



northern
beaches
council

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 21 AUGUST 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

Peter Biscoe	Chair
Steve Kennedy	Urban Design Expert
Marcus Sainsbury	Environmental Expert
Ray Mathieson	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 21 August 2019
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1.00pm**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 14 August 2019	
3.0	DEVELOPMENT APPLICATIONS	5
3.1	MOD2019/0227 - 27 Pittwater Road, Manly - Modification of Development Consent DA2017/1229 granted for a mixed use development, alterations and additions to a heritage building, use as a serviced apartment and construction of a residential flat building	5
3.2	MOD2019/0170 - Kangaroo Street, Manly - Modification of Development Consent DA265/2015 granted for Redevelopment of the Kangaroo Street Child Care Centre and Youth Centre	18
3.3	DA2018/0487 - 4 Brookvale Avenue, Brookvale - Construction of a residential flat building with basement parking	59
3.4	MOD2019/0222 - 17 Cove Avenue, Manly - Modification of Development Consent DA275/2017 granted for Alterations and Additions to an existing hospital	137

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 14 AUGUST 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 14 August 2019 were adopted by the Chairperson and have been posted on Council's website.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0227
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Responsible Officer:	David Auster
Land to be developed (Address):	Lot 2 DP 1252275, 27 Pittwater Road MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA2017/1229 granted for a mixed use development, alterations and additions to a heritage building, use as a serviced apartment and construction of a residential flat building
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Pauterson Holdings Pty Ltd
Applicant:	BBF Town Planners

Application lodged:	16/05/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	28/05/2019 to 08/06/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Executive Summary

The existing building is a heritage item. The proposal involves minor changes to the approved Schedule of Conservation Works, relating to the removal of the existing paintwork and internal plastering. The requirements to remove these have been deleted from the Schedule due to the discovery that this will likely damage the brickwork underneath.

No submissions were received in response to the public notification of the application.

Council's Heritage Officer has assessed the proposed modifications and raised no concerns with the minor changes.

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

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone B2 Local Centre
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Development Control Plan - 3.2 Heritage Considerations

SITE DESCRIPTION

Property Description:	Lot 2 DP 1252275 , 27 Pittwater Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of a single allotment located on the western side of Pittwater Road, Manly.</p> <p>The site is irregular in shape with a frontage of 13.57m along Pittwater Road, 12.49m along Kangaroo Lane and a depth of up to 45.72m. The site has a surveyed area of 566.6m².</p> <p>The site is located within the B2 Local Centre zone and accommodates a single storey brick dwelling house. The existing dwelling house and the adjoining dwelling to the south are listed as a collective heritage item (Item No. I198 'Pair of houses'). The subject site is located within the Pittwater Road Conservation Area pursuant to Manly Local Environmental Plan 2013 and located within the Manly Town Centre pursuant to Manly Development Control Plan 2013.</p> <p>The site is generally flat without any topographical constraint.</p>

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a mix of attached dwellings, residential flat buildings and mixed use development.

To the south of the site is a single storey dwelling house that makes up one half of the heritage listed 'pair of houses'. It should be noted that a development application (DA2017/1217) for alterations and additions to the existing building and construction of two new dwellings resulting in a residential flat building was approved by Council on 3 January 2019.

To the west of the subject site is a natural rock cliff face which runs north/south along Kangaroo Lane. To the east of the subject site is predominantly mixed use developments of varying scale and to the north is a 3 storey mixed use development.

Map:



SITE HISTORY

Development Application No. DA2017/1229

The application to be modified was approved by the Northern Beaches Local Planning Panel (NBLPP) on 21 December 2018, for Construction of a mixed use development including alterations and additions to and use of the existing heritage building as a serviced apartment and construction of a residential flat building.

The NBLPP imposed a deferred commencement condition (Condition 1. Positive covenant - Heritage Conservation) which required creation of a positive covenant to ensure the on-going conservation of the

heritage item in accordance with the Schedule of Conservation Works (SCW) prepared by Heritage 21 (Issue 2 Job No. 8271), dated 19/10/2018.

A further condition of consent (Condition 30. Conservation Works) was also imposed, requiring that the works identified within the SCW identified as 'Immediate Conservation Actions' be carried out prior to issue of an occupation certificate.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification involves amendment of the Schedule of Conservation Works (SCW) referred to in Conditions 1 and 30 of the Notice of Determination for development application no. DA2017/1229. Specifically it relates to paint removal from the front facade (no longer required), brick cleaning (no longer required), internal walls (plaster no longer required), and the existing painted finish to brickwork at the southern facade (requires repainting).

Conditions 1 and 30 are proposed to be modified to refer to the issue and date of the updated SCW.

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 DA2017/1229, 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:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes 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 DA2017/1229.

Section 4.55(1A) - Other Modifications	Comments
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan and Manly Development Control Plan.</p>
<p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>No submissions were received in relation to this application.</p>

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:

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

Section 4.15 'Matters for Consideration'	Comments
	<p>Clauses 54 and 109 of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>No submissions were received.</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	The updated Schedule of conservation works is now acceptable.

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.

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

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 5 Miscellaneous provisions	Yes
5.10 Heritage conservation	Yes
6.13 Design excellence	Yes

Detailed Assessment

Zone B2 Local Centre

The development was approved under clause 5.10(10) of the MLEP. The minor modifications proposed will not alter the permissibility of the development.

5.10 Heritage conservation

The original development application was approved under clause 5.10(10), which reads as follows:

(10) Conservation incentives

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

The applicants have provided an amended heritage management document, in the form of an amended Schedule of Conservation Works. The existing consent and conditions to be modified will satisfy clauses (a), (b), and (c). Council's Heritage Officer has assessed the proposed modifications and raised no concerns. Clause (d) is therefore considered to remain satisfied. The proposed changes are minor, and will not have any significant adverse effect on the amenity of the surrounding area. Clause (e) is therefore considered to be satisfied also.

As such, the proposed modifications do not alter the permissibility of the development under clause 5.10(10).

Manly Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part 3	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.2 Pittwater Road Conservation Area	Yes	Yes

Detailed Assessment

3.2 Heritage Considerations

The proposed changes to the Schedule of Conservation Works are minor, and relate to retaining the existing paintwork due to likely damage to the brick work caused by the paint removal. Brick cleaning using muriatic acid will also be deleted from the SCW, as will the plastering of the internal walls. A new recommendation has been added to require cleaning, anti-moulding and repainting of the lower courses of brickwork at the southern facade of the dwelling.

The potential damage is likely due to water ingress, which has made the porous brickwork softer than the calomine paint, and means that any method of stripping the paint is likely to damage the building.

Council's Heritage Officer has reviewed the documentation provided with the application including the Amended Schedule of Conservation Works cover letter explaining the changes, and the amended Schedule. No concerns have been raised, and approval has been recommended.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0227 for Modification of Development Consent DA2017/1229 granted for a mixed use development, alterations and additions to a heritage building, use as a serviced apartment and construction of a residential flat building on land at Lot 2 DP 1252275,27 Pittwater Road, MANLY, subject to the conditions printed below:

A. Modify Condition 1. Positive covenant - Heritage conservation

1. Pursuant to s 4.16(3) of the Environmental Planning and Assessment Act 1979 (NSW) the person entitled to act on this development consent (consent) must satisfy the following deferred commencement conditions prior to the consent becoming operative:

(a) A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919 (NSW)) shall be created on the title of the land to ensure the on-going conservation of the heritage item in accordance with works outlined within the 'Schedule of Conservation Works' prepared by Heritage 21 (Issue 3 Job No. 8447 - RI.2), dated 12.04.19.

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.

Evidence of the registration of the Positive Covenant on the title of the land shall be submitted to the Council within the time specified in (2) below.

2. The registration of the Positive Covenant that will sufficiently enable the council to be satisfied as to the compliance with the matters required to be done under deferred commencement conditions 1(a) must be submitted to the council within 24 months of the date of the determination of this deferred commencement consent, failing which, this deferred commencement consent will lapse pursuant to s 4.53 of the Environmental Planning and Assessment Act 1979 (NSW).

3. This deferred commencement consent will not become operative until such time that the council notifies the person entitled to act on this consent in writing pursuant to cl 95(5) of the Environmental Planning and Assessment Regulation 2000 (NSW) that the requirements set out under the deferred commencement condition 1(a) has been satisfied.

4. Upon the council notifying the person entitled to act on this consent that the deferred commencement condition 1(a) has been satisfied, the consent will become operative from the date of the written notification subject to the following conditions:

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

C. Modify Condition 30. Conservation works

The works identified within the Schedule of Conservation Works' prepared by Heritage 21 (Issue 3 Job No. 8447 - RI.2), dated 12.04.19, as 'Immediate Conservation Actions' are to be carried out prior to the

issue of an Occupation Certificate.

Details demonstrating compliance are to be submitted to the certifying authority prior to the issue of an Occupation Certificate.

Reason: To ensure immediate conservation works are carried out.

ITEM 3.2

**MOD2019/0170 - KANGAROO STREET, MANLY -
MODIFICATION OF DEVELOPMENT CONSENT DA265/2015
GRANTED FOR REDEVELOPMENT OF THE KANGAROO
STREET CHILD CARE CENTRE AND YOUTH CENTRE**

AUTHORISING MANAGER RODNEY PIGGOTT

TRIM FILE REF 2019/454668

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 the council.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. MOD2019/0170 for Modification of Development Consent DA265/2015 granted for redevelopment of the Kangaroo Street Child Care Centre and Youth Centre at Lot 2623 DP 752038, Kangaroo Street, Manly subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0170
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Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 2623 DP 752038, 0 Kangaroo Street MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA265/2015 granted for Redevelopment of the Kangaroo Street Child Care Centre and Youth Centre
Zoning:	Manly LEP2013 - Land zoned SP2 Infrastructure
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Northern Beaches Council
Applicant:	Northern Beaches Council Quinton Lloyd

Application lodged:	17/04/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Community facility
Notified:	31/05/2019 to 14/06/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

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

The development is for modifications of minor environmental impact to the existing childcare and youth centre and includes:

- Modification of the roof form including deletion of the pop-up roof and addition of skylights.
- Minor internal and external alterations.
- Deletion of vehicle impact barriers.
- Alterations to existing entry and associated landscaping.

(See Proposed Development in Detail within the report)

The development is referred to the Northern Beaches Local Planning Panel for determination as the applicant and land owner is the Northern Beaches Council.

The most notable modification to the development is the removal of the jersey kerbs on Kangaroo Street. These were required by a condition of consent in the original development application. To support the removal of these kerbs the applicant has provided a report from a traffic consultant proposing an alternative solution. Councils Traffic engineer has reviewed the report and supports the modifications. A condition ensuring compliance with this report has been included in the recommendation.

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

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

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 2623 DP 752038 , 0 Kangaroo Street MANLY NSW 2095
Detailed Site Description:	The site is known as the Kangaroo Street Childcare and Community Centre. The title to the site is Lot 2623 DP 752038. The lot has an area of 1821m ² .

To the east and south of the site are residential and commercial developments. To the north of the site is Kangaroo Park. On the western side of Kangaroo Street are residential flat buildings and dwelling houses.

Existing development on the site comprises two (2) main components being the child care area and the community area.

Externally and on another site is a secure covered children's play area to the north of the building. At the lower level along the southern and eastern sides of the building is car parking for twenty two (22) vehicles.

Map:



SITE HISTORY

The land has been used for a childcare and youth centre for an extended period of time. A search of Council's records has revealed the following relevant history:

MOD2019/0170 - The current application was amended on the 18/07/2019. The amendments include the deletion of the rooms office 22 tea making 21 and foyer/waiting 20 and replacement with an open plan meeting room 2. The amendments differed in only minor respects from the application that was notified, and does not result in a greater environmental impact. As such re-notification was not necessary.

MOD2018/0248 - The modified proposal includes:

- Internal alterations to the youth centre without increasing the floor area of the building;
- Adjusting the location of the dividing wall between the youth centre and the childcare centre
- Reducing the main hall of the youth centre to 140m²;
- Increasing the size of the main meeting room by 91sqm

- Major upgrade of the amenities and incorporation of accessible facilities.
- Changes to the amenities in the Child Care Centre to further comply with current requirements.
- Adjustments to the carpark on the lower level to more clearly identify those spaces required by staff and those available to the public. Reducing the on-site parking spaces from 22 to 17.
- A lift from the car park to the upper level is being provided and a new garbage area at the carpark level is proposed.

This application was approved by the Northern Beaches Local Planning Panel on the 3 October 2018.

DA265/2015 - Redevelopment of the Child Care Centre and Youth Centre including:

- New internal child care room of 87m²
- Increasing the size of the existing two child care rooms to 78m²
- New service area of 18m² on the western side of the building
- Internal modifications to upgrade the existing and proposed child care rooms to comply with relevant standards
- Increasing the number of children from 40 to 60
- New roof light over the western part of the building
- Separating the entry to the Child Care Centre from the entry to the Youth Centre

This application was approved by the Development Assessment Unit on the 23 December 2015, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes the following modifications:

- Changes to the vehicle impact barriers along Kangaroo St to improve both pedestrian safety and reduce potential for vehicle conflict
- Amend the design for the proposed new platform lift from the car park to the ground floor
- Delete the approved pop up roof over the building entry;
- Add skylights to western side of existing roof
- Change the existing roof in the north east and north west corners by re-pitching the roof and re-sheeting
- Amend the proposed interior fitout of the Child Care Centre and Community Centre.
- Amend the design of the child proof fence at the Child Care Centre entry and at the north west corner of the building;
- Provide a new accessible entry along the western and northern side of the building
- Refurbish landscaping at entry forecourt including pavements, repairs to planter boxes, a retaining wall and drainage works

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 DA265/2015, 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:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes 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	Council is satisfied that the proposed works are substantially the same as those already approved under DA265/2015.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, 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.	No submissions were received in relation to this application.

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:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of	(i) Environmental Impact

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>No objections subject to conditions.</p> <p><u>Planning Comments:</u> The recommended condition was included in MOD2018/0248. As such the condition already applies and has not been included in this recommendation.</p>
Environmental Health	General Comments

Internal Referral Body	Comments
(Industrial)	<p>Environmental Health has reviewed the application to modify some aspects of the development consent. We find the changes unlikely to create negative impact on the amenity of the neighborhood, furthermore, there is no change to the kitchen that would trigger food-related comments. We propose approval without conditions.</p> <p>Recommendation</p> <p>APPROVAL - no conditions</p>
Landscape Officer	<p>The modification works, in consideration of landscape outcomes, include refurbished landscaping at the entry forecourt including pavements, repairs to planter boxes, a retaining wall and drainage works.</p> <p>No landscape objections to the modifications are raised.</p>
NECC (Development Engineering)	<p>Development Engineering has no objection to the internal change of the development.</p> <p>However, the applicant proposed to erect a fence on road reserve. An Infrastructure Work on Road reserve application shall be submitted to address these works on road reserve. A condition has been placed to address the work of the fence on road reserve.</p>
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of available documents, The application is a S.96, substantially the same as the originally approved DA. Therefore, it is fair to assess that impact of the current proposal will be closely similar to the impact of the previously approved DA.</p> <p>Based on the above, I have no objection to this proposal from heritage perspective and deem heritage conditions not required.</p> <p>Proposal is acceptable without conditions.</p> <p>Kind Regards Zoran Popovic Heritage Adviser</p>
Traffic Engineer	<p>The proposed modifications to the safety barriers on Kangaroo Street are considered appropriate and the recommended changes as detailed in Fig 3 of the TTPA report are supported.</p>
Waste Officer (Council Land)	<p>Bin Store</p> <p style="text-align: center;">Remove double door on Eastern side wall</p> <p style="text-align: center;">Move door in Southern side to centre of south wall</p> <p>Bin store Should not contain any other plant or equipment and be clear of any obstructions or steps</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 Educational Establishments and Child Care Facilities 2017

Clause 23 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 stipulates that:

Before determining a development application for development for the purposes of a centre-based child-care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development.

As previously outlined this application is for the modification of DA265/2015 for redevelopment of the Kangaroo Street Child Care Centre and Youth Centre.

As per the provisions of Clause 23, the provisions of the SEPP and the *Child Care Planning Guideline* are applicable.

DESIGN QUALITY PRINCIPLES

Principle 1: Context

Good design responds and contributes to its context, including 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.

Well-designed child care facilities respond to and enhance the qualities and identity of the area including adjacent sites, streetscapes and neighbourhood.

Well-designed child care facilities take advantage of its context by optimising nearby transport, public facilities and centres, respecting local heritage, and being responsive to the demographic, cultural and socio-economic makeup of the facility users and surrounding communities.

Comment:

The proposal is for modifications to the approved development and will not impact the developments relationship within the context of the locality.

Principle 2: Built Form

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

Good design 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. Good design also uses a variety of materials, colours and textures.

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.

Contemporary facility design can be distinctive and unique to support innovative approaches to teaching and learning, while still achieving a visual appearance that is aesthetically pleasing, complements the surrounding areas, and contributes positively to the public realm.

Comment:

The proposal includes the deletion of the approved pop up roof and will maintain the roof in its existing form. Regardless, the development is of a scale, bulk and height that is consistent with the existing and desired future character of the surrounding area.

Principle 3: Adaptive Learning Spaces

Good facility design delivers high quality learning spaces and achieves a high level of amenity for children and staff, resulting in buildings and associated infrastructure that are fit-for-purpose, enjoyable and easy to use. This is achieved through site layout, building design, and learning spaces fit-out.

Good design achieves a mix of inclusive learning spaces to cater for all students and different modes of learning. This includes appropriately designed physical spaces offering a variety of settings, technology and opportunities for interaction.

Comment:

The proposed modifications to the building design and fit-out will ensure high quality learning spaces that achieve a high level of amenity for children and staff.

The modifications provide a mix of inclusive learning spaces to cater for all students and different modes of learning.

Principle 4: Sustainability

Sustainable design combines positive environmental, social and economic outcomes.

This includes use of natural cross ventilation, sunlight and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and re-use of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

Well-designed facilities are durable and embed resource efficiency into building and site design, resulting in less energy and water consumption, less generation of waste and air emissions and reduced operational costs.

Comment:

The approved development achieves a suitable level of sustainability and internal amenity. The modifications will maintain this amenity.

Principle 5: Landscape

Landscape and buildings should operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A contextual fit of well-designed developments is achieved by

contributing to the landscape character of the streetscape and neighbourhood.

Well-designed landscapes make outdoor spaces assets for learning. This includes designing for diversity in function and use, age-appropriateness and amenity.

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.

Comment:

There is no proposed modification to the landscaping of the outdoor spaces on the site.

Principle 6: Amenity

Good design positively influences internal and external amenity for children, staff and neighbours. Achieving good amenity contributes to positive learning environments and the well-being of students and staff.

Good amenity combines appropriate and efficient indoor and outdoor learning spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, service areas and ease of access for all age groups and degrees of mobility.

Well-designed child care facilities provide comfortable, diverse and attractive spaces to learn, play and socialise.

Comment:

The approved development achieves a high level of amenity in both the internal and external spaces.

Principle 7: Safety

Well-designed child care facilities optimise the use of the built and natural environment for learning and play, while utilising equipment, vegetation and landscaping that has a low health and safety risk, and can be checked and maintained efficiently and appropriately.

Good child care facility design balances safety and security with the need to create a welcoming and accessible environment. It provides for quality public and private spaces that are inviting, clearly defined and allow controlled access for members of the community. Well-designed child care facilities incorporate passive surveillance and Crime Prevention Through Environmental Design (CPTED).

Comment:

The proposal does not include modifications to the external spaces of the Childcare Facility. The approved development is designed to achieve safety and security on the site.

