives of the development standard are achieved, as the application of the building height control in this instance does not apply on sites with existing use rights. The proposed development seeks to redevelop a site which benefits from existing use rights. The current and proposed height limits do not apply to any other development site in the immediate vicinity of the site. As the overall height of the proposed development has a lower RL due to the siting of the existing building and its pitched roof form, the proposal is considered to be acceptable in this instance.

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

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

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

Comment:

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

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

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

Comment:

The height of the new development while greater than that of the immediately adjoining properties is considered compatible with other buildings and development surrounding the site to the north.

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

Comment:

The proposed development is not considered to result in any material disruption of views, loss of privacy or solar access.

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

Comment:

The proposed development has been oriented to maximise its connection and proximity to Manly Lagoon and has incorporated a high quality material palette to compliment the natural spaces on the opposite side of Aitken Avenue.

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

Comment:

The proposed development has provided a recessive step in the building facade at each level to minimise its visual impact. This architectural detail is further enhanced with the use of cascading garden elements throughout the facade which provide visual relief of the building form using natural elements.

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

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

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

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2018/1761 for Demolition Works and construction of a residential flat building, and strata subdivision on land at Lot CP SP 30021, 24 Aitken Avenue, QUEENSCLIFF, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. **Approved Plans and Supporting Documentation**

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

##### a) Approved Plans

| <b>Architectural Plans - Endorsed with Council's stamp</b>  |              |                       |
|---|--------------|-----------------------|
| <b>Drawing No.</b>  | <b>Dated</b> | <b>Prepared By</b>    |
| DA001 - Location Plan - Rev D                               | 25.10.2018   | Breakspear Architects |
| DA103 - Demolition Plan - Rev D                             | 25.10.2018   | Breakspear Architects |
| DA104 - Excavation and Fill Plan - Rev D                    | 25.10.2018   | Breakspear Architects |
| DA200 - Roof terrace Plan - Rev D                           | 25.10.2018   | Breakspear Architects |
| DA201 - Third Floor Plan - Rev E                            | 25.10.2018   | Breakspear Architects |
| DA202 - Second Floor Plan - Rev E                           | 25.10.2018   | Breakspear Architects |
| DA203 - First Floor Plan - Rev E                            | 25.10.2018   | Breakspear Architects |
| DA204 - Ground Floor Plan - Rev F                           | 28.03.2019   | Breakspear Architects |
| DA205 - Basement Plan - Rev F                               | 28.03.2019   | Breakspear Architects |
| DA300 - West Elevation - Rev D                              | 25.10.2018   | Breakspear Architects |
| DA301 - East Elevation - Rev D                              | 25.10.2018   | Breakspear Architects |
| DA302 - North/South Elevation - Rev E                       | 25.10.2018   | Breakspear Architects |
| DA303 - Massing Comparison Elevations (East/West) - Rev E   | 25.10.2018   | Breakspear Architects |
| DA304 - Massing Comparison Elevations (South/North) - Rev D | 25.10.2018   | Breakspear Architects |
| DA400 - Cross Sections 1 and 2 - Rev E                      | 25.10.2018   | Breakspear Architects |
| DA401 - Longitudinal Section - Rev F                        | 28.03.2018   | Breakspear Architects |
| DA902 - Driveway Crossover - Rev B                          | 28.03.2018   | Breakspear Architects |
| DA500 - Schedule of Colours and Materials - Rev D           | 25.10.2018   | Breakspear Architects |

#### **Reports / Documentation – All recommendations and requirements contained within:**

| <b>Report No. / Page No. / Section No.</b> | <b>Dated</b> | <b>Prepared By</b>    |
|--|--------------|-----------------------|
| Traffic Report                             | October      | Colston Budd Rogers & |



|                                      |                 |                               |
|--------------------------------------|-----------------|-------------------------------|
|                                      | 2018            | Kafes Pty Ltd                 |
| Construction Traffic Management Plan | 19 October 2018 | AAA Traffic Control Pty Ltd   |
| Geotechnical Investigation Report    | 17 October 2018 | Geo-environmental Engineering |
| BCA Assessment Report                | 24 October 2018 | City Plan Services            |
| Accessibility Assessment Report      | 4 October 2018  | City Plan Services            |
| Arboricultural Impact Assessment     | 25 October 2018 | Complete Arborcare            |