The following table is an assessment against the criteria of the 'Child Care Planning Guideline' as required by State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

MATTERS FOR CONSIDERATION

Objectives	Criteria/Guidelines	Comments
3.1 Site selection and location		
C1 To ensure that appropriate zone	For proposed developments in or adjacent to a residential zone, consider:	Complies The proposal will not alter the

<p>considerations are assessed when selecting a site</p>	<ul style="list-style-type: none"> • the acoustic and privacy impacts of the proposed development on the residential properties • the setbacks and siting of buildings within the residential context • traffic and parking impacts of the proposal on residential amenity. 	<p>approved number of children or staff nor is there any increase to the hours of operation.</p> <p>The proposal will not alter the existing siting of the building.</p> <p>A traffic and parking report was submitted with the application to support the removal of the "jersey kerbs". Councils Traffic Engineers raised no objection to the modifications.</p>
<p>C2 To ensure that the site selected for a proposed child care facility is suitable for the use</p>	<p>When selecting a site, ensure that:</p> <ul style="list-style-type: none"> • the location and surrounding uses are compatible with the proposed development or use • the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards • there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed • the characteristics of the site are suitable for the scale and type of development proposed having regard to: <ul style="list-style-type: none"> - size of street frontage, lot configuration, dimensions and overall size - number of shared boundaries with residential properties - the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas • where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use • there are suitable drop off and pick up areas, and off and on street parking • the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use • it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises. 	<p>Not applicable, existing approved site.</p>

<p>C3 To ensure that sites for child care facilities are appropriately located</p>	<p>A child care facility should be located:</p> <ul style="list-style-type: none"> • near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship • near or within employment areas, town centres, business centres, shops • with access to public transport including rail, buses, ferries • in areas with pedestrian connectivity to the local community, businesses, shops, services and the like. 	<p>Complies</p> <p>The siting of the development was found to be adequate in the original application . The proposal will not alter the siting of the development.</p>
<p>C4 To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazard</p>	<p>A child care facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from:</p> <ul style="list-style-type: none"> • proximity to: <ul style="list-style-type: none"> - heavy or hazardous industry, waste transfer depots or landfill sites - LPG tanks or service stations - water cooling and water warming systems - odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses 	<p>Complies</p> <p>The proposal will not alter the siting of the development.</p>
<p>3.2 Local character, streetscape and the public domain</p>		
<p>C5 To ensure that the child care facility is compatible with the local character and surrounding streetscape</p>	<p>The proposed development should:</p> <ul style="list-style-type: none"> • contribute to the local area by being designed in character with the locality and existing streetscape • reflect the predominant form of surrounding land uses, particularly in low density residential areas • recognise predominant streetscape qualities, such as building form, scale, materials and colours • include design and architectural treatments that respond to and integrate with the existing streetscape • use landscaping to positively contribute to the streetscape and neighbouring amenity • integrate car parking into the building and site landscaping design in residential areas. 	<p>Complies</p> <p>The proposal will not significantly modify the development as viewed from the street. The proposal will retain the sites compatibility with the local character and surrounding streetscape.</p>
<p>C6, C7, C8 To ensure clear delineation between the child care facility and public spaces</p>	<p>Create a threshold with a clear transition between public and private realms, including:</p> <ul style="list-style-type: none"> • fencing to ensure safety for children entering and leaving the facility • windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and 	<p>Complies</p> <p>The proposal will provide a clear interface between the public and private realms.</p>

	<p>connection between the facility and the community</p> <ul style="list-style-type: none"> • integrating existing and proposed landscaping with fencing. 	
	<p>On sites with multiple buildings and/or entries, pedestrian entries and spaces associated with the child care facility should be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.</p>	<p>Complies The proposal provides separate access for the youth centre and childcare facility. The entry to the facility will be clearly legible.</p>
	<p>Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions:</p> <ul style="list-style-type: none"> • clearly defined street access, pedestrian paths and building entries • low fences and planting which delineate communal/ private open space from adjoining public open space • minimal use of blank walls and high fences. 	<p>Not applicable.</p>
<p>C9, C10 To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.</p>	<p>Front fences and walls within the front setback should be constructed of visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.</p>	<p>Complies The proposed front fences/walls are setback and of permeable design</p>
	<p>High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary</p>	<p>Not applicable.</p>
<p>3.3 Building orientation, envelope and design</p>		
<p>C11 To respond to the streetscape and site, while optimising solar access and opportunities for shade</p>	<p>Orient a development on a site and design the building layout to:</p> <ul style="list-style-type: none"> • ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: <ul style="list-style-type: none"> - facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties - placing play equipment away from common boundaries with residential properties - locating outdoor play areas away from residential dwellings and other sensitive uses • optimise solar access to internal and external play areas • avoid overshadowing of adjoining 	<p>Complies There is no proposed change to the siting or form of the development. The proposal will not result in any unreasonable overshadowing, acoustic or visual privacy impacts on the neighbouring properties.</p>

	<p>residential properties</p> <ul style="list-style-type: none"> • minimise cut and fill • ensure buildings along the street frontage define the street by facing it • ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions. 	
<p>C12 To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised</p>	<p>The following matters may be considered to minimise the impacts of the proposal on local character:</p> <ul style="list-style-type: none"> • building height should be consistent with other buildings in the locality • building height should respond to the scale and character of the street • setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility • setbacks should provide adequate access for building maintenance • setbacks to the street should be consistent with the existing character. 	<p>Complies</p> <p>The proposal will not alter the scale/form of the existing development on the site.</p>
<p>C13, C14 To ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context</p>	<p>Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use.</p>	<p>Not applicable.</p>
	<p>On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.</p>	<p>Not applicable</p>
<p>C15 To ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute to an area's character</p>	<p>The built form of the development should contribute to the character of the local area, including how it:</p> <ul style="list-style-type: none"> • respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage • contributes to the identity of the place • retains and reinforces existing built form and vegetation where significant • considers heritage within the local neighbourhood including identified heritage items and conservation areas • responds to its natural environment including local landscape setting and climate • contributes to the identity of place. 	<p>Complies</p> <p>The proposal will not alter the approved built form, articulation or scale of the development. The development on the site suitably relates to the context of the site and the character of the area.</p>

<p>C16 To ensure that buildings are designed to create safe environments for all users</p>	<p>Entry to the facility should be limited to one secure point which is:</p> <ul style="list-style-type: none"> • located to allow ease of access, particularly for pedestrians • directly accessible from the street where possible • directly visible from the street frontage • easily monitored through natural or camera surveillance • not accessed through an outdoor play area. • in a mixed-use development, clearly defined and separate from entrances to other uses in the building. 	<p>Complies The facility allows ease of access directly from Kangaroo Street and is clearly visible from the street frontage. The entry will be easily monitored through natural or camera surveillance.</p>
<p>C17 To ensure that child care facilities are designed to be accessible by all potential users</p>	<p>Accessible design can be achieved by:</p> <ul style="list-style-type: none"> • providing accessibility to and within the building in accordance with all relevant legislation • linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry • providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible • minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath. <p>NOTE: <i>The National Construction Code, the Discrimination Disability Act 1992 and the Disability (Access to Premises – Buildings) Standards 2010 set out the requirements for access to buildings for people with disabilities.</i></p>	<p>Complies The centre provides accessible access from the street within the building and from the carparking areas.</p>
<p>3.4 Landscaping</p>		
<p>C18, C19 To provide landscape design that contributes to the streetscape and amenity</p>	<p>Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space.</p> <p>Use the existing landscape where feasible to provide a high quality landscaped area by:</p> <ul style="list-style-type: none"> • reflecting and reinforcing the local context • incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping. 	<p>Complies The proposal does not include significant changes to the landscaping on the site. The existing landscaping will be utilised</p>
	<p>Incorporate car parking into the landscape design of the site by:</p>	<p>Complies The proposed carparking is</p>

	<ul style="list-style-type: none"> planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings taking into account streetscape, local character and context when siting car parking areas within the front setback using low level landscaping to soften and screen parking areas. 	within the existing footprint of the approved carparking.
3.5 Visual and acoustic privacy		
C20, C21 To protect the privacy and security of children attending the facility	Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.	Not applicable.
	Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through: <ul style="list-style-type: none"> appropriate site and building layout suitably locating pathways, windows and doors permanent screening and landscape design. 	Complies The proposal does not include modifications to the siting of the outdoor play area. The indoor rooms are not visible from the street.
C22 To minimise impacts on privacy of adjoining properties	Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through: <ul style="list-style-type: none"> appropriate site and building layout suitable location of pathways, windows and doors landscape design and screening. 	Complies The proposal will not result in direct overlooking.
C23, C24 To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments	A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should: <ul style="list-style-type: none"> provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence). ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure. 	Not applicable
	A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters: <ul style="list-style-type: none"> identify an appropriate noise level for a child care facility located in residential and other zones determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use determine the appropriate height of any 	Not applicable

	acoustic fence to enable the noise criteria to be met.	
3.6 Noise and air pollution		
C25, C26	<p>Adopt design solutions to minimise the impacts of noise, such as:</p> <ul style="list-style-type: none"> • creating physical separation between buildings and the noise source • orienting the facility perpendicular to the noise source and where possible buffered by other uses • using landscaping to reduce the perception of noise • limiting the number and size of openings facing noise sources • using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens) • using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits • locating cot rooms, sleeping areas and play areas away from external noise sources 	Not applicable
	<p>An acoustic report should identify appropriate noise levels for sleeping areas and other non play areas and examine impacts and noise attenuation measures where a child care facility is proposed in any of the following locations:</p> <ul style="list-style-type: none"> • on industrial zoned land • where the ANEF contour is between 20 and 25, consistent with AS 2021 - 2000 • along a railway or mass transit corridor, as defined by State Environmental Planning Policy (Infrastructure) 2007 • on a major or busy road • other land that is impacted by substantial external noise. 	Not applicable, there is no change to the location or orientation of the facility. The proposal will not result in or receive additional acoustic impacts.
C27, C28 To ensure air quality is acceptable where child care facilities are proposed close to external sources of air pollution such as major roads and industrial development	<p>Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.</p>	Not applicable, no change to siting.
	<p>A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed child care facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines.</p> <p>The air quality assessment report should</p>	Not applicable.

	<p>evaluate design considerations to minimise air pollution such as:</p> <ul style="list-style-type: none"> • creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution • using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway • incorporating ventilation design into the design of the facility. 	
3.7 Hours of operation		
C29, C30 To minimise the impact of the child care facility on the amenity of neighbouring residential developments	Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.	Not applicable, no change to hours of operation
	Within mixed use areas or predominantly commercial areas, the hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.	Not applicable
3.8 Traffic, parking and pedestrian circulation		
C31, C32, C33 To provide parking that satisfies the needs of users and demand generated by the centre	<p>Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land.</p> <p>Where a Development Control Plan does not specify car parking rates, off street car parking should be provided at the following rates:</p> <p>Within 400 metres of a metropolitan train station:</p> <ul style="list-style-type: none"> • 1 space per 10 children • 1 space per 2 staff. Staff parking may be stack or tandem parking with no more than 2 spaces in each tandem space. <p>In other areas:</p> <ul style="list-style-type: none"> • 1 space per 4 children. <p>A reduction in car parking rates may be considered where:</p>	<p>Complies</p> <p>The approved development under MOD2018/0248 provided 17 parking spaces on-site. The proposal does not include the reduction of parking spaces on-site nor will it result in any further requirement for parking. Furthermore, the proposal will provide safe access to the accessible parking.</p> <p>Councils traffic engineer has reviewed the traffic report submitted with the application and is satisfied that the proposal will result in safe traffic conditions.</p>

	<ul style="list-style-type: none"> • the proposal is an adaptive re-use of a heritage item • the site is in a B8 Metropolitan Zone or other high density business or residential zone • the site is in proximity to high frequency and well connected public transport • the site is co-located or in proximity to other uses where parking is appropriately provided (for example business centres, schools, public open space, car parks) • there is sufficient on street parking available at appropriate times within proximity of the site. 	
	In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high levels of vehicle movement or potential conflicts with trucks and large vehicles.	Not applicable
	<p>A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that:</p> <ul style="list-style-type: none"> • the amenity of the surrounding area will not be affected • there will be no impacts on the safe operation of the surrounding road network. 	<p>Complies The traffic and parking study was submitted and demonstrated that the proposal will not result in unreasonable amenity or traffic safety impacts in the locality.</p>
C34, C35 To provide vehicle access from the street in a safe environment that does not disrupt traffic flows	<p>Alternate vehicular access should be provided where child care facilities are on sites fronting:</p> <ul style="list-style-type: none"> • a classified road • roads which carry freight traffic or transport dangerous goods or hazardous materials. 	Not applicable.
	<p>The alternate access must have regard to:</p> <ul style="list-style-type: none"> • the prevailing traffic conditions • pedestrian and vehicle safety including bicycle movements • the likely impact of the development on traffic. 	
	<p>Child care facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.</p>	Not applicable.
C36, C37, C38 To provide a safe and	The following design solutions may be incorporated into a development to help	<p>Complies The pedestrian access is of a</p>

<p>connected environment for pedestrians both on and around the site</p>	<p>provide a safe pedestrian environment:</p> <ul style="list-style-type: none"> • separate pedestrian access from the car park to the facility • defined pedestrian crossings included within large car parking areas • separate pedestrian and vehicle entries from the street for parents, children and visitors • pedestrian paths that enable two prams to pass each other • delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities • in commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas • vehicles can enter and leave the site in a forward direction. 	<p>suitable design to ensure a safe pedestrian environment.</p>
	<p>Mixed use developments should include:</p> <ul style="list-style-type: none"> • driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by trucks • drop off and pick up zones that are exclusively available for use during the facility's operating hours with spaces clearly marked accordingly, close to the main entrance and preferably at the same floor level. Alternatively, direct access should avoid crossing driveways or maneuvering areas used by vehicles accessing other parts of the site • parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility. 	<p>Not applicable.</p>
	<p>Car parking design should:</p> <ul style="list-style-type: none"> • include a child safe fence to separate car parking areas from the building entrance and play areas • provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards • include wheelchair and pram accessible parking. 	<p>Complies The carparking is separate to the childcare facility. The parking is suitable to the service the facility.</p>

APPLYING THE NATIONAL REGULATIONS TO DEVELOPMENT PROPOSALS

Regulation	Design Guidance	Comments
4.1 Indoor space requirements		
<p>Regulation 107 Education and Care Services National Regulation</p> <p>Every child being educated and cared for within a facility must have a minimum of 3.25m² of unencumbered indoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p> <p>Unencumbered indoor space excludes any of the following:</p> <ul style="list-style-type: none"> • passageway or thoroughfare (including door swings) used for circulation • toilet and hygiene facilities • nappy changing area or area for preparing bottles • area permanently set aside for the use or storage of cots • area permanently set aside for storage • area or room for staff or administration • kitchens, unless the kitchen is designed to be used predominately by the children as part of an educational program e.g. a learning kitchen • on-site laundry • other space that is not suitable for children. <p>All unencumbered</p>	<p><i>The proposed development includes at least 3.25 square metres of unencumbered indoor space for each child.</i></p> <p>Verandahs as indoor space For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space.</p> <p>Storage Storage areas including joinery units are not to be included in the calculation of indoor space. To achieve a functional unencumbered area free of clutter, storage areas must be considered when designing and calculating the spatial requirements of the facility. It is recommended that a child care facility provide:</p> <ul style="list-style-type: none"> • a minimum of 0.3m³ per child of external storage space • a minimum of 0.2m³ per child of internal storage space. <p>Storage does not need to be in a separate room or screened, and there should be a mixture of safe shelving and storage that children can access independently.</p> <p>Storage of items such as prams, bikes and scooters should be located adjacent to the building entrance.</p> <p>Where an external laundry service is used, storage and collection points for soiled items should be in an area with separate external access, away from children. This will prevent clothes being carried through public areas and reduce danger to children during drop off and collection of laundry.</p>	<p>Complies This clause requires 65sqm of unencumbered indoor space for each child. The proposal complies with 93sqm, 69sqm and 72sqm per 20 children.</p>

<p>indoor spaces must be provided as a secure area for children. The design of these spaces should consider the safe supervision of children.</p> <p>When calculating indoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6) of the National Regulations.</p> <p>Applicants should also note that regulation 81 requires that the needs for sleep and rest of children at the service be met, having regard to their ages, development stages and individual needs.</p> <p>Development applications should indicate how these needs will be accommodated.</p> <p>Verandahs may be included when calculating indoor space with the written approval from the regulatory authority.</p>		
<p>4.2 Laundry and hygiene facilities</p>		
<p>Regulation 106 Education and Care Services National Regulation</p>	<p><i>The proposed development includes laundry facilities or access to laundry facilities.</i></p> <p>Laundry and hygiene facilities are a key</p>	<p>Complies</p> <p>The proposal includes laundry facilities that is of an adequate size to service the facility.</p>

<p>There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children.</p> <p>Child care facilities must also comply with the requirements for laundry facilities that are contained in the National Construction Code.</p>	<p>consideration for education and care service premises. The type of laundry facilities provided must be appropriate to the age of children accommodated.</p> <p>On site laundry On site laundry facilities should contain:</p> <ul style="list-style-type: none"> • a washer or washers capable of dealing with the heavy requirements of the facility • a dryer • laundry sinks • adequate storage for soiled items prior to cleaning • an on site laundry cannot be calculated as usable unencumbered play space for children. <p>External laundry service A facility that does not contain on site laundry facilities must make external laundering arrangements. Any external laundry facility providing services to the facility needs to comply with any relevant Australian Standards.</p>	
<p>4.3 Toilet and hygiene facilities</p>		
<p>Regulation 109 Education and Care Services National Regulation</p> <p>A service must ensure that adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children.</p> <p>Child care facilities must comply with the requirements for sanitary facilities that are contained in the National Construction Code.</p>	<p><i>The proposed development includes adequate, developmentally and age appropriate toilet, washing and drying facilities for use by children being educated and cared for by the service.</i></p> <p>Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants. Design considerations could include:</p> <ul style="list-style-type: none"> • junior toilet pans, low level sinks and hand drying facilities for children • a sink and handwashing facilities in all bathrooms for adults • direct access from both activity rooms and outdoor play areas • windows into bathrooms and cubicles without doors to allow supervision by staff • external windows in locations that prevent observation from neighbouring properties or from side boundaries 	<p>Complies</p> <p>The proposal provides suitable toilet facilities to each of the rooms playrooms within the childcare centre.</p>

4.4 Ventilation and natural light		
<p>Regulation 110 Education and Care Services National Regulation</p> <p>Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children.</p> <p>Child care facilities must comply with the light and ventilation and minimum ceiling height requirements of the <i>National Construction Code</i>. Ceiling height requirements may be affected by the capacity of the facility.</p>	<p><i>The proposed development includes indoor spaces to be used by children that:</i></p> <ul style="list-style-type: none"> • <i>will be well ventilated; and</i> • <i>will have adequate natural light; and</i> • <i>can be maintained at a temperature that ensures the safety and well-being of children.</i> <p>Ventilation</p> <p>Good ventilation can be achieved through a mixture of natural cross ventilation and air conditioning. Encouraging natural ventilation is the basis of sustainable design; however, there will be circumstances where mechanical ventilation will be essential to creating ambient temperatures within a facility.</p> <p>To achieve adequate natural ventilation, the design of the child care facilities must address the orientation of the building, the configuration of rooms and the external building envelope, with natural air flow generally reducing the deeper a building becomes. It is recommended that child care facilities ensure natural ventilation is available to each indoor activity room.</p> <p>Natural light</p> <p>Solar and daylight access reduces reliance on artificial lighting and heating, improves energy efficiency and creates comfortable learning environments through pleasant conditions. Natural light contributes to a sense of well-being, is important to the development of children and improves service outcomes. Daylight and solar access changes with the time of day, seasons and weather conditions. When designing child care facilities consideration should be given to:</p> <ul style="list-style-type: none"> • providing windows facing different orientations • using skylights as appropriate • ceiling heights. <p>Designers should aim to minimise the need for artificial lighting during the day, especially in circumstances where room depth exceeds ceiling height by 2.5 times. It is recommended that ceiling heights be</p>	<p>Complies</p> <p>The modifications will not alter the access to natural light or ventilation within the facility. The rooms will achieve adequate access to natural light and ventilation.</p>

	proportional to the room size, which can be achieved using raked ceilings and exposed trusses, creating a sense of space and visual interest.	
4.5 Administrative space		
<p>Regulation 110 Education and Care Services National Regulation</p> <p>A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.</p>	<p><i>The proposed development includes an adequate area or areas for the purposes of conducting the administrative functions of the service; and consulting with parents of children; and conducting private conversations.</i></p> <p>Design considerations could include closing doors for privacy and glass partitions to ensure supervision.</p> <p>When designing administrative spaces, consideration should be given to functions which can share spaces and those which cannot. Sound proofing of meeting rooms may be appropriate where they are located adjacent to public areas, or in large rooms where sound can easily travel.</p> <p>Administrative spaces should be designed to ensure equitable use by parents and children at the facility. A reception desk may be designed to have a portion of it at a lower level for children or people in a wheel chair.</p>	<p>Complies</p> <p>The childcare facility includes a dedicated office and meeting room in close proximity to the entrance.</p>
4.6 Nappy change facilities		
<p>Regulation 112 Education and Care Services National Regulations</p> <p>Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children.</p> <p>Child care facilities must also comply with the requirements for nappy</p>	<p><i>The proposed development includes an adequate area for construction of appropriate hygienic facilities for nappy changing including at least one properly constructed nappy changing bench and hand cleansing facilities for adults in the immediate vicinity of the nappy change area.</i></p> <p>In circumstances where nappy change facilities must be provided, design considerations could include:</p> <ul style="list-style-type: none"> • properly constructed nappy changing bench or benches • a bench type baby bath within one metre from the nappy change bench • the provision of hand cleansing facilities for adults in the immediate vicinity of the nappy change area • a space to store steps • positioning to enable supervision of the 	<p>Complies</p> <p>The childcare rooms 2 and 3 include adequate nappy change facilities. The applicant has advised that the room 1 is not intended to be used for age groups that require nappy change facilities.</p>

<p>changing and bathing facilities that are contained in the National Construction Code.</p>	<p>activity and play areas.</p>	
4.7 Premises designed to facilitate supervision		
<p>Regulation 115 Education and Care Services National Regulations</p> <p>A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity.</p> <p>Child care facilities must also comply with any requirements regarding the ability to facilitate supervision that are contained in the National Construction Code.</p>	<p><i>The proposed development (including toilets and nappy change facilities) are designed in a way that facilitates supervision of children at all times, having regard to the need to maintain the rights and dignity of the children.</i></p> <p>Design considerations should include:</p> <ul style="list-style-type: none"> • solid walls in children’s toilet cubicles (but no doors) to provide dignity whilst enabling supervision • locating windows into bathrooms or nappy change areas away from view of visitors to the facility, the public or neighbouring properties • avoiding room layouts with hidden corners where supervision is poor, or multi room activity rooms for single groups of children • avoiding multi-level rooms which compromise, or require additional staffing, to ensure proper supervision. If multilevel spaces are proposed, consideration should be given to providing areas that can be closed off and used only under supervision for controlled activities 	<p>Complies</p> <p>The facilities within the childcare centre are of a suitable design to ensure the supervision of children while maintaining the dignity and rights of the child.</p>
4.8 Emergency and evacuation procedures		
<p>Regulations 97 and 168 Education and Care Services National Regulations</p> <p>Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation.</p> <p>Regulation 97 sets out the detail for what those procedures must cover</p>	<p>Facility design and features should provide for the safe and managed evacuation of children and staff from the facility in the event of a fire or other emergency.</p> <p>Multi-storey buildings with proposed child care facilities above ground level may consider providing additional measures to protect staff and children. For example:</p> <ul style="list-style-type: none"> • independent emergency escape routes from the facility to the ground level that would separate children from other building users to address child protection concerns during evacuations • a safe haven or separate emergency area where children and staff can muster during the initial stages of a fire alert or other 	<p>Complies</p> <p>The modifications will not alter the Emergency or evacuation procedures.</p>

<p>including:</p> <ul style="list-style-type: none"> • instructions for what must be done in the event of an emergency • an emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit • a risk assessment to identify potential emergencies that are relevant to the service. 	<p>emergency. This would enable staff to account for all children prior to evacuation.</p> <p>An emergency and evaluation plan should be submitted with a DA and should consider:</p> <ul style="list-style-type: none"> • the mobility of children and how this is to be accommodated during an evacuation • the location of a safe congregation/assembly point, away from the evacuated building, busy roads and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings • how children will be supervised during the evacuation and at the congregation/assembly point, relative to the capacity of the facility and governing child-to-staff ratios. 	
<p>4.9 Outdoor space requirements</p>		
<p>Regulation 108 Education and Care Services National Regulations</p> <p>An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m² of unencumbered outdoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.</p> <p>Unencumbered outdoor space excludes any of the following:</p> <ul style="list-style-type: none"> • pathway or thoroughfare, except where used by children as part of the education and care program • car parking area • storage shed or other storage area • laundry • other space that is not 	<p><i>The proposed development includes at least 7.0 square metres of unencumbered outdoor space for each child.</i></p> <p>Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children's play.</p> <p>When new equipment or storage areas are added to existing services, the potential impact on unencumbered space calculations and service approvals must be considered.</p> <p>Verandahs as outdoor space</p> <p>Where a covered space such as a verandah is to be included in outdoor space it should:</p> <ul style="list-style-type: none"> • be open on at least one third of its perimeter • have a clear height of 2.1 metres • have a wall height of less than 1.4 metres where a wall with an opening forms the perimeter • have adequate flooring and roofing • be designed to provide adequate protection from the elements <p>Simulated outdoor environments</p> <p>Proponents should aim to provide the requisite amount of unencumbered outdoor space in all development applications.</p>	<p>Complies</p> <p>No proposed change to outdoor spaces.</p>

<p>suitable for children.</p> <p>When calculating outdoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6) of the National Regulations.</p> <p>Applicants should also note that regulation 274 (Part 7.3 NSW Provisions) states that a centre-based service for children preschool age or under must ensure there is no swimming pool on the premises, unless the swimming pool existed before 6 November 1996. Where there is an existing swimming pool, a water safety policy will be required.</p> <p>A verandah that is included within indoor space cannot be included when calculating outdoor space and vice versa.</p>	<p>A service approval will only be granted in exceptional circumstances when outdoor space requirements are not met. For an exemption to be granted, the preferred alternate solution is that indoor space be designed as a simulated outdoor environment.</p> <p>Simulated outdoor space must be provided in addition to indoor space and cannot be counted twice when calculating areas.</p> <p>Simulated outdoor environments are internal spaces that have all the features and experiences and qualities of an outdoor space. They should promote the same learning outcomes that are developed during outdoor play. Simulated outdoor environments should have:</p> <ul style="list-style-type: none"> • more access to natural light and ventilation than required for an internal space through large windows, glass doors and panels to enable views of trees, views of the sky and clouds and movement outside the facility • skylights to give a sense of the external climate • a combination of different floor types and textures, including wooden decking, pebbles, mounds, ridges, grass, bark and artificial grass, to mimic the uneven surfaces of an outdoor environment • sand pits and water play areas • furniture made of logs and stepping logs • dense indoor planting and green vegetated walls • climbing frames, walking and/or bike tracks • vegetable gardens and gardening tubs. 	
4.10 Natural Environment		
<p>Regulation 113 Education and Care Services National Regulations</p> <p>The approved provider of a centre-based</p>	<p><i>The proposed development includes outdoor spaces that will allow children to explore and experience the natural environment.</i></p> <p>Creating a natural environment to meet this regulation includes the use of natural</p>	<p>Complies No proposed change to outdoor spaces.</p>

<p>service must ensure that the outdoor spaces allow children to explore and experience the natural environment.</p>	<p>features such as trees, sand and natural vegetation within the outdoor space.</p> <p>Shrubs and trees selected for the play space must be safe for children. Avoid plant species that risk the health, safety and welfare of the facility's occupants, such as those which:</p> <ul style="list-style-type: none"> • are known to be poisonous, produce toxins or have toxic leaves or berries • have seed pods or stone fruit, attract bees, have thorns, spikes or prickly foliage or drop branches <p>The outdoor space should be designed to:</p> <ul style="list-style-type: none"> • provide a variety of experiences that facilitate the development of cognitive and physical skills, provide opportunities for social interaction and appreciation of the natural environment • assist supervision and minimise opportunities for bullying and antisocial behaviour • enhance outdoor learning, socialisation and recreation by positioning outdoor urban furniture and play equipment in configurations that facilitate interaction. 	
<p>4.11 Shade</p>		
<p>Regulation 114 Education and Care Services National Regulations</p> <p>The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</p>	<p><i>The proposed development includes adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</i></p> <p>Providing the correct balance of sunlight and shade to play areas is important for the health and well-being of children and staff. Combining built and natural shade will often be the best option.</p> <p>Solar access</p> <p>Controlled exposure to daylight for limited periods is essential as sunlight provides vitamin D which promotes healthy muscles, bones and overall well-being. Outdoor play areas should be provided with controlled solar access throughout the year. Outdoor play areas should:</p> <ul style="list-style-type: none"> • have year-round solar access to at least 30 per cent of the ground area, with no more than 60 per cent of the outdoor space covered. • provide shade in the form of trees or built 	<p>Complies</p> <p>No proposed change to outdoor spaces.</p>

	<p>shade structures giving protection from ultraviolet radiation to at least 30 per cent of the outdoor play area</p> <ul style="list-style-type: none"> • have evenly distributed shade structures over different activity spaces. <p>Natural shade Natural shade should be a major element in outdoor play areas. Trees with dense foliage and wide-spreading canopies provide the best protection. Existing stands of trees, particularly in rear setbacks, should be retained to provide shaded play areas. Species that suit local soil and climatic conditions and the character of the environment are recommended.</p> <p>Dense shrubs can also provide shade. They should be planted around the site perimeter so they don't obstruct supervision. Pruning shrubs on the underside may create shaded play nooks underneath. Planting for shade and solar access is enhanced by:</p> <ul style="list-style-type: none"> • placing appropriately scaled trees near the eastern and western elevations • providing a balance of evergreen and deciduous trees to give shade in summer and sunlight access in winter. <p>Built shade structures Built structures providing effective shade include:</p> <ul style="list-style-type: none"> • permanent structures (pergolas, sails and verandahs) • demountable shade (marquees and tents) • adjustable systems (awnings) • shade sails. <p>Shade structures should not create safety hazards. Support systems such as upright posts should be clearly visible with rounded edges or padding. Vertical barriers at the sides of shade structures should be designed to prevent children using them for climbing. Shade structures should allow adults to view and access the children's play areas, with a recommended head clearance of 2.1 metres. The floor area underneath the structure should be of a sufficient size and shape to allow children to gather or play actively.</p>	
4.12 Fencing		
Regulation 104	<i>Outdoor space that will be used by</i>	Complies

<p>Education and Care Services National Regulations</p> <p>Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</p> <p>This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age. Child care facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the National Construction Code</p>	<p><i>children will be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.</i></p> <p>Fencing at child care facilities must provide a secure, safe environment for children and minimise access to dangerous areas. Fencing also needs to positively contribute to the visual amenity of the streetscape and surrounding area. In general, fencing around outdoor spaces should:</p> <ul style="list-style-type: none"> • prevent children climbing over, under or through fences • prevent people outside the facility from gaining access by climbing over, under or through the fence • not create a sense of enclosure. <p>Design considerations for side and rear boundary fences could include:</p> <ul style="list-style-type: none"> • being made from solid prefinished metal, timber or masonry • having a minimum height of 1.8 metres • having no rails or elements for climbing higher than 150mm from the ground. <p>Fencing and gates should be designed to ensure adequate sightlines for vehicles and pedestrian safety in accordance with Australian Standards and Roads and Maritime Services Traffic Management Guidelines. Gates should be designed to prevent children leaving/entering unsupervised by use of childproof locking systems.</p>	<p>No proposed change to outdoor spaces.</p>
<p>4.13 Soil Assessment</p>		
<p>Regulation 25 Education and Care Services National Regulations</p> <p>Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval.</p>	<p>To ensure consistency between the development consent and the service approval application, a soil assessment should be undertaken as part of the development application process.</p> <p>Where children will have access to soil the regulatory authority requires a preliminary investigation of the soil. This includes sites with or without buildings and existing approved children's services where:</p> <ul style="list-style-type: none"> • the application is to alter or extend the premises • the alteration or extension requires earthworks or deep excavations (exceeding 	<p>Not applicable.</p>

<p>With every service application one of the following is required:</p> <ul style="list-style-type: none"> • a soil assessment for the site of the proposed education and care service premises • if a soil assessment for the site of the proposed child care facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken • a statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children 	<p>a depth of one metre)</p> <ul style="list-style-type: none"> • the works are going to take place in an area used for children's outdoor play or will be used for children's outdoor play after the work is completed • a soil assessment has not been undertaken at the children's service. <p>Minor landscaping, creation of sand pits, movement of play equipment and so on do not qualify as earthworks and do not require a soil assessment.</p> <p>An assessment of soil for a children's service approval application may require three levels of investigation:</p> <ul style="list-style-type: none"> • Stage 1 - Preliminary investigation (with or without soil sampling) • Stage 2 - Detailed site investigation • Stage 3 - Site specific human health risk assessment. 	
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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

There are no principal development standards applicable to the site.

Compliance Assessment

Clause	Compliance with Requirements
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1821sqm	Requirement	Approved	Proposed	Complies
4.4.6.2 Car Parking and Access	Childcare Centre - 1 space per employee and provision of on-site pick up/drop off points (8 spaces)	Parking 17 Pickup/drop off - 2 on-street spaces	No proposed change	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.2 Heritage Considerations	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.6 Child Care Centres	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

INDEPENDENT REVIEW

As this application relates to Council Land, the assessment report has been reviewed by an independent Town Planner. The independent planner concluded the following:

"The development proposed minor changes to the existing approved DA.

- *The roof form & skylight additions will reduce bulk, allow light and remain an attractive form.*
- *Increased accessibility is provided.*
- *The internal alterations and lift amendments are insignificant in their impact.*
- *Landscape and fencing changes are appropriate and minor in impact.*
- *Traffic barrier alterations are appropriate as supported by Council's traffic engineer*

The Council Officer's report is thorough, considers all relevant planning considerations is supported in full."

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

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

- State Environmental Planning Policy Education Establishments and Child Care Facilities 2017. The assessment found the development to be consistent with this policy and the associated Childcare Planning Guideline
- The removal of the jersey kerbs. This has been assessed by Councils Traffic Engineer and the modifications found to be satisfactory subject to conditions.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0170 for Modification of Development Consent DA265/2015 granted for Redevelopment of the Kangaroo Street Child Care Centre and Youth Centre on land at Lot 2623 DP 752038,0 Kangaroo Street, MANLY, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA100 Site & Roof Plan - Revision C	18/07/2019	Nimbus Architecture and Design
DA110 Ground Floor - Demolition Plan - Revision C	18/07/2019	Nimbus Architecture and Design
DA120 Lower Ground Floor Plan - Revision B	28/03/2019	Nimbus Architecture and Design
DA121 Ground Floor Plan - Part 1 - Revision B	28/02/2019	Nimbus Architecture and Design
DA122 Ground Floor Plan - Part 2 - Revision C	18/07/2019	Nimbus Architecture and Design
DA200 Elevations - Revision B	28/02/2019	Nimbus Architecture and Design
DA201 Elevations - Revision B	28/02/2019	Nimbus Architecture and Design
DA300 Sections - Revision B	28/02/2019	Nimbus Architecture and Design
DA301 Sections - Revision B	28/02/2019	Nimbus Architecture and Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Kangaroo Street, Manly - Child Care and Community Centre Safety Assessment	28 February 2019	Transport and Traffic Planning Associates

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

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

B. Modify Condition ANS08 to read as follows:

The development is to comply with the recommendation of the report Kangaroo Street, Manly - Child Care and Community Centre Safety Assessment, prepared by Transport and Traffic Planning Associates dated 28 February 2019.

Reason: To improve the safety of pedestrians and for vehicles on Kangaroo St and to maintain the

safety of the children within the childcare facility.

C. Add Condition 16a - Road Reserve to read as follows:

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.

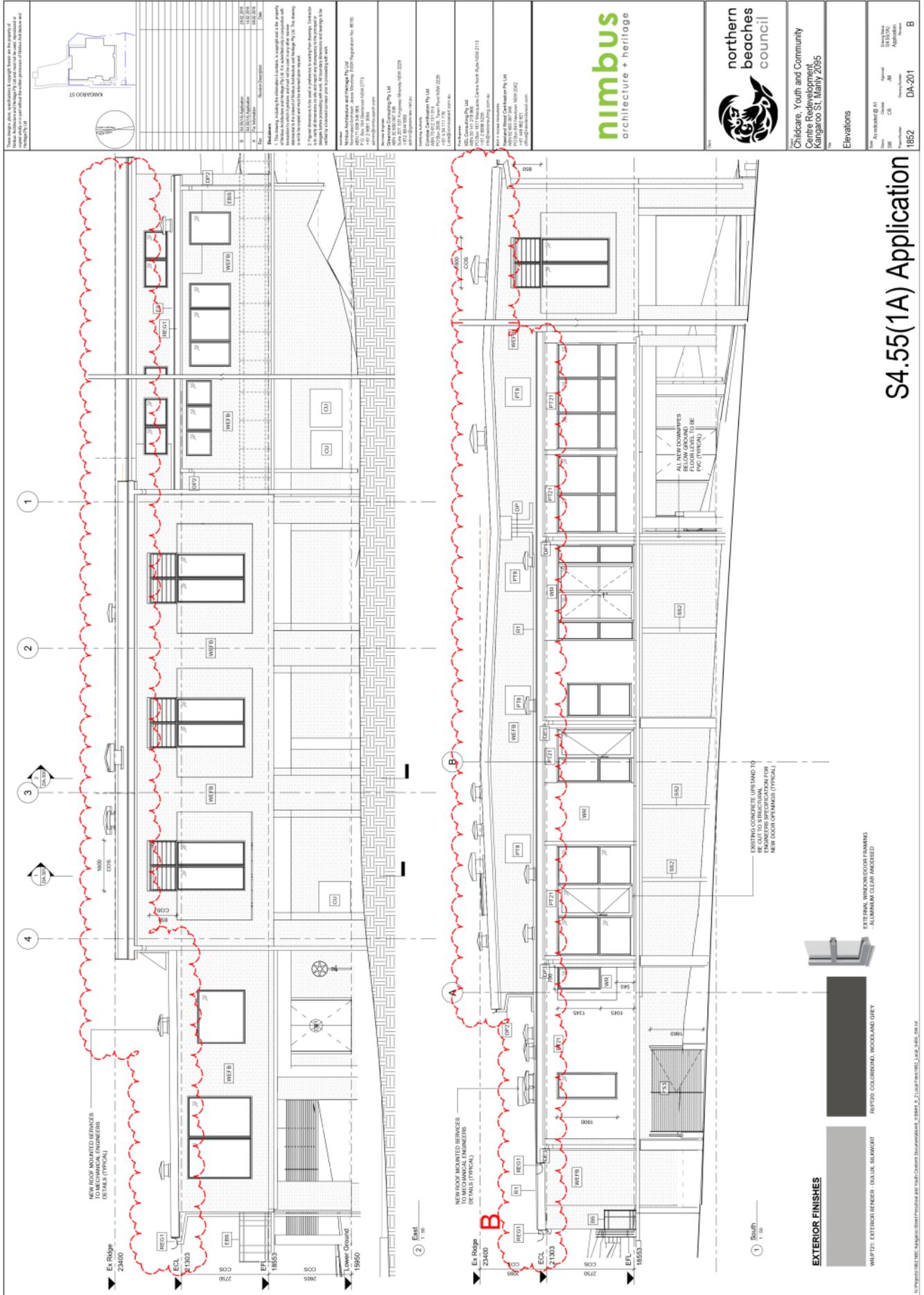
Reason: Public Safety.