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

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

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

| Landscape Plans                       |                 |                              |
|---------------------------------------|-----------------|------------------------------|
| Drawing No.                           | Dated           | Prepared By                  |
| L100 - Landscape Concept Plan - Rev E | 17 October 2018 | Spirit Level Designs Pty Ltd |

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

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

## 2. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the

work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
  - A. the name and licence number of the principal contractor, and
  - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
  - A. the name of the owner-builder, and
  - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative Requirement

### 3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether

the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

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

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

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

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

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

Northern Beaches Council Contributions Plan 2018

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

The following monetary contributions are applicable:

| Northern Beaches Council Contributions Plan 2018                  |           |              |
|---|-----------|--------------|
| Contribution based on a total development cost of \$ 2,908,959.21 |           |              |
| Contributions   | Levy Rate | Payable      |
| Total Section 7.12 Levy   | 0.95%     | \$ 27,635.11 |
| Section 7.12 Planning and Administration                          | 0.05%     | \$ 1,454.48  |
| Total   | 1%        | \$ 29,089.59 |

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



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

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

**5. Security Bond**

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

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

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

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

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

**6. Construction, Excavation and Associated Works Bond (Drainage)**

The applicant is to lodge a Bond of \$350,000 as security against failure to complete the construction of Stormwater drainage works as part of this consent. Details demonstrating payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

**7. Construction, Excavation and Associated Works Bond (Maintenance for civil works)**

The developer/applicant must lodge with Council a Maintenance Bond of \$29,000 for the construction of stormwater drainage within Aitken Avenue. The Maintenance Bond will only be refunded on completion of the six-month Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing practical completion.

Reason: Protection of Council's infrastructure.

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

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

- a) Details shall be submitted to the Certifying Authority prior to the issue of the



Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.

- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.
- c) The following soil depths are required in order to be counted as landscaping:
  - 300mm for lawn
  - 600mm for shrubs
  - 1metre for trees

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

#### **9. Pump-Out System Design for Stormwater Disposal**

The design of the pump-out system for stormwater disposal will be permitted for drainage of hard surfaces areas such as driveways and basement pavement areas only, and must be designed in accordance with AS/NZS 3500. The Applicant is to provide engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site.

#### **10. Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for Infrastructure works on Councils roadway. Engineering plans for the new development works within the road reserve within this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the design of stormwater drainage within Aitken Avenue which shall be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer.

The design must include the following information:

- i. Construction of a stormwater pipeline to connect to existing Council road drainage to the west of the subject site.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

#### 11. On-site Stormwater Detention

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Warringah Water Management Policy PL850, and generally in accordance with the concept drainage plans prepared by Insync Services, job number 20180047, drawing number SW-000, SW-001, SW-100, SW-101, SW-102, SW-103, SW-104, SW-105, SW-106, issue 3 and SW-107, issue 1, dated 26/03/19. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

#### 12. Structural Adequacy and Excavation Work

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

- a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

#### 13. Sub-Soil Seepage

The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit, directly to Council's road drainage system within Aitken Avenue and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.)

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

Reason: To ensure appropriate drainage and stormwater management on site to protect amenity of residents.

**14. Shoring of Adjoining Property**

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

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

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

**15. Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

**16. Traffic Management and Control**

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

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

**17. Environmental Management Plan**

A site specific Environmental Management Plan (EMP) prepared by a suitably qualified contractor must be submitted to Council, assessed and approved to the satisfaction of Council's Environmental Health Team prior to any Construction Certificate being issued.

The plan shall be prepared by a suitably qualified person and shall address risk assessment of

all Environmental aspects and impacts to the site and other potentially impacted properties.

The impacts must at minimum consider the following areas:

- Hazardous Substances (Asbestos, Crystalline Silica)
- Water
- Air
- Noise
- Vibration
- Waste & Litter
- Land
- Community
- Environmental Protection objectives and control strategies
- Environmental conditions using measurable indicators and standards
- Emergency Response Plan
- Environmental monitoring and reporting plan

Reason: To prevent pollution and protect Public and Environmental Health in accordance with Protection of the Environment Operations Act 1997 and Safework NSW requirements.