D. Add Condition 2a - Submission Roads Act Application for Civil Works in the Public Road to read as follows:

An Application for Infrastructure work on road reserve, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to engineering plans for the design of the fence and bollards which are to be generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and/ or Council's Minor Works Policy.

The plan shall be prepared by an qualified engineer. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. A Council's approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To provide public and private safety.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/0487
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 45 DP 6040, 4 Brookvale Avenue BROOKVALE NSW 2100
Proposed Development:	Construction of a residential flat building with basement parking
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	The Outlook Brookvale Pty Ltd
Applicant:	Boston Blyth Fleming Pty Ltd

Application lodged:	28/03/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	13/04/2018 to 09/05/2018
Advertised:	14/04/2018
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 24%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 4,018,465.00
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Executive Summary

The proposal is for a residential flat building containing 11 apartments with 2 basement parking levels, on a single lot that has an area of 1,298sqm located toward the eastern end of Brookvale Avenue, Brookvale. The proposal is a permissible use on the site under the *Warringah Local Environmental Plan 2011* (WLEP) being an R3 Medium Density, two-storey area that has an 8.5m height limit.

The proposal is partly 3 storeys in some sections and therefore subject to *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development*, in addition to planning controls under the *Warringah LEP 2011* and the *Warringah Development Control Plan 2011* (WDCP).



This assessment reveals that the proposal has not followed Council's pre-lodgement advice to pursue site consolidation and does not respond well to the local planning controls of the WDCP 2011 in terms of objectives relating to site consolidation, setback treatment, building bulk, height, carparking, landscaping and privacy. Additional concerns are also raised with regard to matters relating to Building Code of Australia (BCA) issues and the extensive deep excavation across the site. Other matters of concern also relate to the location and design of private open space, solar amenity, inadequate details for soil depths and destruction of the significant rock outcrops at the rear of the site. Based on these shortcomings, it is not in the public interest to support a development that does not satisfactorily respond to the built form controls and satisfy the objectives of the applicable planning controls.

The application was notified and three (3) public submissions of objection to the proposal were received. Overall, the apartment building does not represent a "good fit" within the existing local character due its excessive scale on a single lot, being symptomatic of an over-development. Fundamental concerns are therefore raised in relation to the suitability of the land to be developed in isolation which has 'knock-on' effects for other adjacent sites that will impose much greater difficulty and environmental impacts with the future re-development of those sites, and therefore is inconsistent with the orderly and economic development of land.

This assessment report has taken into consideration all public submissions, the Statement of Environmental Effects, plans and other documentation supporting the application. On balance, it is considered that the proposed development does not respond appropriately to the development controls and will result in an unfavourable development outcome pursuant to SEPP 65, the *Apartment Design Guide*, Warringah LEP 2011 and DCP 2011.

Accordingly, the application is recommended for refusal.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings



Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - A.5 Objectives
 Warringah Development Control Plan - B2 Number of Storeys
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - C7 Excavation and Landfill
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D2 Private Open Space
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk
 Warringah Development Control Plan - D19 Site Consolidation in the R3 and IN1 Zone
 Warringah Development Control Plan - E6 Retaining unique environmental features

SITE DESCRIPTION

Property Description:	Lot 45 DP 6040 , 4 Brookvale Avenue BROOKVALE NSW 2100
Detailed Site Description:	<p>The subject site consists of a single allotment located on the northern side of Brookvale Avenue, near the intersection with Old Pittwater Road.</p> <p>The site has a 'wedge' shape with a frontage of 15.24 metres (m) along Brookvale Avenue, a rear width of 30.4m, maximum depth of 60.04m, and a site area of 1,298 square metres (sqm).</p> <p>The site currently contains a dwelling house with some ancillary domestic / garden structures. There are some scattered medium sized trees on the site at the rear with a number of those trees close to side boundaries. The land is very steep and contains a substantial rock shelf area and rock outcrops in the rear (northern) half of the property. The site falls 20m in elevation from the rear boundary to Brookvale Avenue. The site is within "Area B" & "C" for landslip risk and with the shallow soils and exposed rocky areas, surface water runoff is quickly influenced by the natural slope and modified topography.</p> <p>Surrounding development consists of a mix of residential flat buildings, 2 storey or part 3 storeys high on some surrounding properties in Brookvale Avenue and to the north. However, there are also single detached dwellings to the west, north and opposite the site. A multi-tiered flat building adjoins the south eastern boundary. However, the site is not regarded as being an 'isolated' site and may be appropriately consolidated with land to the northwest. There are a number of newer style 2 storey residential flat buildings at the western end of Brookvale Avenue and the Brookvale industrial area begins 70m south of the site with Warringah Mall 400m south, and Brookvale Public School</p>



	<p>160m east of the site.</p> <p>There are currently no Council easements across the site, however there is a sewer line at the rear and water connection line at the street frontage.</p>
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Map:



SITE HISTORY

Building Application No.611/46 for a fibro dwelling was approved by Council in 1946.

Building Application No.C978/71 for building additions was approved by Council in 1971.

The existing structures on the land will be completely demolished and removed as part of the proposal and therefore require no further assessment except for the handling of materials and waste (such as lead based paint or asbestos that may exist within older buildings). This is addressed by relevant NSW laws and 'Australian Standards' requirements as applicable.

Pre-lodgement Meeting PLM No.2017/0076 was held with Council on 10 August 2017. The current proposal is inconsistent with Council's advise on the scheme. Council provided the following conclusive advise to the applicant:

"The proposal should be reduced in building footprint (potentially to 10 units) as the built form shown in the PLM does not ensure an appropriate design response necessary to satisfy the Warringah LEP 2011, DCP 2011 and SEPP 65/ADG. Particular issues of concern are raised with regard to the lack of compliant landscaped open space, building bulk, overshadowing, natural site features, side setbacks, building height, excavation near boundaries and privacy impacts on adjacent land.

The site is not considered to be constrained to such an extent as to warrant the number and extent of variations to the built form controls shown. The adjacent site of No.2 Brookvale Avenue has demonstrated that re-development is achievable on the site that responds appropriately to the lot shape, topography and built form controls. Council's preferred re-development for the site would require



consolidation with adjacent properties pursuant to Part D19 Site Consolidation in the R3 zone.

This should ideally involve No.6 and 6A Brookvale Avenue and would enable better amenity outcomes in the setback areas for landscaping and conserving significant features of the site.

Based upon the above comments you are advised Council is not supportive of the current concept for a residential flat building on the site. Council encourages a significant redesign of the proposal and a new PLM should be held to further discuss any potential redevelopment proposal on the site."

The applicant has not adhered to Council's PLM advice to facilitate the orderly and economic development land consistent with the applicable local planning controls.

PROPOSED DEVELOPMENT IN DETAIL

Demolition of all existing structures and the construction of a residential flat building, with 11 apartments and basement parking configured as:

- **Ground Floor Plan RL27.0** Entry driveway, stair access, vehicle ramp, eight (8) carparking spaces, lift access, waste bin storage, service rooms, fire egress.
- **First Floor Plan RL30.0** Vehicle ramp, nine (9) carparking spaces, lift and stair access, fire egress, 1 x two-bedroom apartment with 2 bathrooms, living area and deck space.
- **Second Floor Plan RL33.0** Five (5) storage rooms, lift and stair access, fire egress, 2 x two-bedroom apartments with 2 bathrooms each, living areas and deck space.
- **Third Floor Plan RL36.0** Four (4) storage rooms, lift and stair access, fire egress, 2 x two-bedroom apartments with 2 bathrooms each, living areas and deck space.
- **Fourth Floor Plan RL39.0** Two (2) storage rooms, lift and stair access, fire egress, 2 x two-bedroom apartments with 2 bathrooms each, living areas and deck space.
- **Fifth Floor Plan RL42.0** Lift and stair access, fire egress, 2 x two bedroom apartments with 2 bathrooms each, living areas and deck space.
- **Sixth Floor Plan RL45.0** Lift and stair access, fire egress, 2 x two bedroom apartments with 2 bathrooms each, living areas and deck space.

Ancillary site works include:

- Site preparation including demolition, tree removal and excavation work (up to 16.7 metres).
- Driveway egress, drainage, landscaping and associated site works.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.55 'Matters for Consideration'	Comments
Section 4.55 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.

Section 4.55 'Matters for Consideration'	Comments
Section 4.55 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.55 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.55 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.55 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are capable of being addressed via a conditions of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is relevant to this application as the development is subject to the provisions of SEPP 65. The applicant has submitted a design verification that is unsatisfactory.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information has been requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider <i>AS 2601 - 1991: The Demolition of Structures</i>. This matter is capable of being addressed via conditions of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter is capable of being addressed via conditions of consent however the applicant has not shown the location of fire hydrant protection area which is normally adjacent the driveway / entry area. Space for this infrastructure should be shown on the plans as can it affect the landscaping and street frontage presentation. This issue is therefore considered as insufficient information.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is capable of being addressed via a conditions of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the <i>Building Code of Australia (BCA)</i>. This matter is capable of being addressed via conditions of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is relevant to this application as SEPP 65 applies and is capable of being addressed via conditions of</p>



Section 4.55 'Matters for Consideration'	Comments
	consent.
<p>Section 4.55 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p><u>Environmental Impact</u> The environmental impacts of the development on the natural and built environment are addressed under the Warringah Development Control Plan section of this report.</p> <p>Generally, the subject site is constrained by natural features but is not subject to any threatened species, critical habitat, bushfire, heritage or shallow acid sulfate soils. The site is able to drain stormwater to Brookvale Avenue and provide on-site detention requirements. The proposal is supported by Council's Development Engineers subject to appropriate conditions of consent contained within the Recommendation of this report.</p> <p>The proposal is for the construction of a part 3 storey residential flat building over 7 levels (containing 11 dwellings) including residential and basement area, and is permissible with consent in the subject R3 Medium Density Residential zone. However, the numerical controls include building setbacks and envelope, height and two-storey limitations and landscape open space requirements. All the properties within Brookvale Avenue have not been fully re-developed for apartment buildings (from houses) and the site is adjoined by two single dwelling lots, which enables the site to be appropriately considered for consolidation.</p> <p>The proposal will result in unreasonable impacts to the adjoining and nearby land that cannot be addressed by conditions. The development will create an unreasonable sense of building bulk that is inconsistent with comparable medium density development that is characteristic of the street (within the local precinct). The building will not maintain reasonable level of solar access or maintain reasonable privacy given the narrow setbacks and proximity to adjacent private open space, despite the addition of privacy screening. The impacts of overlooking and overshadowing are inconsistent with the pattern of surrounding medium density development in the urban environment and create an undesirable precedent.</p> <p><u>Social Impact</u> The development is considered satisfactory in terms of potential social impact in the locality considering the residential character of the proposal and that the development will provide greater diversity in supply to the housing stock of the Northern Beaches LGA.</p> <p><u>Economic Impact</u> The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the proposed land use.</p>
<p>Section 4.55 (1) (c) – the suitability of the site for the development</p>	<p>The land use zone of the area as R3 Medium Density Residential is however the proposal is not reflective of the desired future character of the area. The site is partially constrained by the slope and natural rock outcrops and the design is not a site suitable response that achieved the</p>



Section 4.55 'Matters for Consideration'	Comments
	<p>desired outcomes to preserve the unique natural features, maintain a landscape setting and minimise amenity impacts to surrounding land.</p> <p>Brookvale Avenue is characterised by a mix of low density (single houses) and medium density housing stock (up to 3 storeys). The surrounding area transitions into two storey flat buildings and industrial land to the south west. To the immediate north and north east of the site are detached dwellings in a landscape setting.</p> <p>On balance the development does not maintain a suitable and compatible building form and is not considered to result in reasonable development impacts on the adjoining properties.</p> <p>The site has access to adequate utility services (water, sewer telecommunication's and electricity etc.)</p>
Section 4.55(1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report. Issues raised in the submissions received have been considered in this report.
Section 4.55 (1) (e) – the public interest	Refer to detailed considerations provided under the heading "Submission" within this report.

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 Raymond James Sykes	8 / 2 Brookvale Avenue BROOKVALE NSW 2100
Ms Karen White	1 / 2 Brookvale Avenue BROOKVALE NSW 2100
Mr John James Russell	9 / 2 Brookvale Avenue BROOKVALE NSW 2100

The following key issues were raised in the submissions:

- a) Traffic generation
- b) Car parking
- c) Building bulk
- d) Amenity impacts
- e) Dilapidation risk



f) Building height

The matters raised within the submissions are addressed as follows:

a) Concern that the proposal will create increased traffic impacts due to the intensity of use proposed, including truck and large vehicles during construction.

Comment:

The proposal has been submitted with a Traffic Impact Assessment Report, which has been reviewed and considered by Council's Traffic Engineer. The existing road capacity is sufficient to accommodate the increased traffic generation and will not lead to any unreasonable traffic impacts. The proposal includes a construction management plan to address heavy vehicle movement during excavation and construction works.

Therefore, this issue does not have determining weight to warrant refusal of the application.

b) Concern that the proposal will create increased parking demand in the surrounding streets due to inadequate carparking on site for the intensity of use.

Comment:

The proposal does not provide sufficient detail with regard to parking space allocation and therefore is not supported for approval due to the likely displacement of parking on the street. Therefore, it is considered that the proposal demonstrates an over-development of the site and would therefore contribute to increased parking pressure in the surrounding streets. This issue is considered and addressed in detail under *Part C3 Parking Facilities* within this report.

This issue is considered to carry determining weight and warrants refusal of the application.

c) Concern that the building bulk is excessive for the site.

Comment:

The proposal is symptomatic of an over-development of the site and is unsatisfactory in terms of the unsympathetic design that is out of character its setting, land of landscaping, excessive building bulk and general low design amenity. This issue is considered in detail under the heading *Part D9 Building Bulk* within this report.

Therefore the proposal is considered to be unsuitable for the site and the site which is too small and narrow for the size and scale of the proposal.

This issue is considered to carry determining weight and warrants refusal of the application.

d) Concern that the flat building is of an inappropriate design for the site, including by solar amenity and privacy impacts on apartments within No.2 Brookvale Avenue

Comment:

The density of the proposal in terms of the number of rooms within the building and the overall size of the building has been raised. Concerns in relation to density, scale and bulk of the development have been raised with the applicant in terms of the visual impact on adjacent residential properties and the development "fitting-in" with the local character of surrounding residential development. The building bulk, scale, inadequate landscaping to building area are discussed in detail within this report under the headings *Part D5 Side Boundary Setbacks, D1 Landscape Open Space and D8 Privacy* of the



WDCP including SEPP 65 assessment within this report. In summary, it is considered that the proposal will create unacceptable impacts on the privacy and amenity of adjacent land.

Overall an appropriate design response has not been proposed to ensure the development is in keeping with the existing character of the area in terms of the size and scale of the proposal, including building bulk.

Therefore, this issue has determining weight and warrants refusal of the application.

e) Concern that the development will create a dilapidation risk to No.2 Brookvale Avenue (including dust) and degrade recent new work to adjacent apartments.

Comment:

Any redevelopment of the site will require a dilapidation survey to be undertaken to ensure damage from excavation or works does not cause damage to adjacent property assets. The proposal has been submitted with an Excavation Management Plan and Geotechnical Report to address construction and excavation related issues that would occur during the works phase (including the Construction Certificate).

This issue may therefore be appropriately addressed by conditions and does not warrant refusal of the application.

f) Concern that the height is excessive for the site and the scale of the building will adversely affect the amenity of adjacent land.

Comment:

This issue is discussed in detail under the heading *Part D9 Building Bulk* of the WDCP and Clause 4.6 of the WLEP 2011 within this report. The large massed appearance of the proposed building over 7 levels is considered to be inconsistent with the surrounding residential character and the request to vary the building height standard is not sufficient in detail or well founded.

This issue has determining weight and is included as a reason for refusal of the proposal.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p> <p><u>Planning Comment:</u> Building comments are concurred with except for insufficient information provided to address changes to the design that may be required for disabled access / parking and fire hydrant protection walls. These design considerations are not shown on the plans.</p>
Landscape Officer	The rear of the site contains significant rock outcrops. Comment was

Internal Referral Body	Comments
	<p>made in pre-lodgement noted regarding protection of the outcrops, particularly the escarpment through the rear of the site.</p> <p>The plans provided indicate that the escarpment is to be removed to accommodate the development.</p> <p>Additionally, the landscape plan provided indicates removal of rock at the rear of the site to create level garden areas with significant retaining walls near the boundary.</p> <p>In view of the extent of rock proposed to be removed and the prominence of the rock in the rear of the site, the proposal is considered to be inconsistent with the Aims of WLEP 2011, the Objectives of the R3 Zone, <i>C7 Excavation and landfill</i> and <i>WDCP E6 Retaining unique environmental features</i>.</p> <p>The proposed OSD tank is located in the front setback. The structure as indicated on the Stormwater Plans is 5m x 4.5m size, flush with the ground level. The landscape plan indicates low planting over the tank and the sections and elevations indicate landscaped embankment. The location of the tank and hydraulic design indicates that the tank requires flat land without landscape cover.</p> <p>The location of the OSD structure in the front setback prohibits planting of canopy trees to assist with integrating the development to the streetscape and soften bulk and scale of the building.</p> <p>The landscape plans indicate no canopy trees within the front setback area on either side of the driveway.</p> <p>The location of the OSD structure in the front setback and lack of opportunity for provision of suitable soft landscape elements in this area is considered to be inconsistent with WDCP B7 Front Boundary Setbacks and D1 Landscaped Open Space and Bushland Setting. It is also likely based on the OSD details provided that the area of the tank does not qualify to be included in landscaped open space calculations over the site.</p> <p>At this stage, the proposal is not supported with regard to landscape issues.</p> <p>1.2 Aims of Plan</p> <p>(1) <i>This Plan aims to make local environmental planning provisions for land in that part of Northern Beaches local government area to which this Plan applies (in this Plan referred to as Warringah) in accordance with the relevant standard environmental planning instrument under section 33A of the Act.</i></p> <p>(2) <i>The particular aims of this Plan are as follows:</i></p> <p>(a) <i>to create a land use framework for controlling development in Warringah that allows detailed provisions to be made in any development control plan made by the Council,</i></p> <p>(b) <i>to recognise the role of Dee Why and Brookvale as the major</i></p>

Internal Referral Body	Comments
	<p>centres and employment areas for the sub-region,</p> <p>(c) to maintain and enhance the existing amenity and quality of life of the local community by providing for a balance of development that caters for the housing, employment, entertainment, cultural, welfare and recreational needs of residents and visitors,</p> <p>(d) in relation to residential development, to:</p> <p>(i) protect and enhance the residential use and amenity of existing residential environments, and</p> <p>(ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and</p> <p>(iii) increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah,</p> <p>(e) in relation to non-residential development, to:</p> <p>(i) ensure that non-residential development does not have an adverse effect on the amenity of residential properties and public places, and</p> <p>(ii) maintain a diversity of employment, services, cultural and recreational facilities,</p> <p>(f) in relation to environmental quality, to:</p> <p>(i) achieve development outcomes of quality urban design, and</p> <p>(ii) encourage development that demonstrates efficient and sustainable use of energy and resources, and</p> <p>(iii) achieve land use relationships that promote the efficient use of infrastructure, and</p> <p>(iv) ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment, and</p> <p>(v) protect, conserve and manage biodiversity and the natural environment, and</p> <p>(vi) manage environmental constraints to development including acid sulfate soils, land slip risk, flood and tidal inundation, coastal erosion and biodiversity,</p> <p>(g) in relation to environmental heritage, to recognise, protect and conserve items and areas of natural, indigenous and built heritage that contribute to the environmental and cultural heritage of Warringah,</p> <p>(h) in relation to community well-being, to:</p> <p>(i) ensure good management of public assets and promote opportunities for social, cultural and community activities, and</p> <p>(ii) ensure that the social and economic effects of development are appropriate.</p> <p>2.3 Zone objectives and Land Use Table</p> <p>(1) The Land Use Table at the end of this Part specifies for each zone:</p> <p>(a) the objectives for development, and</p> <p>(b) development that may be carried out without development consent, and</p> <p>(c) development that may be carried out only with development consent, and</p> <p>(d) development that is prohibited.</p> <p>(2) The consent authority must have regard to the objectives for</p>