**18. Planter and Garden Bed soil depth**

All constructed planter boxes and garden beds, excluding the balcony overhangs are to provide a minimum of 1.0m soil depth. The balcony overhangs must provide a minimum of 600mm soil depth. Details to be provided to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure adequate soil depth is provide to support sufficient scale planting.

**19. Pre-commencement Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

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

**20. Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:-

- Site Boundaries and contours;
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points

- Locations and methods of all erosion and sediment controls;
- North point and scale.

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

Reason: To mitigate environmental impact resulting from site disturbance (DACNEC22)

21. **Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended to delete the Cupaniopsis (Tuckeroo) and replace these with locally native canopy trees of minimum mature height of 8m. The amended Landscape Plan is to be certified by a qualified landscape architect, arborist or ecologist prior to the issue of the Construction Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls. (DACNECPCC2)

22. **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.

23. **Privacy Screen to be extended to Apartment 03**

The privacy screen on the western side of the balcony of Apartment 03 is to be extended for the full length of the deck finishing at the southern edge of the trafficable balcony section. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that are consistent with the approved colours and materials and that complement the design of the approved development.

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

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

24. **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](http://www.sydneywater.com.au) for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

25. **Waste and Recycling Requirements**



Details demonstrating compliance with Northern Beaches Council Waste Management Guidelines, including the required Northern Beaches Council Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with Northern Beaches Council Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided. (DACWTC01)

**26. Waste Management Plan**

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

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

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

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

**27. 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.

**28. Tree protection**

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause

E1 Private Property Tree Management and AS 4373 Pruning of amenity trees  
v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

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

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

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

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

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

30. **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.

31. **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.

32. **Traffic Control During Road Works**

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

Reason: Public Safety

33. **Vehicle Crossings**

The Applicant is to construct a normal standard vehicle crossing 3.6 metres wide in accordance

with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

34. **Noise and Vibration**

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

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

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

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

Reason: To ensure private and public safety

36. **Site Fencing**

The site must be fenced throughout construction and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

Reason: To ensure public safety.

37. **Site Management Sign**

A clearly legible Site Management Sign is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:

- The builder's name, builder's telephone contact number both during work hours and after hours
- That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
- That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections.
- During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
- That no skip bins or materials are to be stored on Council's Road Reserve.
- That the contact number for Northern Beaches Council for permits is 9970 1111.

Reason: To ensure that contractors on site are aware of council permits that need to be obtained and contact for the builder/foreman.

**38. Waste Management During Development**

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

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

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

**39. Compliance with the Environmental Management Plan**

During the demolition, excavation and construction phase of the approved development, the proponent must comply with the Environmental Management Plan that is approved by Council's Environmental Health Team.

Reason: to prevent pollution during demolition, earthworks and construction.

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

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

b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

**41. 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)

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

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

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

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

**43. Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan



Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

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

**44. Landscape Certification**

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Principal Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the approved Landscape Drawing and a maintenance program has been established.

Reason: This is to ensure the landscaping is planted in accordance with the drawing and maintained appropriately.

**45. 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.

**46. 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.



**47. 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.

**48. Post-Construction Dilapidation Report**

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties

Reason: To ensure security against possible damage to Council and private property.

**49. Required Planting**

a) Trees, shrubs and groundcovers shall be planted in accordance with the approved Landscape Plan.

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

Reason: To maintain environmental amenity.

**50. Certification of Drainage Works and Works as Executed Data**

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

approval prior to the release of any security deposits.

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

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

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

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

Reason: To ensure bushland management. (DACPLF01)

52. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area. (DACPLF03)

53. **Waste Management Confirmation**

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

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

54. **Undergrounding of Telecommunications Services**

Arrangements are to be made for the provision of underground telecommunications services to the building.

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

Reason: Provision of telecommunication facilities in a manner that facilitates the future underground provision of cable services. (DACPLF06)

55. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the 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.

56. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with Northern Beaches Council Waste Management Guidelines

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

Reason: To ensure waste and recycling facilities are provided. (DACWTF01)

57. **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)

58. **Positive Covenant for Waste Services**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

59. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land. (DACWTF04)

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

60. **Landscape maintenance**

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity.