Internal Referral Body	Comments
	<p>development in a zone when determining a development application in respect of land within the zone.</p> <p>(3) In the Land Use Table at the end of this Part:</p> <p>(a) a reference to a type of building or other thing is a reference to development for the purposes of that type of building or other thing, and</p> <p>(b) a reference to a type of building or other thing does not include (despite any definition in this Plan) a reference to a type of building or other thing referred to separately in the Land Use Table in relation to the same zone.</p> <p>(4) This clause is subject to the other provisions of this Plan.</p> <p>Zone R3 Medium Density Residential</p> <p>1 Objectives of zone</p> <ul style="list-style-type: none"> • To provide for the housing needs of the community within a medium density residential environment. • To provide a variety of housing types within a medium density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. • To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah. • To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces. <p>B7 Front Boundary Setbacks</p> <p>Objectives</p> <ul style="list-style-type: none"> • To create a sense of openness. • To maintain the visual continuity and pattern of buildings and landscape elements. • To protect and enhance the visual quality of streetscapes and public spaces. • To achieve reasonable view sharing. <p><u>Requirements</u></p> <p>Development is to maintain a minimum setback to road frontages.</p> <p>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>Where primary and secondary setbacks are specified, buildings and structures (such as carparks) are not to occupy more than 50% of the area between the primary and secondary setbacks.</p> <p>The area between the primary setback and the road boundary is</p>

Internal Referral Body	Comments
	<p><i>only to be used for landscaping and driveways. For land zoned E3 and not having frontage to Kamber Road or Kimbriki Road the minimum front building setback area is to be densely landscaped using locally occurring species of canopy trees and shrubs and free of any structures, carparking or site facilities other than driveways, letterboxes and fences.</i></p> <p>C7 Excavation and Landfill Applies to Land This control applies to land to which Warringah Local Environmental Plan 2011 applies.</p> <p><u>Objectives</u></p> <ul style="list-style-type: none"> • <i>To ensure any land excavation or fill work will not have an adverse effect upon the visual and natural environment or adjoining and adjacent properties.</i> • <i>To require that excavation and landfill does not create airborne pollution.</i> • <i>To preserve the integrity of the physical environment.</i> • <i>To maintain and enhance visual and scenic quality.</i> <p><u>Requirements</u></p> <ol style="list-style-type: none"> 1. <i>All landfill must be clean and not contain any materials that are contaminated and must comply with the relevant legislation.</i> 2. <i>Excavation and landfill works must not result in any adverse impact on adjoining land.</i> 3. <i>Excavated and landfill areas shall be constructed to ensure the geological stability of the work.</i> 4. <i>Excavation and landfill shall not create siltation or pollution of waterways and drainage lines, or degrade or destroy the natural environment.</i> 5. <i>Rehabilitation and revegetation techniques shall be applied to the fill.</i> 6. <i>Where landfill is necessary, it is to be minimal and shall have no adverse effect on the visual and natural environment or adjoining and surrounding properties.</i> <p>E6 Retaining unique environmental features Applies to Land This control applies to land to which Warringah Local Environmental Plan 2011 applies.</p> <p><u>Objectives</u></p> <ul style="list-style-type: none"> • <i>To conserve those parts of land which distinguish it from its surroundings.</i> <p><u>Requirements</u></p> <ol style="list-style-type: none"> 1. <i>Development is to be designed to address any distinctive environmental features of the site and on adjoining nearby land.</i> 2. <i>Development should respond to these features through location of structures, outlook, design and materials.</i> <p>D1 Landscaped Open Space and Bushland Setting</p>

Internal Referral Body	Comments
	<p>Applies to Land This control applies to land shown on DCP Map Landscaped Open Space and Bushland Setting.</p> <p>Objectives</p> <ul style="list-style-type: none"> • <i>To enable planting to maintain and enhance the streetscape.</i> • <i>To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.</i> • <i>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.</i> • <i>To enhance privacy between buildings.</i> • <i>To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.</i> • <i>To provide space for service functions, including clothes drying.</i> • <i>To facilitate water management, including on-site detention and infiltration of stormwater.</i> <p><u>Requirements</u></p> <p>1. <i>The required minimum area of landscaped open space is shown on DCP Map Landscaped Open Space and Bushland Setting. To measure the area of landscaped open space:</i></p> <ol style="list-style-type: none"> <i>a) Driveways, paved areas, roofed areas, tennis courts, car parking and stormwater structures, decks, etc, and any open space areas with a dimension of less than 2 metres are excluded from the calculation;</i> <i>b) The water surface of swimming pools and impervious surfaces which occur naturally such as rock outcrops are included in the calculation;</i> <i>c) Landscaped open space must be at ground level (finished); and</i> <i>d) The minimum soil depth of land that can be included as landscaped open space is 1 metre.</i> <p><u>Planning comment:</u> The comments and considerations by Council's Landscape Assessment Officer are consistent with the pre-lodgment advice of Council and are concurred with in the this development assessment report.</p>
NECC (Development Engineering)	<p>Development Engineer has no objection to the application subject to conditions.</p> <p><u>Planning Comment:</u> Conditions are not recommended for inclusion as the development proposal fails to comply with planning requirements.</p>
Strategic and Place Planning	<p>The draft Brookvale Structure Plan does not propose any changes to the residential zones or the permitted uses or development yields within those zones. The proposal is acceptable from a Strategic Planning viewpoint.</p>

Internal Referral Body	Comments
	<p><u>Planning Comment:</u> No comments applicable to conditions or reasons for refusal.</p>
<p>Strategic and Place Planning (Urban Design)</p>	<p>The proposal in its current form cannot be supported for the following reasons:</p> <p>1. SEPP 65-Design Quality of Residential Apartment Development (ADG) The applicant is advised that compliance with the requirements of the ADG are to be demonstrated inclusive of, but not limited to, the following clauses which have not achieved compliance in the proposed development; <i>- 1B Local Character and Context, 1C Precincts and Individual Sites, 2B Building Envelopes, 2F Building Separation, 2G Side and Rear Setbacks, 3B Orientation, 3G Pedestrian Access and Entries, 3F Visual Privacy, 4A Solar and Daylight Access, 4B Natural Ventilation, 4E Private Open Space and Balconies, 4H Acoustic Privacy</i></p> <p><i>3G Pedestrian Access and Entries</i> <i>Objective 3G-2</i> <i>The design of ground floors and underground car parks minimise level changes along pathways and entries</i></p> <p>Response Disabled parking is to be located in the basement carpark. No disabled spaces are indicated on the drawings.</p> <p><i>4E Private Open Space and Balconies</i> <i>Objective 4E-2</i> <i>Private open spaces and balconies predominantly face north, east and west.</i></p> <p>Response Compliance with Private Open Space and Balconies has not been demonstrated. (Refer also 3. D2 Private Open Space)</p> <p>2. Built Form Controls <i>WLEP 2011</i> <i>Aims of the LEP in relation to residential development, are to:</i> <i>i. protect and enhance the residential use and amenity of existing residential environments, and</i> <i>ii. promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, . . .</i></p> <p>Response Compliance with the WLEP 2011 has not been achieved. The proposed mass and bulk of the front elevation in particular, the projection of the balconies is not in sympathy with the existing residential environments. Consideration should be made to provide some relief to the street</p>

Internal Referral Body	Comments
	<p>edge through considered articulation and relief to the balcony projections.</p> <p>3. WDCP 2011</p> <p><i>B2 - Number of Storeys</i> <i>Objectives</i></p> <ul style="list-style-type: none"> • To ensure development does not visually dominate its surrounds. • To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes. • To provide equitable sharing of views to and from public and private properties. • To ensure a reasonable level of amenity is provided and maintained to adjoining and nearby properties. • To provide sufficient scope for innovative roof pitch and variation in roof design. • To complement the height of buildings control in the LEP with a number of storeys control. <p><i>Response</i> When assessed against the Number of Storeys Map the development demonstrates instances through the building sections where the number of storeys is exceeded. The sectional overlap of units shown in Section AA (Drawing A14) should not exceed two storeys. For example measuring the roof from balcony fascia of units 10/11 which vertically align over units 2 & 3 (measured to finished ground line) has a height of 14.8 metres approximately (dimensioned from drawing A13). For this reason we believe the building exceeds the Height of Buildings control and is therefore non-compliant.</p> <p><i>B3 – Side Boundary Envelope</i> <i>Requirements</i> 1. Buildings on land shown coloured on the DCP Map Side Boundary Envelopes must be sited within a building envelope determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries of: 4 metres</p> <p><i>Response</i> Please provide adequate sections which demonstrate there is no encroachment into the side boundary envelope. This could be demonstrated through building sections taken at relevant intervals as the building steps down the site. Built form is to comply with the Building Envelope requirements as it steps down the sloping topography.</p> <p><i>B5 – Side Boundary Setbacks</i> <i>Objectives</i></p> <ul style="list-style-type: none"> • To provide opportunities for deep soil landscape areas. • To ensure that development does not become visually dominant. • To ensure that the scale and bulk of buildings is minimised.

Internal Referral Body	Comments
	<p>• <i>To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.</i></p> <p>• <i>To provide reasonable sharing of views to and from public and private properties.</i></p> <p><i>And</i></p> <p><i>Exceptions</i> <i>Land Zoned R3</i> <i>Basement car parking structures, and private open space:</i> <i>. . . Basement Car parking may extend:</i></p> <ul style="list-style-type: none"> • <i>Up to 2 metres from the side boundary, . . .</i> <p><i>Response</i> The encroachment of the basement carpark structure into the side boundary zone on the eastern elevation leaves little room for deep soil planting.</p> <p><i>D1 Landscaped open space – Site Coverage/Landscaped Areas Objectives</i></p> <ul style="list-style-type: none"> • <i>To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.</i> • <i>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.</i> • <i>To enhance privacy between buildings.</i> • <i>To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.</i> <p><i>Response</i> The requirement for Landscaped Open Space is not adequately shown on the Landscape drawings and as such the landscaped area calculation is not supported for this reason. There are some anomalies with the landscape plan on the eastern side of the site whereby the planting indicated does not demonstrate the relative level to which the planting applies. Calculations demonstrating the required 40% landscaped open space are required across the ground plane of the site in order to determine the various levels of landscape and terrain. Areas under the suspended balconies cannot be counted as landscaped areas. Deep soil zones for planting require a minimum 3 metres for productive maturation of planting. These zones are not clearly demonstrated on the drawings. The current drawings demonstrate that deep soil zones may not be achievable in locations where the carpark has encroached in to the setback zone, thus leaving little depth for deep soil plantings.</p> <p><i>D2 Private Open Space.</i> <i>Objectives</i></p> <ul style="list-style-type: none"> • <i>To ensure that private open space receives sufficient solar access and privacy.</i>

Internal Referral Body	Comments
	<p><i>Requirements</i> 6. Private open space is to be located to maximise solar access.</p> <p>Response Proposed private open space has not been located to maximise solar access. The proposed development indicates all private open spaces are located to the front of the property/development, facing due south. This planning arrangement has a negative effect in regards to the proposed orientation, planning and distribution of apartments. With the building stepping down over the site and the balconies projecting over the lower units' open private spaces, the constraints indicate that there would be little to no solar access to these private open spaces during winter.</p> <p><i>D6 - Access to Sunlight</i> <i>Objectives</i> • To ensure that reasonable access to sunlight is maintained.</p> <p>Response Accurate shadow diagrams (generated from 3D model) demonstrating living spaces receive minimum of 3 hours of sunlight between 9am and 3pm on June 21 will be required. They should also show the buildings own projected shadow to the south facing balcony areas for assessment of the solar amenity to private open spaces.</p> <p><i>D8 – Privacy</i> <i>Objectives</i> • To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours. • To encourage innovative design solutions to improve the urban environment. • To provide personal and property security for occupants and visitors.</p> <p>Response The proposed balconies overlooking private open spaces and windows of the adjoining properties No. 2 and 4, compromise the amenity of the adjacent residences. Screening devices should be considered to minimise privacy issues.</p> <p><i>D9 – Building Bulk</i> <i>Objectives</i> • To encourage good design and innovative architecture to improve the urban environment. • To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.</p> <p><i>Requirements</i> 1. Side and rear setbacks are to be progressively increased as wall height increases.</p>



Internal Referral Body	Comments
	<p>2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.</p> <p>3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:</p> <ul style="list-style-type: none"> - The amount of fill is not to exceed one metre in depth. - Fill is not to spread beyond the footprint of the building. - Excavation of the landform is to be minimised. <p>4. Building height and scale needs to relate to topography and site conditions.</p> <p>Response Reduction in the extent of excavation is required across the site by stepping the building up the site, so as to work with the contours and sloping topography. The proposed excavation depth up to 19 metres is considered excessive.</p> <p><u>Planning Comment:</u> The comments and considerations by Council's Urban Designer are consistent with the pre-lodgment advice of Council and are concurred with in the this development assessment report. The bulk of excavation at the rear of the building is 16.7m deep with some excavation points extending 19m to 21.6m deep as shown on the Section details.</p>
Waste Officer	<p>No waste services referral comments subject to conditions.</p> <p><u>Planning Comment:</u> Conditions are not recommended for inclusion as the development proposal fails to comply with planning requirements.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to <i>Ausgrid</i> . No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Police - Local Command (CPTED)	The proposal was referred to NSW Police (Local Command) for any comments on crime prevention through environmental design. No comments and no conditions have been received for the referral.

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 re-development. Site investigations of the property assets have not identified any likely contamination risk. Conditions may be suitably imposed to ensure the appropriate safe handling disposal of asbestos / lead paint materials, if found present during demolition work.

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 three storey residential flat 'housing' development plus basement car parking for the provisions of eleven self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:



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

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

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel (Development assessments has though considered the Urban Design referral response).

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:

In assessing the proposal Council has been mindful of the following matters in consideration of the built form and addressing consistency with this design quality principle:

- What is the relevant area?
- What does "consistent" mean?
- What is the local character?
- What is the character of the proposed development?
- Is the character of the development consistent with the local character?"

The subject site is located in a medium density area that is characterised by a gradual change to two-storey residential flat buildings from single dwelling houses. Most flat buildings in Brookvale Avenue are less than 20 years old and the western end of the street has a concentration of flat buildings compared to the eastern end where a majority of lots remain as single dwelling houses. The site is also near to the Brookvale industrial area along Old Pittwater Road but most of this is beyond the relevant visual catchment of the neighbourhood character for Brookvale Avenue.

The scale and architecture of the flat development is distinctly two storey as the defining character with no other mixed / commercial or industrial uses in the street. The land in Brookvale Avenue is sloping and a some of the higher points allows district views toward Brookvale industrial area and toward Warringah Mall. Buildings predominantly conform to two storeys and those sites where the existing flat buildings are higher do not define the neighbourhood character. Flat buildings are also required to maintain a landscape setting and visual outlook toward the street. The subject property is not an isolated site and as there are more than 15 single dwelling house lots remaining in the street. The



character of the street is defined by many single lots remaining and those in the past that been consolidated (with 2 or 3 adjacent properties) for redevelopment of apartment buildings. This is also most defining and evident for No. 40 to 62 Old Pittwater Road, at the corner of Brookvale Avenue and Old Pittwater Road.

In terms of building bulk, the design has not responded appropriately to conserve the existing natural character of the land and maximise its landscape setting. Consideration of the surrounding context and socio-economic character of the Brookvale area suggests that the development is designed to provide two bedroom apartments being common, with off-street parking.

The provision of landscaping provided around the perimeter of the development is insufficient to screen such a large building that rises 7 levels and would require significant site works leaving only exposed excavated rock prior to new landscaping. Site consolidation would enable a development that fits the existing context and neighbourhood character that is defined by low rise flat buildings across wide frontages that retain a very high proportion of landscaping.

For the reasons above, the development is recommended for refusal as it does not fit contextually with desired character for medium density development in the neighbourhood.

Principle 2: Built Form and Scale

"Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook."

Comment:

The development potential of the site has an opportunity to consolidate with No.6 and No.6A Brookvale Avenue that would significantly enhance landscaping and design opportunities to create a built form and scale in context with the majority of other flat buildings in Brookvale Avenue and the boarder area of the two-storey medium density zone. In this regard, the site overlooks and overshadows No.2 Brookvale Avenue despite achieving compliance for solar access to neighbouring land. The shape of the building is a wedge shape and therefore building mass and scale increase toward the rear as the land rises. Overall the proposal does not comply with landscaping and building height controls and is out of context with the desired built form and scale in the surrounding precinct.

Notwithstanding any numerical non-compliances, the development is of a scale that is undesirable for the medium density two-storey medium density zone and does not provide sufficient landscape area or setbacks to screen such a large building where the site is dominated by extensive bedrock formations.

The development is not considered to achieve a scale, bulk and height that is appropriate for surrounding and existing developments, and is designed in a manner that is not reasonable in terms of building form and two-storey scale to adjacent medium density housing or the remaining adjacent houses.

Principle 3: Density

"Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs,



community facilities and the environment."

Comment:

The development provides 11 x 2 bedroom apartments. The majority of other large apartment buildings in Brookvale Avenue have sought consolidation with 2 or 3 lots to gain an orderly and economic development of land.

Therefore, the density of the development is not considered to be appropriate due to the significant excavation works required, including modification to the majority of the natural site features to accommodate the proposed density for a single site.

The site benefits from existing infrastructure and proximity to public services including transport links to Manly and Dee Why from the Brookvale location.

Principle 4: Sustainability

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

Comment:

The development application is accompanied by a BASIX Certificate which indicates the development achieves an adequate design for water and energy conservation including thermal comfort. The development provides an adequate cross-ventilation and shading devices to living area windows and all apartments have side windows to assist ventilation.

The development will utilize a waste management plan to recycle and dispose of waste in accordance with Council's Waste management policies and will not detract from the sustainability of the environment or surrounding area.

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, coordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management."

Comment:

The site provides some landscaping around the building with the majority of landscaped open space at the rear and south-eastern side setback. The site contains a significant rock feature at the rear however site excavation proposed involves a deep basement area and ancillary excavation work to modify the natural ground level for entire site. Opportunity to conserve the natural site features have been compromised by developing the building in isolation whereas a consolidated lot would enable greater design opportunities for the built form and more landscaped open space.

The development application is accompanied by a landscaped plan and Council's Landscape Assessment does not support the proposed development due to impacts on landscape features of the



site. Concern is also raised that privacy screening and amenity outlook, along the side setbacks including the front and rear will be constrained by the excavated bedrock / shallow soils within the retained landscape areas.

Principle 6: Amenity

"Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility."

Comment:

The development creates narrow excavated setbacks and a building that rises 7 levels up the site. The building creates a number of low amenity issues due to excavated areas including below ground level windows to bedrooms. The consecutive balcony levels have potential to cause amenity impacts to both units directly below (within the development) and adjacent land due to the massing of all balconies on a single elevation.

Overall the proposal is not considered to achieve good amenity that contributes positively to the medium density living environment of Brookvale Avenue and is not a good fit with the desired future character.

Principle 7: Safety

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

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

Comment:

The development will incorporate adequate standard safety features for the comfort and security of residents. The development will provide opportunities for casual surveillance of the streetscape and adjoining setback areas. The basement access has a security access for vehicles and internal pedestrian entry.

The access points into the development are well-defined but require significant stairways along the northwest boundary. Details are not shown on the plans for stair lift mechanism to get to the foyer on the second floor.