61. **No Planting Environmental Weeds**

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

**Reason:** Weed management.

62. **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.

63. **Dead or Injured Wildlife**

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

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

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

64. **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

65. **Services**

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

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

66. **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

67. **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) <<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

68. **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

69. **Release of Subdivision Certificate**

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

Reason: To ensure that the plans relate to approved development

70. **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

71. **Title Encumbrances**

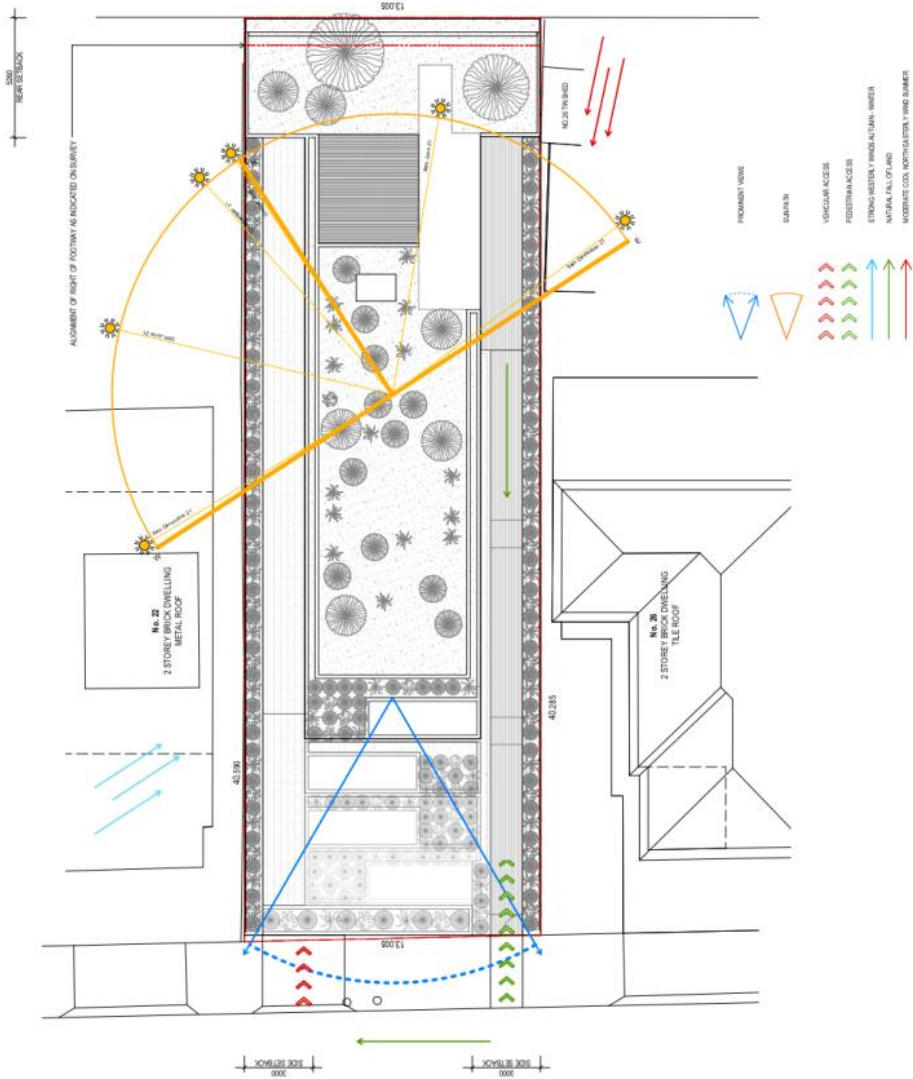
All easements, rights of carriageway, positive covenants and restrictions as to user as indicated on the plans and required by this consent are to be created on the title naming Northern Beaches Council as the sole authority empowered to release or modify. Details demonstrating compliance are to be submitted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

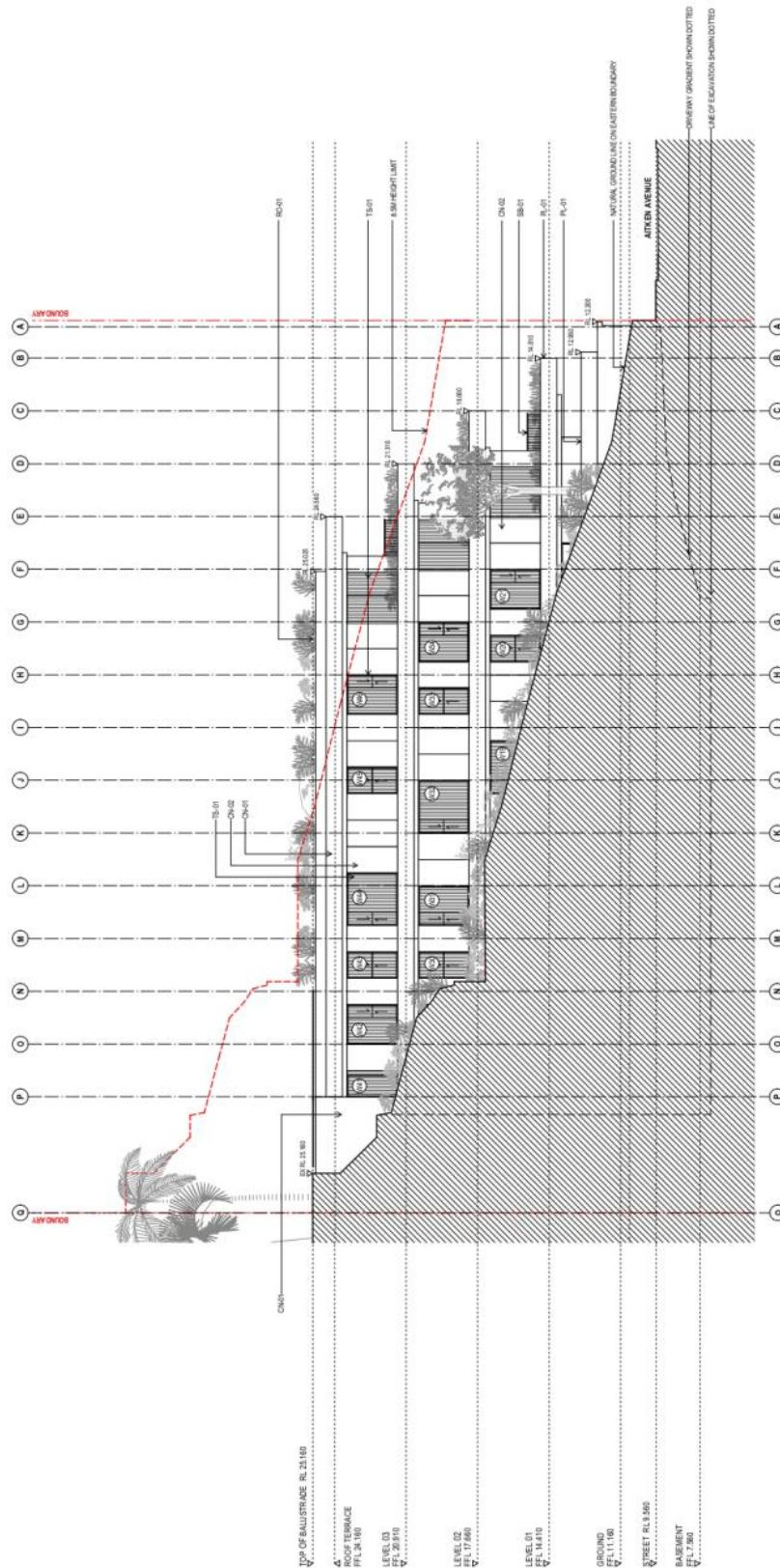
Reason: To ensure proper management of land