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 site is located within the Brookvale medium density area which is dominated by relatively new apartments (less than 20 years old) and older style dwelling houses generally from 1950 -60's era. There are still a lot of sites within Brookvale Avenue that remain capable of re-development and site consolidation to enable future medium density development. As such, the development of single lots in isolation is not favourable due to the 'knock-on' effect for remaining sites yet to be re-developed.

The development as a whole, and each apartment, provides features (such a basement parking, lift access, balconies, storage and spacious living areas), that would warrant the value of the apartments and provides opportunities for social interactions between residents of the subject and surrounding development.

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:

This assessment report details the built form of the development against the control requirements and objectives, as can be found under the DCP section of this report. The development is considered to be of a design and proportion that compromises the desired landscaping and site treatment expected by the WDCP. Significant excavation is proposed for carparking and ancillary works that will radically modify site levels. The aesthetics of the external appearance of the building are contemporary and elements of the design serve practical functions but (despite numerical compliance) do not minimise overshadowing or privacy impacts on neighbouring apartments or dwelling houses.

The varying use of materials, colours and textures combined with the design and provision of landscaping provide a visual appearance that is visually dominating within the streetscape.

The overall aesthetic of the apartment building is considered to be inappropriate for the urban context and in-fill site within the Brookvale medium density area.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Inconsistent The development of the subject apartment building is not appropriate within the context of the surrounding two-storey R3 Medium Density Residential zone. In this regard the scale and proportion of the development is



		<p>inconsistent in height and setback treatment to the streetscape which is largely characterised wide landscaped areas. Due to the shape of the site the landscaping frontage is narrow and steep. Site consolidation would enable less impact on the streetscape across a wider frontage.</p> <p>For the reasons above, the development is not considered to relate appropriately to its context and the established medium density development in the local surroundings as it does not seek the advantages that the site needs by site consolidation.</p>
<p>Orientation</p>	<p>Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?</p>	<p>Subject to design measures</p> <p>The site is constrained in regards to the existing natural landscape features of the property having significant rock outcrops at the rear.</p> <p>The architecture of the site and the building setbacks are not appropriate for the streetscape, and the front and rear setback areas leave only a narrow area for the landscape component that is on excavated rock.</p> <p>Given that the existing development on the site consists of low density housing the redevelopment of this site into a medium density development, is inevitably going to have a greater</p>



		<p>overshadowing impact. A wider consolidated site with No.6 and No.6A Brookvale Avenue would be less likely to have the same impact. Therefore the development will overshadow neighbouring properties to an additional degree.</p> <p>Plan A15 and A16 shows the overshadowing that affects the upper, middle and lower windows, and private open space courtyards for No.2 Brookvale Avenue, with the least impact between 9am and 11am on June 21.</p> <p>It should be noted that the overshadowing impacts to the apartment show compliant solar access for 3 hours per day experienced between 9am and 3pm. Shadowing from the fence line is also shown on the plans.</p> <p>(Solar access is also considered in detail under the heading "Submissions" and "<i>Part D6 Access to Sunlight</i>" within this report)</p>
<p>Public Domain Interface</p>	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p>Inconsistent</p> <p>The development does not provide an appropriate transition for medium density development within the street. The interface to the street is overbearing compared to more recent surrounding flat developments (especially those apartment buildings nearby less than 10 years old).</p>

		It is considered that the proposal creates an unreasonable impact on the amenity of the public domain by virtue of visual interest and beautification of the streetscape.															
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principle usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter) 	<p>Subject to design measures</p> <p>The development has a designated 'communal open space' area, but which is proposed in the rear setback. The gardens surrounding the development (front and rear) have an area of 25% of the total site area and will achieve 2 hours of solar access. In order to create this area the existing rock outcrop will be excavated out and not conserved in situ.</p>															
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th> <th>Minimum dimensions</th> <th>Deep soil zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td>Less than 650m²</td> <td>-</td> <td>7%</td> </tr> <tr> <td>650m² – 1,500m²</td> <td>3m</td> <td></td> </tr> <tr> <td>Greater than 1,500m²</td> <td>6m</td> <td></td> </tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td> <td>6m</td> <td></td> </tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m		Greater than 1,500m ²	6m		Greater than 1,500m ² with significant existing tree cover	6m		<p>Subject to design measures</p> <p>The site is calculated to have deep soil zones (1m deep) within a net area of 129 sqm, equating to 10%. The landscaping is considered to have insufficient volume and area to be able to effectively screen a large and high building with such extensive excavation within all the setback zones.</p> <p>Insufficient detail is shown to demonstrate that medium sized trees (9-12m) have 35 m3 of soil volume or that small trees (6-8m) have 15 m3 of soil</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)															
Less than 650m ²	-	7%															
650m ² – 1,500m ²	3m																
Greater than 1,500m ²	6m																
Greater than 1,500m ² with significant existing tree cover	6m																

		<p>volume. Therefore, the proposal has insufficient design information.</p>												
<p>Visual Privacy</p>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1" data-bbox="481 600 1034 907"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p><i>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</i></p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Subject to design measures</p> <p>The development is part 3 storey residential flat building below 11m in height, but is actually within an 8.5m height restriction zone. Thereby requiring a spatial separation of 6.0m to habitable rooms and balconies and 3.0m to non-habitable rooms.</p> <p>The minimum separation distance to the southeast is habitable rooms (apartments) is 10.8m; and balcony to balcony is 4.5m; and balcony to habitable room is 9.1m (No.2 Brookvale Avenue).</p> <p>The separation distance to the adjacent dwelling (Northwest) is 7.2m between habitable rooms; and 5.6m from the front balconies to habitable rooms (No. 6 Brookvale Avenue)</p> <p>In summary, the building design includes some unconventional design elements in order to overcome site constraints for an in-fill development including steep slope, single lot width and an apartment building adjacent. Additional privacy screening would be required or increased setbacks in order to achieve a more appropriate level of visual privacy.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

<p>Pedestrian Access and entries</p>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Inconsistent</p> <p>Pedestrian access into the building is easily identifiable from Brookvale Avenue. However, details are not shown as the provision of a stair lift to reach the public entry foyer at the second level. The lift overrun (which part of the highest elements of the building) is integrated within the northern end of the building and not prominent to the street.</p>
<p>Vehicle Access</p>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p>Consistent</p> <p>The driveway entry to the street has been assessed as satisfactory by Council's Development Engineer.</p>
<p>Bicycle and Car Parking</p>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Inconsistent</p> <p>The proposed provision of car parking has been assessed in accordance with Appendix H of the WDCP 2011. Some inconsistency is identified with the allocation of the appropriate visitor and disabled parking access spaces. The proposal is non-compliant with the DCP.</p> <p>All car parking is provided off street in the basement car park and thereby has minimal visual impact. The excavation (including basement parking) though is deeper than the building is high and is therefore not 'low impact' that is consistent with a two-storey zone.</p>

Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter 	<p>Subject to design measures</p> <p>The development achieves a satisfactory provision of solar and daylight access to 75% of the apartments given the orientation of the building, allows morning or afternoon light. The amenity of the principle living areas is enhanced by the wide balcony areas for the upper level apartments.</p> <p>In summary, the building contains 11 apartments and solar access is met to the balcony areas for the majority of apartments. Concern though is raised to lower apartments on the side elevations where bedrooms are deeply excavated and solar amenity to those rooms will be poor.</p>
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line. 	<p>Consistent</p> <p>The development comprises of 11 units and has been designed to achieve natural ventilation.</p> <p>Therefore, the application is assessed as having 100% of apartment living areas being adequately ventilated and satisfying the requirements of this control.</p>
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p>	<p>Consistent</p> <p>The development achieves satisfactory</p>

	<table border="1"> <thead> <tr> <th colspan="2">Minimum ceiling height</th> </tr> </thead> <tbody> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>For 2 storey apartments</td> <td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td>Attic spaces</td> <td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td>If located in mixed used areas</td> <td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> </tbody> </table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	<p>floor-to-ceiling levels as per the ADG and BCA. Storage is provided in the mid levels (L2, L3 and L4).</p> <p>As the building has lift access the provision of storage rooms to access the mid levels of the building conveniently.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
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<p>Apartment Size and Layout</p>	<p>Apartments are required to have the following minimum internal areas:</p> <table border="1"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35sqm</td> </tr> <tr> <td>1 bedroom</td> <td>50sqm</td> </tr> <tr> <td>2 bedroom</td> <td>70sqm</td> </tr> <tr> <td>3 bedroom</td> <td>90sqm</td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12sqm each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe</p>	Apartment type	Minimum internal area	Studio	35sqm	1 bedroom	50sqm	2 bedroom	70sqm	3 bedroom	90sqm	<p>Consistent</p> <p>The development has a satisfactory apartment size and layout per unit as per the ADG guide.</p>		
Apartment type	Minimum internal area													
Studio	35sqm													
1 bedroom	50sqm													
2 bedroom	70sqm													
3 bedroom	90sqm													

	<p>space). Bedrooms have a minimum dimension of 3m (excluding wardrobe space). Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>																
<p>Private Open Space and Balconies</p>	<p>All apartments are required to have primary balconies as follows:</p> <table border="1" data-bbox="480 869 1029 1093"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>Consistent</p> <p>Each apartment within the development has a courtyard area or balcony / terrace that are directly accessible from a living area.</p> <p>Apartment 1 balcony 55 sqm. Apartment 2 balcony 13 sqm. Apartment 3 balcony 15 sqm. Apartment 4 balcony 23 sqm. Apartment 5 balcony 20 sqm. Apartment 6 balcony 23 sqm. Apartment 7 balcony 20 sqm. Apartment 8 balcony 38 sqm. Apartment 9 balcony 31 sqm. Apartment 10 balcony 35 sqm Apartment 11 balcony 33 sqm</p> <p>All apartments contain 2 bedrooms and the principle balconies have minimum dimensions that exceed 2.0m.</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
<p>Common</p>	<p>The maximum number of apartments off a</p>	<p>Consistent</p>															

Circulation and Spaces	<p>circulation core on a single level is eight.</p> <p>For buildings of 7 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>First Floor - 1 unit (Basement ground entry level below) Second Floor - 2 units Third Floor - 2 units Fourth Floor - 2 Units Fifth Floor - 2 Units Sixth Floor - 2 Units (Level 7)</p>										
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1" data-bbox="480 779 1031 1003"> <thead> <tr> <th>Dwelling Type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> </tr> <tr> <td>1 bedroom apartments</td> <td>6m²</td> </tr> <tr> <td>2 bedroom apartments</td> <td>8m²</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>10m²</td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	<p>Consistent</p> <p>Each apartment has a satisfactory provision of dedicated storage rooms located on Level 2, 3 and 4. (Additionally the units have walk-in-robos, laundry and kitchen / living and bedroom storage)</p>
Dwelling Type	Storage size volume											
Studio apartments	4m ²											
1 bedroom apartments	6m ²											
2 bedroom apartments	8m ²											
3+ bedroom apartments	10m ²											
Acoustic Privacy	<p>Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.</p>	<p>Subject to design measures</p> <p>It is considered that the design of the building, anticipated usage and current construction standards (insulation and the like) would mitigate any unreasonable or detrimental acoustic impact from the interior of the building. The tiered design of the building with all balconies facing southeast (split along central line) however is likely to impact the acoustic amenity of the adjacent building at No.2 Bookvale Avenue and any future redevelopment of No.6 Brookvale Avenue. A design that increases the building separation would assist to reduce this impact, by site consolidation.</p>										

		Conditions may be applied to ensure no unreasonable noise impact from air conditioning or lift motors when operating.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Subject to design measures Conditions are suitable to ensure no unreasonable noise pollution impact from air conditioning or lift motors.
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Subject to design measures The application proposes two bedroom units to accommodate for a potential buyers / tenants suitable for the local area and demographics.
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Inconsistent The development incorporates contemporary architecture and design features however the tiered effect creates a substantial visual impact on the street. The surrounding area is influenced by the gradual transition from single dwellings to consolidated sites that are redeveloped for two storey apartment buildings. It is considered that the development is inconsistent with the predominant pattern of medium density development in the street and adjacent medium density zone.

<p>Roof Design</p>	<p>Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability</p>	<p>Consistent</p> <p>The development provides a low parapet and a generally flat roof stepped over two levels. A central courtyard instep and lift facility are principal elements of the central rear part of the building.</p>																														
<p>Landscape Design</p>	<p>Was a landscape plan submitted and does it respond well to the existing site conditions and context.</p>	<p>Inconsistent</p> <p>The development does not respond well to the desired landscape outcomes for medium density development. This issue was given significant weight at the pre-lodgement phase and has not been complied with for a satisfactory design.</p>																														
<p>Planting on Structures</p>	<p>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</p> <table border="1" data-bbox="469 1265 1045 1960"> <thead> <tr> <th>Plant type</th> <th>Definition</th> <th>Soil Volume</th> <th>Soil Depth</th> <th>Soil Area</th> </tr> </thead> <tbody> <tr> <td>Large Trees</td> <td>12-18m high, up to 16m crown spread at maturity</td> <td>150m³</td> <td>1,200mm</td> <td>10m x 10m or equivalent</td> </tr> <tr> <td>Medium Trees</td> <td>8-12m high, up to 8m crown spread at maturity</td> <td>35m³</td> <td>1,000mm</td> <td>6m x 6m or equivalent</td> </tr> <tr> <td>Small trees</td> <td>6-8m high, up to 4m crown spread at maturity</td> <td>9m³</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> </tbody> </table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		<p>Inconsistent</p> <p>As per the landscaped plans accompanying the application, side setbacks are to be planted with grasses and small / medium height plants but the viability and capability of those areas to support the deep soil volume required to gain effective screen planting are not evident.</p> <p>The proposal has most planting on bedrock areas with some backfill.</p>
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																												
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																												
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	Turf		200mm	
Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.			Inconsistent Detail not defined by the applicant.
Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.			Not Applicable
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.			Not Applicable
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.			Consistent The application proposes no awning or signage along the property boundaries.
Performance				
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?			Consistent BASIX Certificate commitments are included with architectural plan package.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?			Consistent The application has been reviewed by Council's Development Engineers who raises no objections to the proposal, subject to conditions to address stormwater runoff in compliance with Council's Policy.
Waste Management	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.			Consistent A waste management plan has been provided to accompany the development application, and appropriate conditions ensuring compliance with such



		have been included in the recommendations of this report.
Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	Consistent The building materials selected for the subject development are of a suitable quality and will achieve a longevity that is expected for a development of this nature.

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 development application is not being refused on any grounds contained within Cl. 30 (1) (a), (b) or (c).

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

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

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.



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

Comment: The assessment of this development application against the criteria and requirements of SEPP 65 has not adequately demonstrated consideration has been given to Cl. 30 (2) (a) and (b) as per the above assessment.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.907367M dated March 2018).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	25	29

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.

Other Service Infrastructure Authorities

The proposal was not required to be referred to the Roads and Maritime Service (RMS) and no other service authority referral issues are raised pursuant to the SEPP.



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?	
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.6m	24%	No*

*Refer to detailed merit assessment (Clause 4.6 variation) within this report.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

The site is subject to an 8.5m height control measured from existing ground level pursuant to the definition of building height under Clause 4.3 WLEP 2011. In the circumstances of this assessment, it is important to note that the site has been excavated to a minor extent for the existing dwelling and ancillary structures (e.g. garage at the front). However, there are no artificially created height anomalies such as a pool or basement structures on the site.

In the case *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189 it is made apparent that the measure of existing building height should relate to the levels and natural topography of the site, and not relate to artificially modified levels (such as those achieved through excavation).

Therefore, in measuring the natural ground level of a site, reliance must be placed upon known levels of the site which can be relied on to extrapolate the natural slope of the land. In the circumstances of this case, it is evident that the natural landform is evidenced by the gradient and levels of the survey height adjacent the existing dwelling house footprint. The dwelling footprint has minimal excavation and is generally consistent with natural surface levels of the site, whereby the land slope is intercepted by steep rock terraces then slopes to the next lower band of sandstone bedrock.



Therefore, for the purpose of this assessment, natural ground level is taken from survey information around central area of the proposed building, as detailed on the plans, submitted accompanying the application (see cross sections and survey details). Building height does not include height measured from modified ground floor levels, stairs or basements. In measuring the building height, using this methodology, this assessment maintains the same approach to building height as that used by the applicant in the Statement of Environmental Effects.

Description of non-compliance:

Development standard:	8.5 metres (m)
Requirement:	8.5 m (2 storey)
Proposed:	10.6m
Percentage variation to requirement:	24% (2.1m)

4.6 Exceptions to Development Standards

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 not adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Applicants Written Request

The Applicant's written request has sought to demonstrate that the objectives of the development standard are achieved within Section 4.22 of the Statement of Environmental Effects. It is contended that the proposal does not have sufficient grounds to warrant the extent of the variation in response to the site constraints and opportunities to comply with the development standard.

Planning Comment:

In doing so, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a). The proposal does not warrant the extent of the variation proposed, given the constraints and opportunities that the site presents, individually or collectively in the context of the amenity of land within the zone and categorised as "environmental planning grounds".

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

Conclusions on Environmental Planning Grounds

In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

"1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental



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

The applicants written request argues, in part:

Reasons for Clause 4.6 Variation Consideration

- *Compatibility with height and scale of surrounding and nearby development – The subject site is located within an R3 Medium Density Residential precinct which is in transition and undergoing change with original detached dwelling houses being replaced with new medium density residential building typologies. An example of how a medium density form can be appropriately designed on a steeply sloping site exists at No. 2 Brookvale Avenue, the property immediately to the south east of the subject site. Design cues have been taken from this building with the design approach adopted resulting in a complimentary and compatible building form consistent with that anticipated in the R3 Medium Density Residential zone. In this regard, we have formed the considered opinion that the height, bulk and scale of the development are entirely consistent with the height and scale of surrounding and nearby medium density development."*

Planning Comment:

Some degree of non-compliance with the development standard of 8.5m on a steeply sloping site is not considered unreasonable. However "design cues" from adjacent development may not be appropriate where that development was made under past planning instruments or led to design outcomes that are not appropriate for the subject land to follow with current planning controls. In this regard, it is uncertain how vigorously that the proposal has pursued opportunities and design responses to maintain the objectives of the current development controls. A wider context should be considered that would include other sites in the street or nearby that are affected by the same controls and provide a more recently considered and more current precedent than No.2 Brookvale Avenue (circa 2002-2003).

- *Visual impact, disruption to views, loss of privacy and loss of solar access - Having undertaken a detailed site and context analysis and identified available view lines over the site we have formed the considered opinion that the height of the development, and in particular the non-compliant height components, will not give rise to any unacceptable visual, views, privacy or solar access impacts. We rely on the accompanying shadow diagrams (Plans A15 and A16) in this regard."*

Planning Comment:

The building height variation is a 24% variation or 2.1 metres. In considering whether compliance is unreasonable or unnecessary weight should be given as to whether a compliant height can be achieved by the offending element to the control, or the variation can be at least minimised / reduced. It is evident



by the plans that the large balconies that extend much wider than (up to 7 metres) the minimum DCP / SEPP requirements for balcony dimensions contribute to the breach of the development standard. In this regard, where the minimum dimension are met and a non-compliance still exists then, on balance, a variation is more justified. In this case, a reduction in those balcony widths would assist to reduce building bulk, reduce opportunities for overlooking, assist in better privacy and minimise amenity impacts. In addition, to this site consolidation would enable greater scope for a development that has a wider building footprint and lower profile with increased landscaping to better shield impacts on neighbours. The site constraints driving the current building height non-compliance are likely to then be less influential.

Therefore, the proposal is unreasonable within its context due to the significant amenity impacts, including massed building bulk creating an undesirable precedent whereby the building is overpowering the surrounding properties particularly the remnant detached dwellings, adjacent the north-west boundary and apartments close to the south-east boundary.

Consequently, it is concluded that the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard (as required by cl 4.6 (3)(b)) when full building height compliance could be achieved, nor that the addition is of a good design that will sufficiently protect and improve the amenity of the surrounding built environment. Therefore, the proposal does not satisfy cls 1.3 (g) of the EPA Act.

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 R3 Medium 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:

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

Comment:

The site is in a zone of variable slope, however the subject site is much steeper than all others to the west in Brookvale Avenue. There are a number of original dwelling houses to the immediate west (extending to No.20 Brookvale Avenue). A significant number of other sites in Brookvale Avenue have been consolidated in the past to achieve medium density development (generally appearing as two storey when viewed from the street). To the south-east (No.2 Brookvale Avenue) is a flat building with a juxtaposed design that has been developed in isolation as a single Lot development and is affected by the proposed development. The subject proposal rises up the site in a wedge shape and will be visible



as seven (7) levels from the street (as indicated in the photomontage).

By comparison to the majority of development in Brookvale Avenue the proposal is not compatible in height and scale. The accumulated massing and height is influenced by the intensity of the development, including extensive civil engineering required, radical changes to the natural site levels and not following the precedent for site consolidation used widely in the street for more orderly and efficient development of apartments.

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

Comment:

It is noted that the non-compliance with the height requirement in itself does not have a severe impact on views and solar access by virtue of details provided in the shadow diagrams, and that there is only a single dwelling development to the adjacent northwest sites. However, the design of the proposal will have adverse amenity impacts on the adjoining properties, with regards to visual privacy and visual bulk due to the extensive number of levels that would be overbearing when viewed from adjacent land and the opportunities created to overlook adjacent properties from consecutively higher and higher terraces on either side of the subject building.

Therefore, the proposal is found to be inconsistent with this objective.

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

Comment:

The development is not found to result in an adverse impact on the scenic quality of the Northern Beaches bush environment and therefore satisfies this objective.

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

Comment:

The development will have a considerable visual impact on the street due to the openness of the approach from Old Warringah Road and exposure of the property toward the south whereby land in Brookvale Avenue falls generally toward the south. Therefore, the site is in a very exposed position and the occurrence of surface rock throughout the site will inhibit the ability for visual impact to be softened / shielded by large canopy trees and that this is a significantly non-compliant landscape area provided (much less than 50% of the site).

Zone Objectives

The underlying objectives of the R3 Medium Density Residential zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*

Comment:

The site will continue to cater for providing housing for the community.



It is considered that the development satisfies this objective.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The development is within the residential zone and will supply 2 bedroom units to the housing stock within the medium density environment.

It is considered that the development satisfies this objective.

- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The new building has an extensive and very deeply excavated building footprint, and does not maintain a sufficient landscape setting in area, distribution or soil depth due to the removal of and modification of the natural slope features. In particular, the proposal will require excavation across the entire site and destroy the existing natural character created by the unique rock outcrops, particularly at the rear. An alternative design that was responsive to the site features would enable consistency with this objective to be more easily achieved (this may be facilitated by site consolidation) Therefore, the proposal adversely affects the landscaped setting for the site and the development is not in harmony with the natural environment that characterises the site.

It is considered that the development fails this objective.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Conclusion:

For the reasons detailed above, the proposal is considered to not be consistent with the objectives of the R3 Medium Density Residential zone in view of the desirable 2 storey built form, emphasis on a landscape setting (50%) retention of natural rock features, massed appearance and layered height levels that will appear as overbearing toward the street and adjacent land. A consolidated site would reduce the influence and necessity to increase the building height and enable opportunities for better environmental outcomes and more orderly and economic development, consistent with the development standards and merit based controls. In this regard the Clause 4.6 variation is not considered to be well founded.

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 circumstance given the inconsistency 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 not assumed.

6.4 Development on sloping land

The Geotechnical report (No.D-11-265978) prepared by *Civil and Structural* has not identified any significant slope instability or other soil conditions that may not be overcome by safe engineering methods. With respect to slope, excavation (including dilapidation) and water table risks the geotechnical report identifies and makes the following conclusion to acceptable risk and management to address relevant considerations:

"The underlying sandstone will offer suitable founding material. The bearing capacity of the sandstone supporting the foundation/footing should not be less than 1000kpa. The foundation for the structure is to consider all surcharges that may be transferred from neighboring structures being at higher levels and the use of shotcrete walling for surrounding weaker capacity soils particularly near boundary conditions.

The site is suitable for the development proposed and the development proposal can achieve the Acceptable Risk Management required by the Northern Beaches council geotechnical policy provided that the structure is built in accordance with an appropriate structural design yet to be provided by CSEDS and all recommendations for risk mitigation in the sections above are adhered to."

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies	
B2 Number of storeys	2 storeys	3 storeys (Transitioning across Second floor to sixth floor)	1 storey	No*	
B3 Side Boundary Envelope	4m at 45 degrees Southeast elevation	Ground floor (at grade)	N/A	Yes	
		Within envelope First floor	N/A	Yes	
		Within envelope Second floor	N/A	Yes	
		Within envelope Third floor	N/A	Yes	
		Within envelope Fourth floor	N/A	Yes	
		Within envelope Fifth floor	N/A	Yes	
		Within envelope Sixth floor	N/A	Yes	
		Within envelope	N/A	Yes	
		4m at 45 degrees Northwest elevation	Ground floor (at grade)	N/A	Yes
			Within envelope First floor	N/A	Yes

		Within envelope Second floor	N/A	Yes	
		Within envelope Third floor	N/A	Yes	
		Within envelope Fourth floor	N/A	Yes	
		Within envelope Fifth floor	N/A	Yes	
		Within envelope Sixth floor	N/A	Yes	
		Within envelope			
B5 Side Boundary Setbacks	4.5m building 2.0m basement (Southeast side)	Ground floor 2.1m	N/A	Yes	
		First floor 2.1m	N/A	Yes	
		Second floor 3.5m to 4.5m	N/A	Yes	
		Third floor 3.5m to 4.5m	N/A	Yes	
		Fourth floor 3.5m to 4.5m	N/A	Yes	
		Fifth floor 3.5m to 4.5m	N/A	Yes	
		Sixth floor	N/A	Yes	
B7 Front Boundary Setbacks	6.5m	Basement (& Plant room) 6.5m to 8.4m	N/A	Yes	
		Ground floor 6.5m to 8.4m	N/A	Yes	
		First floor deck 6.8m	N/A	Yes	
		First floor wall 9.2m (Second floor to	N/A	Yes	



		sixth floor complies) 12.8m to 27.5m		
B9 Rear Boundary Setbacks	6.0m	Ground floor 18.7m First floor 18.7m Second floor 18.5m Third floor 18.5m Fourth floor 18.5m Fifth floor 18.5m Sixth floor 9.6m	N/A N/A N/A N/A N/A N/A	Yes Yes Yes Yes Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	50% 648.5sqm	29% 386sqm	40%	No*

*Refer to detailed merit assessment under the heading Built Form Controls within this report.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B2 Number of Storeys	No	No
B3 Side Boundary Envelope	Yes	No
B5 Side Boundary Setbacks	Yes	No
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	No
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	No
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	No	No
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	No
D2 Private Open Space	Yes	No
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D19 Site Consolidation in the R3 and IN1 Zone	No	No
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	No	No
E10 Landslip Risk	Yes	Yes

Detailed Assessment

A.5 Objectives

- *To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood .*

Comment:

The predominant characteristics and pattern and scale of residential development in the surrounding neighbourhood is a critical element in the assessment of the boarding house proposal. The low density qualities of the surrounding neighbourhood have been raised in numerous public submissions including concerns regarding inconsistency of the boarding house design in terms of its building bulk, inadequate landscaping and high occupancy/intensity of use. While the site is being considered for potential change to R3 Medium density zone, the proposal has not sought to achieve a development that meets the desired characteristics and qualities expected by the controls applying that zone either.

It is considered that the proposal has not responded to the predominant character of the surrounding neighbourhood and does not satisfy this objective.

- *To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome.*

Comment:

The building bulk, size and intensity of use (based on the number and size of rooms) and ratio of landscaping to built form creates an abrupt change compared to neighbouring residential development. While the proposed use of the site is not considered to be inherently in contrast surrounding residential land, the building bulk is visibly exposed along all boundaries of the site. The building bulk is in stark contrast to the low density residential development surrounding site whereby there is a predominance of part one and part two-storey detached housing.



While it is accepted that existing development will gradually transition over time to a higher density, the proposed full 4 storey design within a single massed structure is not in keeping with the existing pattern of development. By comparison to the scale of surrounding residential properties the proposal represents a generally poor planning outcome and sets an undesirable precedent of urban form. Additionally, no effective landscape buffers are available along the side and rear setbacks. Therefore the proposal has not properly addressed the built form controls in a manner that will maximise landscaping and provide a positive contribution to the street or neighbours amenity.

- *To inspire design innovation for residential, commercial and industrial development.*

Comment:

The important controls which go to achieving design innovation are; building bulk (use of articulation and modulation), colours and materials (harmonise with the landscaped setting) and roof form (complements the buildings design and provides an attractive and interesting appearance within the street). In this regard, the proposal is unsatisfactory in terms of the bulk and massing of the ground and first floor levels and the unbroken wall and roof lines. Therefore, the proposal does not exhibit design innovation to an acceptable degree.

An appropriate series of innovative solutions for the site would be to:

- incorporate single storey elements (particularly at the rear and eastern side of the site).
 - break the building into connected modules or pavilions.
 - incorporate private open space / balcony elements within the central or front portions of the site.
 - break up the roof into distinct and separate sections (and respect the continuity of traditional roof forms).
 - accommodate carparking underneath the building (without extending close to any boundaries).
 - increase side setbacks and provide pockets of substantial green space in deep recesses (in association with creating module or pavilion-style design / effect).
- *To provide a high level of access to and within development.*

Comment:

The proposal demonstrates adequate access to the front of the development from the street. However the plans show inconsistencies with practical access from the rear of the building via the side access. A high level of safe access is required due to the intensity of residential use, however the plans provide insufficient and inconsistent information to address this requirement.

- *To protect environmentally sensitive areas from overdevelopment or visually intrusive development so that scenic qualities, as well as the biological and ecological values of those areas, are maintained.*

Comment:

The site is not within an "environmentally sensitive area" under WLEP 2011. Additionally, the land is not identified as having intrinsic scenic and visual qualities in the area and the site is not situated on a prominent hillside or ridgetop. The site does not contain any significant biological or ecological values such as remnant natural bushland or habitat.

- *To achieve environmentally, economically and socially sustainable development for the community of Warringah.*



Comment:

The proposal raises issues in relation to the lack of a suitable landscape setting for the development, and does not provide for well designed communal spaces which protect the amenity of adjacent land. Hence, the proposal is not considered to be an environmentally sustainable development. It is noted that the community have raised a significant level of concern in relation to the social impacts of the development. However, suitable conditions including a OPM will regulate the occupant impacts on the community. There are no issues in relation to economic sustainability.

B2 Number of Storeys

Description of non-compliance

The site has a two (2) storey limit however the proposal transitions is 3 storeys in the central part of the building. The rear part of the building is single storey and the front parts two storey when measures from *existing* ground level.

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 development does not visually dominate its surrounds.*

Comment:

The proposal includes significant excavation and the design focuses the primary aspect of all units toward the south creating a tiered effect of seven (7) levels when viewed from Brookvale Avenue. The design therefore has a concentrated and visually dominating impact on its surroundings. The narrow side setbacks that have minimal landscaping and steep site levels further expose the building's dominance. A broader semi-detached design across a consolidate site would enable a building design that is much less dominating on its surrounds.

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

Comment:

The building will have a strong visual impact when viewed from the street. Visual impact has not been minimised and that impact would be significantly reduced by re-development in a manner that minimised deep excavation across the frontage and enabled a broad landscape setback (including retaining existing natural features of the site where practicable).

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

Comment:

View across the site are urban district views and generally toward the south and south east. However, the adjacent properties are either substantially above the site (fronting Warringah Road) or already have obstructed views across the site (looking easterly) from No.6 and no.6A Brookvale Avenue. This objective does not have determining weight for the DCP control.



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

Comment:

The proposal will create a significant change to the existing amenity of adjacent land. The amenity impacts of building bulk and massing, including overlooking and loss of existing landscape amenity will be experienced by No.6 and No.2 Brookvale Avenue. Consideration includes the variation in storey level height between adjacent land. In this regard amenity is easier to maintain where adjacent 2 storey buildings are at the same level, but on steeper sites a second or third storey level may be much higher by comparison to an adjacent existing development. In this case the development 'towers' over the adjacent properties within limited landscape amenity. The wedge shaped building creates an imposing impact on Brookvale Avenue by comparison to other flat development such as No.7-13, or No.15-17 or No. 2 Brookvale Avenue. The proposal is not consistent with this objective.

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

Comment:

The proposal has selected to use a flat roof at the upper level. The lower levels utilise the floor above, including balcony / terraces to form the roof area over each consecutive level. This objective does not have determining weight for the DCP control.

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

Comment:

The building has seven (7) visible levels, viewed from the Brookvale Avenue. Along the side elevations six (6) levels will be visible from neighbours land as each consecutive level steps up the slope and back into the next higher level. This creates a single, large scale massed form from the front setback to the rear which will be exposed due to the excavation required along the side setbacks. Limited opportunities existing for large canopy trees in the side setback due to the surface bedrock and shallow soils. While based on 'existing ground level' the non-compliance to the 2 storey height control is located toward the centre-rear section of the building the constructed building, as shown on the plan, will appear as being mostly three (3) storey as it transitions up the site. The proposal is not consistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the aims and 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 not supported, in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

The proposal is inconsistent with the objectives of the numerical 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 that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The side elevations are visually dominating due to the steep and extensive tiered levels that widen as the building increases in height toward the rear. By virtue of this the building bulk is substantially larger at the rear for the upper levels than at the front of the site. In this regard, the building moves outward along the building envelope line creating a visually dominating effect. The proposal is inconsistent with this objective of the DCP control.

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

Comment:

The proposal does not provide an appropriate design response to ensure reasonable privacy is maintained to adjacent land imposing constraints on adjacent future redevelopment potential due to inadequate spatial separation. The proposed development would significantly reduce levels of residential amenity for the building and for adjacent land. A number of habitable window spaces for Units 1, 2, 3, 4, 5, 6, and 7 will have poor natural light amenity since the back of these units are deeply excavated and the narrow side setback and fencing will restrict light. Some windows are more than 4.0 metres below the adjacent fence line. Units within SP79431 that have windows and open space close to the south-east (side) boundary of the site are most affected by loss of light, solar access and privacy due to the inadequate response to the building envelope. The properties of No.6 and No.6A Brookvale Avenue are detached dwellings and the pedestrian access for the proposal is located along their common boundary with the subject site. This extensive stair access will reduce opportunities for landscape screening and impact privacy on this side (NW boundary) of the site. The proposal is inconsistent with this objective of the DCP control.

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

Comment:

The proposal includes significant excavation and modifies the natural landform with abrupt changes at the boundary lines across the entire site. In total the basement excavation is deeper than the height of the building itself. This is contrary to the intent of this objective to follow the topography of the land and respond to the natural slope of the land, including the retention of existing site levels, unique rock outcrops and to support landscaping and natural drainage around the perimeter of the building. The proposal is inconsistent with this objective of the DCP control.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

B5 Side Boundary Setbacks



Description of non-compliance

The proposal is inconsistent with the objectives of the numerical 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 provide opportunities for deep soil landscape areas.*

Comment:

The proposed development will not be sufficiently surrounded by landscaping to soften and reduce the visual bulk when viewed along the side setbacks since the basement level and driveway is built to side boundaries leaving no adequate opportunity for deep soil landscaping, including canopy screen trees. The proposal is inconsistent with this objective of the DCP control.

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

Comment:

The building height, width and overall scale is commensurate with that of a medium density apartment block, and is an obviously dominating structure by comparison to the adjacent dwelling houses. This imposes constraints on adjacent land and places unreasonable impacts on future re-development opportunities to overcome the lack of spatial separation, inadequate landscaped setbacks and imposing building scale along the side setbacks. The proposal is inconsistent with this objective of the DCP control.

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

Comment:

The side and rear setbacks are not progressively increased as wall height increases. The building design does not demonstrate adequate recessed elements and stepping-in along the upper storeys to provide adequate articulation and a compatible residential appearance that reduces visual bulk when viewed from adjacent land. The proposal is inconsistent with this objective of the DCP control.

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

Comment:

Narrow side setbacks and building height contribute to reduce solar access to adjacent land. The inadequate deep soil zones and high levels of occupancy reduce the residential amenity of the building. The numerous balconies along the side setbacks have limited functional purpose due to their enclosed design and therefore further detract from the spatial amenity between neighboring buildings as have limited utility and do not serve to enhance the residential appearance if the building when viewed from the public domain or private property. The proposal is inconsistent with this objective of the DCP control.



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

Comment:

The site is not in a location that affords any coastal or district views therefore not further consideration of this objective is required.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

The proposal is inconsistent with the objectives of the front setback 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:

The majority of the front setback will be excavated to facilitate construction access and site works and the nature strip in front of the site is steeply sloping. The reinstatement of the front setback areas shows a stone retaining wall (2 to 3m high) where the pedestrian access joins the driveway with a on-site detention tank 4.5m x 5.0m x 1.4m however the submitted plans have insufficient detail to establish how or if any landscaping above the tank is possible due to the surcharge and maintenance access. The proposal is therefore not supported with regard to this objective due to insufficient information.

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

Comment:

The excavation of the front setback is shown in the photomontage and architectural plans, however a large on-site detention tank is to be situated in front of the building. This is shown as having no soil cover and is therefore inconsistent with the intended outcomes of this DCP control.

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

Comment:

The front setback area is also dominated by structures for the driveway, pedestrian access and a raised on-site detention tank within the setback area. This effectively prevents the opportunity to protect and enhance the visual quality of the streetscape along the available site frontage.



The conflicting information on the submitted plans (landscaped, drainage and architectural) prevent assurance that the visual quality of the streetscape will be consistent with the photomontage provided for the development application.

- *To achieve reasonable view sharing.*

Comment:

The site is not in a location that affords any coastal or district views and therefore no further consideration of this objective is required for the front setback area.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

B9 Rear Boundary Setbacks

Description of non-compliance

The proposal complies with the minimum rear setback and requirement for 50% of the rear yard to remain as open space. However, the proposal is not consistent with maintaining the objectives of this built form control in terms of retaining landscape soil depth and landscape features.

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 majority of the rear setback is dominated by new excavated area across a natural rock terrace that will destroy almost the entirety of the unique rock outcrop at the rear. In this regard, deep soil landscaping of 1.0m depth is unlikely to be achieved. In this regard it is considered that the proposal is not site responsive. This results in more than 50% of the rear setback not having deep soil areas that are capable of supporting medium to large canopy trees to enhance the landscaped setting of the building when viewed from adjacent private open space and houses.

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

Comment:

The building complies with the rear setback distance of 6.0m and there are no ancillary outbuildings in the rear setback therefore the proposal is consistent with maintaining an open rear setback that does not have secondary buildings that encroach into this area.



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

Comment:

The redevelopment of the site for a boarding house will intensify the use of the rear setback area where communal open space will be available and other site facilities (such as clothes drying) are frequently used. Therefore, the privacy of adjacent land should be protected by ensuring a wide landscaped buffer is provided. Ideally this should be 3m to 4m wide (commensurate with the side setbacks) to buffer any communal areas and enable deep soil screen tree planting that provide effective privacy within the rear setback area and does not solely rely on adjacent private open space. The proposed boarding house does not have a sufficient landscape buffer within the rear setback and the use of the communal area is likely to impact on the amenity and privacy of adjacent land. Therefore, the proposal is inconsistent with this objective.

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

Comment:

The depth of the building extends to the limit of the rear setback area which is not consistent with the existing continuity and pattern of building, rear gardens and landscaping. In addition to this the rear setback is dominated by paved and excavated areas that prevent any substantial landscape elements and reduces the overall landscaping within the rear setback to less than 50% of the area. Therefore, the proposal is inconsistent with this objective of the DCP control.