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| 1  | SITE AND CONTEXT ANALYSIS PLAN<br>1:200  | 2   | LOCATION PLAN<br>1:200       | NOT FOR CONSTRUCTION | SHEET TITLE<br>SITE PLAN AND LOCATION PLAN | DOCUMENTATION STAGE<br>DA | SHEET NUMBER<br>001            | SHEET<br>D  |
| <p>24 AITKEN AVE APARTMENTS, QUEENSCLIFF</p> <p>PROJECT NUMBER<br/>1801</p> <p>PROJECT NAME<br/>24 AITKEN AVE APARTMENTS, QUEENSCLIFF</p> <p>PROJECT ADDRESS<br/>24 AITKEN AVE, QUEENSCLIFF VIC 3220</p> <p>PROJECT CONTACT<br/>JACKIE BAKER<br/>M 081 452 2811 E jackie@breakspear.com.au</p> | <p>ARCHITECT<br/>BREAKSPEAR ARCHITECTS<br/>100/110 DUNDAS ST, MELB VIC 3000<br/>P 03 9594 1111 E info@breakspear.com.au</p> <p>LANDSCAPE ARCHITECT<br/>Landscape Architects<br/>100/110 DUNDAS ST, MELB VIC 3000<br/>P 03 9594 1111 E info@breakspear.com.au</p> <p>STRUCTURAL ENGINEER<br/>Structural Engineering<br/>100/110 DUNDAS ST, MELB VIC 3000<br/>P 03 9594 1111 E info@breakspear.com.au</p> <p>GEOTECHNICAL ENGINEER<br/>Geotechnical Engineering<br/>100/110 DUNDAS ST, MELB VIC 3000<br/>P 03 9594 1111 E info@breakspear.com.au</p> <p>CONVEYANCING<br/>Conveyancing<br/>100/110 DUNDAS ST, MELB VIC 3000<br/>P 03 9594 1111 E info@breakspear.com.au</p> | <p>CLIENT<br/>24 AITKEN AVE APARTMENTS, QUEENSCLIFF<br/>M 081 452 2811 E jackie@breakspear.com.au</p> | <p>DATE<br/>17 JULY 2019</p> | <p>SCALE<br/>A3</p>  | <p>CHECKED<br/>TB</p>                      | <p>DRAWN<br/>CA</p>       | <p>PROJECT NUMBER<br/>1801</p> | <p>PROJECT NAME<br/>24 AITKEN AVE APARTMENTS, QUEENSCLIFF</p> |





**1** WEST ELEVATION  
1:200

This drawing should be used in conjunction with all relevant contracts, specifications, reports and drawings. Do not scale drawings dimensions from this drawing. Verify all dimensions on site before construction. Copyright of this drawing is reserved by Breakspear Architects Pty Ltd.

| NOT FOR CONSTRUCTION                  |  |                                     |  |                                     |  |                                     |  |                                     |  |
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| JACKSON'S                             |  | JACKSON'S                           |  | JACKSON'S                           |  | JACKSON'S                           |  | JACKSON'S                           |  |
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This drawing should be read in conjunction with all relevant contracts, specifications, reports and drawings. Do not scale drawings. Dimensions given. Verify all dimensions on site before construction. Copyright of this drawing is vested in the author. *© 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 2682, 2683, 26*

**NOT FOR CONSTRUCTION**

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|---|------------|---------------|----------------|--|--|---|---|--|--------------------------------------|----------------------------|-----------------------------|-------------------------------|----------------------|-----------------------|--------------------------------|---------------------------|
| 1 | 2024-11-01 | JOHN J. JAMES | SYNOPSIS/OWNER | Electrical Engineer<br>John J. James<br>10000 1st Ave. Suite 100<br>M 604-238-1000<br>M 604-238-1001<br>M 604-238-1002 | Electrical Engineer<br>John J. James<br>10000 1st Ave. Suite 100<br>M 604-238-1000<br>M 604-238-1001<br>M 604-238-1002 | LANDSCAPE ARCHITECT<br>M 604-238-1000<br>M 604-238-1001<br>M 604-238-1002 | ARCHITECT<br><b>BRANDT PEACOCK ARCHITECTS</b><br>10000 1st Ave. Suite 100<br>M 604-238-1000<br>M 604-238-1001<br>M 604-238-1002 | PROJECT<br><b>24 ATTKEN AVE APARTMENTS, QUEENSBURG</b><br>Title No. BP 30021 | SHEET TITLE<br><b>EAST ELEVATION</b> | SHEET NUMBER<br><b>301</b> | SHEET SCALE<br><b>1-200</b> | PROJECT NUMBER<br><b>1801</b> | CREATED<br><b>CA</b> | REVISION<br><b>TB</b> | DOCUMENT'S STATUS<br><b>DA</b> | DATE<br><b>2024-11-01</b> |
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