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

Comment:

At ground level privacy can be partly addressed by high boundary fencing, however this does not reduce overlooking from the upper storeys of the building or create a spatial separation between adjacent usable open space. The proposal does not provide adequate deep soil space for effective landscape screening to maintain privacy to adjacent dwellings. The photomontage is considered to be an unrealistic representation due to anomalies between the plan details of the stormwater plans, architectural plans (excavation detail) and landscape plans. Therefore, the proposal is inconsistent with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C3 Parking Facilities

Description of carparking

The proposal has 11 x 2 bedroom units and shows 17* carparking spaces available within two basement parking levels

Merit consideration



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

- To provide adequate off street carparking.

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Residential Flat Buildings	1 space per 1 bedroom dwelling 1.2 spaces per 2 bedroom dwelling 1.5 spaces per 3 bedroom dwelling 1 visitor space per 5 units or part of dwellings	11 (2 bedroom units) x 1.2 spaces 13.2 (14) + 3 visitor spaces 17 spaces	16 spaces* (note that 1 disabled persons space is required that will occupy 2 of the car spaces shown.	-1 car spaces*
Total		17	16	-1

The proposal can compliant parking and access for the building including the ability to provide 1 disabled persons accessible space and visitor parking in accordance with the DCP and the current Australian Standard 2890

- To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.

Comment:

Due to the narrow frontage of the garage door takes up 4.8m width of the 15.2m frontage. The garage is setback 8.3 metres from Brookvale Avenue and due to the slope of the site the driveway enters the building at grade similar to the adjacent development of No.2 Brookvale Avenue. The proposal is consistent with this objective of the DCP.



- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

Due to the surrounding topography and alignment of the street, including the narrow property frontage the basement garage access will not dominate the street. The proposal is consistent with this objective of the DCP.

Having regard to the above assessment, it is concluded that the proposed development is not consistent with the relevant requirements of the WDCP for the provision of and adequate number of parking spaces and is therefore inconsistent with 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.

C7 Excavation and Landfill

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 any land excavation or fill work will not have an adverse effect upon the visual and natural environment or adjoining and adjacent properties.*

Comment:

The proposal requires radical changes to natural site levels including extensive civil engineering for the construction of side steps and drainage infrastructure within the side setbacks. The depth and extent of excavation will have a significant impact and does not minimise impacts on the natural environment or maintain the amenity of adjacent land.

- *To require that excavation and landfill does not create airborne pollution.*

Comment:

An excavation management plan has been prepared to address this issue and the proposal is also subject to OHS requirements to ensure no unreasonable dust impacts.

- *To preserve the integrity of the physical environment.*

Comment:

The proposal does not preserve the integrity of the natural rock outcrops at the rear of the site. This issue is regarded as a priority and a strong reason to achieve site consolidation to enable a more environmentally sensitive design in accordance with this objective.

- *To maintain and enhance visual and scenic quality.*

Comment:

The excavation across the site will create limited opportunity for deep soil zones to be retained,



including the existing trees. The loss of natural landscape zone that exist will therefore not maintain the visual and scenic quality.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposal has a landscaped open space (LOS) area of 386sqm (29%), which represents a deficiency of 40% from the required landscaping area of 648.5sqm (50%).

Merit consideration

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

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

Comment:

The proposal has provided some 2m wide deep soil landscaping within the front setback between the access driveway and the southeastern boundary, which should serve to maintain and enhance the streetscape (if not taken up for emergency fire hydrant services). However, the south west side of the driveway contains a on-site detention tank that limits landscape area and opportunities for substantial landscape planting.

In addition to the lack of deep soil zones within the side setbacks have no substantial landscaping zones due to extensive excavation up to 4 metres deep for the construction of stairs or ancillary site works. This is due to the basement structures and driveway having a 2.0m to 1.8m setback to the side boundaries which results in limited ability to retained existing planting planting or provide suitable landscape setting to enhance the buildings amenity and provide a buffer to the adjoining properties when viewed from the street.

As such the proposal is inconsistent with this objective and results in having a low standard of LOS considerations that prevents medium to large planting distributed around the building that would enhance the appearance of the development appropriate for the streetscape.

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

Comment:

The proposal does not provide adequate LOS due to the excessive building footprint, including extensive excavation along the boundary side setbacks, removal of all existing natural rock features at the rear and other ancillary hard paved areas around the building perimeter. The shortfall in LOS represents a significant variation from the 50% landscaping required for the DCP control. The lack of LOS does not enable sufficient area/buffers for substantial indigenous vegetation to complement the landscaped area on surrounding land and provide habitat for wildlife.



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

Comment:

The proposal does not provide an adequate width of landscaping within the south-eastern setback or north-western setback as it is compromised by excavated areas and ancillary structures. Overall, the minimal landscape screen planting will not provide effective mitigation of the bulk and scale of the development and is inappropriate to meet this objective.

- *To enhance privacy between buildings.*

Comment:

The building has narrow side setbacks with basement elements that extend to the minimum setback for the side boundaries. Therefore, minimal buffer is retained establish screen tree planting to enhance privacy protection and also screen the building. There should be no structures below this buffer area to be retained around the perimeter of the building.

In addition to this, the proposal includes numerous balconies sections along the southeast and northwest elevations that increase the need for effective LOS screen planting, despite the privacy screens also shown. Overall, due to the size and high occupancy of the building, landscaping will not satisfactorily address privacy loss concerns due to the proposed narrow setbacks and site works that limit opportunities to retain trees and enhance landscape privacy between buildings.

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

Comment:

The subject development has limited outdoor open space at the rear of the site but this is in addition to the balcony spaces provided for each unit that comply with private open space areas for apartments. The placement of the communal private open space/terrace within an excavated rock area limits the effective landscaping opportunities. Therefore, the treatment of the rear setback area is inappropriate considering the DCP controls (illustrated in the DCP) that seek such areas to be retained in natural form where there are unique rock outcrops present.

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

Comment:

The proposal includes an internal laundry and open air clothes drying outside the building in the terrace areas.

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

Comment:



The proposal includes an on-site detention (OSD) tank in the southwestern corner of the site, which reduces landscape area within the front setback. In addition, the area above the building in the rear setback does not show any drainage management on the engineering diagrams provided.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D2 Private Open Space

Description of non-compliance

The proposal does not satisfy the objectives of the private open space 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 that all residential development is provided with functional, well located areas of private open space.*

Comment:

The principal private open space for each unit is located on the same level and faces the street. The balconies step up with each tier of the building and the upper balcony terraces are split to serve each of the Units on either side of the building. At the rear of the building an area has been allocated for communal open space.

- *To ensure that private open space is integrated with, and directly accessible from, the living area of dwellings.*

Comment:

Each balcony (private open space area) is adjoining a living area within the unit and is therefore directly accessible to comply with this objective.

- *To minimise any adverse impact of private open space on adjoining buildings and their associated private open spaces.*

Comment:

It is possible that each balcony can overlook the one below on the forward edge within each tier / level. This creates a potential privacy issue in that the persons below would be unable to realise they may be directly overlooked / watched from above if they are at the forward edge of their (lower) balcony. The proposal is unsatisfactory with regard to overlooking issues.

- *To ensure that private open space receives sufficient solar access and privacy.*

Comment:



Units 9, 7, 5, and 3 do not appear to be able to received compliant solar access. The applicant has not provided sufficient information to demonstrate compliance with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

D8 Privacy

Merit consideration

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:

The proposal includes the location of elevated open space areas facing Brookvale Avenue with "wrap-around" sections across multiple levels. The building will have an overbearing impact on No.2 Brookvale Avenue (SP79431) especially for the units within SP79431 that have private open spaces on the north eastern side. The "cascading" repetitive balcony spaces across 6 levels within the proposed development will create a significant impact on visual and acoustic privacy for adjacent Units along the common boundary with SP79431 despite the use of some privacy screen. The proposed privacy screens serve limited utility due to the large balcony spaces within the proposal and close alignment. It is considered that adverse privacy impacts will also impact No.6 Brookvale Avenue. The provision of numerous privacy screens along the side elevations demonstrate that the proposal has not given a design response to well located private open space that affords natural privacy without the need to use screen structures as an "after-thought". This is demonstrated by addition of screens as attachments to balustrades that also breach the building envelope, contributing other amenity impacts of bulk, wall scale and overshadowing. Therefore, the proposal is inconsistent with this objective.

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

Comment:

The design of the building includes numerous balconies that are generally higher than or in close proximity to the private open space area of adjacent land. The narrow setbacks of the building and deep transition into the site reduce the opportunities for landscape screening and adequate buffer / spatial separation of good design. It is therefore considered that the resultant design solutions are not innovative and do not provide a positive contribution to the urban environment. The repetitive scale of the building bulk transitioning up the site contributes to a "massed" appearance of the building when viewed from surrounding land and the street, setting and undesirable precedent for future development. This is exacerbated by the visibility of 6 levels in sequence in repetitive massing up the slope of the site, that gets wider as the building becomes higher. There are also numerous large window spaces along the side elevations and while some have privacy screens shown a number of the upper floor side windows would still permit persons to look (eastward toward SP79431 or westward toward No.6 Brookvale Ave) into



adjacent private open space from the higher floors within the proposal (namely Units 4, 6, 8 and 10).

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposal has the driveway (basement) and front entry area and a pathways along the northwest side boundary. Therefore, privacy is potentially further compromised by the long stair access lines that link to the lift at the rear of the building.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

In consideration of the above assessment regard has been made to *Super Studio v Waverley [2004] NSWLEC 91* including particulars that:

- Where proposed landscaping is being used as the main safeguard against overlooking it should be given *minor weight*, and
- Landscaping as an effective tool for establishing and maintaining privacy depends on too many external factors (such as continued maintenance, good conditions etc).

Furthermore consideration has also been made to *Meriton v Sydney City Council [2004] NSWLEC 313*, including particulars that:

- Density of development, Separation distances, usability of the open space areas, and good design principles that would give enhanced privacy outcomes at not additional cost compared to poor design responses.

D9 Building Bulk

Merit consideration

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

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

Comment:

The design of the building includes extensive multi-storey wall planes along the side elevations. This is symptomatic of the number of units and large wedge-shaped building footprint extending across the available site area that also required very deep basement excavation. The number of apartments, carparking and extensive excavation for the site area translates into excessive visual building bulk that is incompatible and inconsistent with the site constraints. The proposal is not considered to be consistent with improving the urban environment by virtue of the consecutive massing of the building as it rises up the slope. In addition, the design required



extensive excavation and radical changes in site levels that will remove the existing unique natural rock features of the property. Site consolidation would encourage good design outcomes, wider setback, greater separation of building bulk, including architectural opportunities to maintain amenity and improve the urban environment.

The building bulk is unsatisfactory and inconsistent with this objective of the DCP controls.

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

Comment:

The resultant built form does not appropriately respond to the local character of the existing residential whereby design emphasis should focus on development that provides a 'good fit' in terms of visual impact and consistency with the DCP controls. The visual impact of the building on the streetscape and when viewed from adjacent land is overbearing in terms of the massed and layered building form with inadequate landscape area, including extensive modification of natural ground levels and height above adjacent development to the south, southwest and southeast in Brookvale Avenue.

Therefore, the proposal is inconsistent with this objective of the DCP controls.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the *Environmental Planning and Assessment Act, 1979*. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D19 Site Consolidation in the R3 and IN1 Zone

Merit consideration

With regard to the consideration, the development is assessed against the underlying Objectives of the Control as follows:

- ***To encourage lot consolidation to allow efficient use of land.***

Comment:

The objective of this clause is to encourage lot consolidation to ensure the orderly and efficient use of land, in line with the objects of the *Environmental Planning and Assessment Act 1979*. The applicant has provided no evidence of genuine effort to consolidate with No.6 and No.6A Brookvale Avenue. These adjacent properties are approximately half the size of the subject land and consolidation would facilitate compliant landscape area, including the ability to conserve the existing significant rock outcrop at the rear of No.4 Brookvale Avenue. Site consolidation will also assist in achieving better long term outcomes for the re-development of remaining properties by the efficient and orderly consolidation for remaining single dwelling properties in Brookvale Avenue. The re-development of each remaining single dwelling property between No.8 to No.20 and No.1 to No.5 to a flat building on each property, in the same manner, without site consolidation, as being proposed is unfavourable.

The applicant has not demonstrated that a thorough and robust effort to satisfy this objective has been undertaken to consolidate with No.6 and No.6A to allow the most efficient use of land



within the subject zone.

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

Comment:

While site consolidation would significantly assist to reduce excavation depth, improve carpark access and setbacks for a single development across the 3 adjacent lots of No.6, No.6A and No.4 Brookvale Avenue. Otherwise the applicant not sought to demonstrate that a smaller "boutique" apartment development on the site can still be carried out in a manner that provides a better outcomes in terms of compliance with the DCP controls.

The applicant has not demonstrated appropriate measures to address the numerous non-compliances with the built form controls. This includes design measures to minimize or address issues / concerns regarding privacy, setback encroachments, overshadowing, excavation, landscaped areas, preserving unique rock outcrops, reducing building bulk and height if the site is not to be consolidated. Redevelopment of the site in isolation is likely to result in further precedent poor design outcomes for any new future flat development on No.6 and No.6A Brookvale Avenue that will adversely affect No.4 Brookvale Avenue if approved.

- **To avoid lot sterilization.**

Comment:

Failure to consolidate with No.6 and No.6A Brookvale Avenue will significantly compromise those lots. In particular No. 6 is isolated because of the access handle from No.6A prevents opportunity to consolidate with No.8 Brookvale Avenue. Additionally No.6A has a long narrow access that would be unsuitable for a residential flat building. Site consolidation of No.6, No.6A and No.4 would avoid these issues and overcome any 'knock-on' effects of lot sterilization creating problematic design issues for adjacent land in the future between these 3 sites.

Having regard to the above assessment, it is concluded that the proposed development is not 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 not supported, in this particular circumstance.

In considering this element of the DCP this assessment has had regard to *Melissa Grech v Auburn Council* [2004] NSW LEC 2004, and *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSW LEC 189 and *Karavellalas v Sutherland Shire Council* [2004] NSW LEC 251. In particular considerations of:

- Site isolation considerations including the need for property owners to negotiate at the early stages.
- Applicants chronological process of negotiating to seek consolidation.
- The impact of departures from the DCP / LEP due to site constraints and whether site isolation / lack of consolidation affected an adjoining property.
- The level of negotiations and reasonable offers to effect a successful consolidation including relevant considerations under the aims and matters for consideration under the Act.
- Feasibility of consolidation and potential compromises to achieving of the orderly and economic development of land.
- Ability of a site and adjacent sites to be redeveloped consistently with the planning controls
- Details of building envelopes to appreciate the relationship of a proposal to an adjacent site yet to be re-developed in the same zone.



- Potential amendments to increase setbacks or the intensity of the development on both sites to assist the reasonable development for adjacent land in the future for a similar form.
- Reasonableness of any offers made to pursue consolidation effectively and realistically.

In assessing the proposed development application the above matters the applicant has not demonstrated an adequate response to address and achieve site consolidation for the purpose of satisfying the established principles.

E6 Retaining unique environmental features

Merit consideration:

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

- *To conserve those parts of land which distinguish it from its surroundings.*

Comment:

The site contains significant and unique rock outcrops in the upper section of the land that distinguish it from the surroundings. The rock features are in a natural state and rise sharply above the 41m contour line. The application has understated the significance of this rock feature and the proposal disregarded this provision of the DCP and its objectives. Council's pre-lodgment advise stressed that any re-development of the site must conserve this rock feature at the rear, which is above the 41m contour. This is most practically achievable by site consolidation with the two smaller properties adjoining the western boundary or by way of a less intensive, less bulky redevelopment that is more suitable for the site features and constraints. In addition to the above, the landscape plans show significant reshaping of the site within the rear setback without any regard to conserve the rock outcrops at the rear that are such a distinctive feature of the site.

The inappropriate design response warrants refusal of the application.

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 not 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.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

The development application assessment revealed that the proposal is incompatible and inconsistent with the desired character for two (2) storey residential flat buildings whereby opportunities are capitalised on for site consolidation to support the orderly and economic development of land including environmental outcomes that achieve the objectives of the Warringah DCP controls and Warringah LEP 2011. The proposal does not respond well to the local planning controls in the WDCP 2011 in terms of planning objectives relating to retaining natural site features, building bulk, setback, excavation, inadequate LOS and privacy management. More site specific assessment issues include concerns relating to the need to pursue site consolidation with the R3 medium density zone as a priority to achieve better environmental outcomes. Based on these shortcomings, it is not in the public interest to support a development that does not satisfactorily address and satisfy the applicable planning controls.

The application was notified and advertised. There have been 3 public submissions of objection to the proposal received with a range of concerns from neighbours expressed including dilapidation risks, overshadowing, bulk, overdevelopment, excessive height traffic and parking impacts, and loss of privacy. The development does not demonstrate a "good fit" within the existing local character due to the scale of the proposal. Additional concerns were also raised in relation to the suitability of the site to be developed in isolation to adjacent land setting an undesirable precedent for future medium development.

A pre-lodgement meeting was held with the applicant to encourage site consolidation and a more environmentally sensitive design redesign the building. The applicant decided to maintain the current design and has not sought to withdraw the proposal during the assessment period. The detailed assessment has highlighted particular concerns in relation to the variation to building height ("clause 4.6") built form, streetscape and residential amenity, including building bulk, amenity issues, site landscaping, setbacks, access and privacy. The ability to address these concerns would require radical design changes therefore the submission of amended plans has not been pursued.

This assessment report has taken into consideration all public submissions, Statement of Environmental Effects, plans and other documentation supporting the application, including relevant



Planning Principles established by the NSW LEC. On balance, it is considered that the proposed development does not respond appropriately to the development controls and will result in an unfavourable development outcome pursuant to SEPP 65, and the Warringah DCP 2011.

Accordingly, the application is recommended for refusal.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2018/0487 for the Construction of a residential flat building with basement parking on land at Lot 45 DP 6040,4 Brookvale Avenue, BROOKVALE, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the objectives of the Environmental Planning and Assessment Act 1979 to ensure orderly and economic use of land and achieve the desired outcomes and objectives of the applicable local planning controls in the public interest.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions *State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development*. In particular, the quality of landscaped open space, amenity and built form and scale.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the Objectives of the *Warringah Development Control Plan 2011*. In particular in relation to design considerations relating to streetscape, setbacks, landscaping, building bulk and form to maintain and enhance residential amenity.
5. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the objectives of *Part B2 Number of Storeys* of the *Warringah Development Control Plan*.
6. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the objectives of *Part B3 Side Boundary Envelope* of the *Warringah Development Control Plan 2011*.
7. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the objectives of *Part B5 Side Boundary Setbacks* of the *Warringah Development Control Plan*.
8. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the objectives of *Part B7 Front Boundary Setbacks* of the *Warringah Development Control Plan*.
9. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of *Part B9 Rear Boundary Setbacks* of the *Warringah Development Control Plan*.



the *Warringah Development Control Plan 2011*.

10. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of *Part C3 Parking Facilities* of the *Warringah Development Control Plan*.
11. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the objectives of *Part C7 Excavation and Landfill* of the *Warringah Development Control Plan*.
12. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the objectives of *Part D1 Landscaped Open Space and Bushland Setting* of the *Warringah Development Control Plan 2011*.
13. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of *Part D2 Private Open Space* of the *Warringah Development Control Plan*.
14. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of *Part D8 Privacy* of the *Warringah Development Control Plan*.
15. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the objectives of *Part D9 Building Bulk* of the *Warringah Development Control Plan 2011*.
16. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of *Part D19 Site Consolidation* in the *R3 Medium Density Residential Zone* of the *Warringah Development Control Plan*.
17. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of *Part E6 Retaining Unique Environmental Features* of the *Warringah Development Control Plan*.

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

Signed

The application is determined on //, under the delegated authority of:



Anna Williams, Manager Development Assessments

Peter Robinson, Executive Manager Development Assessment

LEGEND

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Client: **LOTUS PROJECTS**

Project: **4 BROOKVALE AVE BROOKVALE**

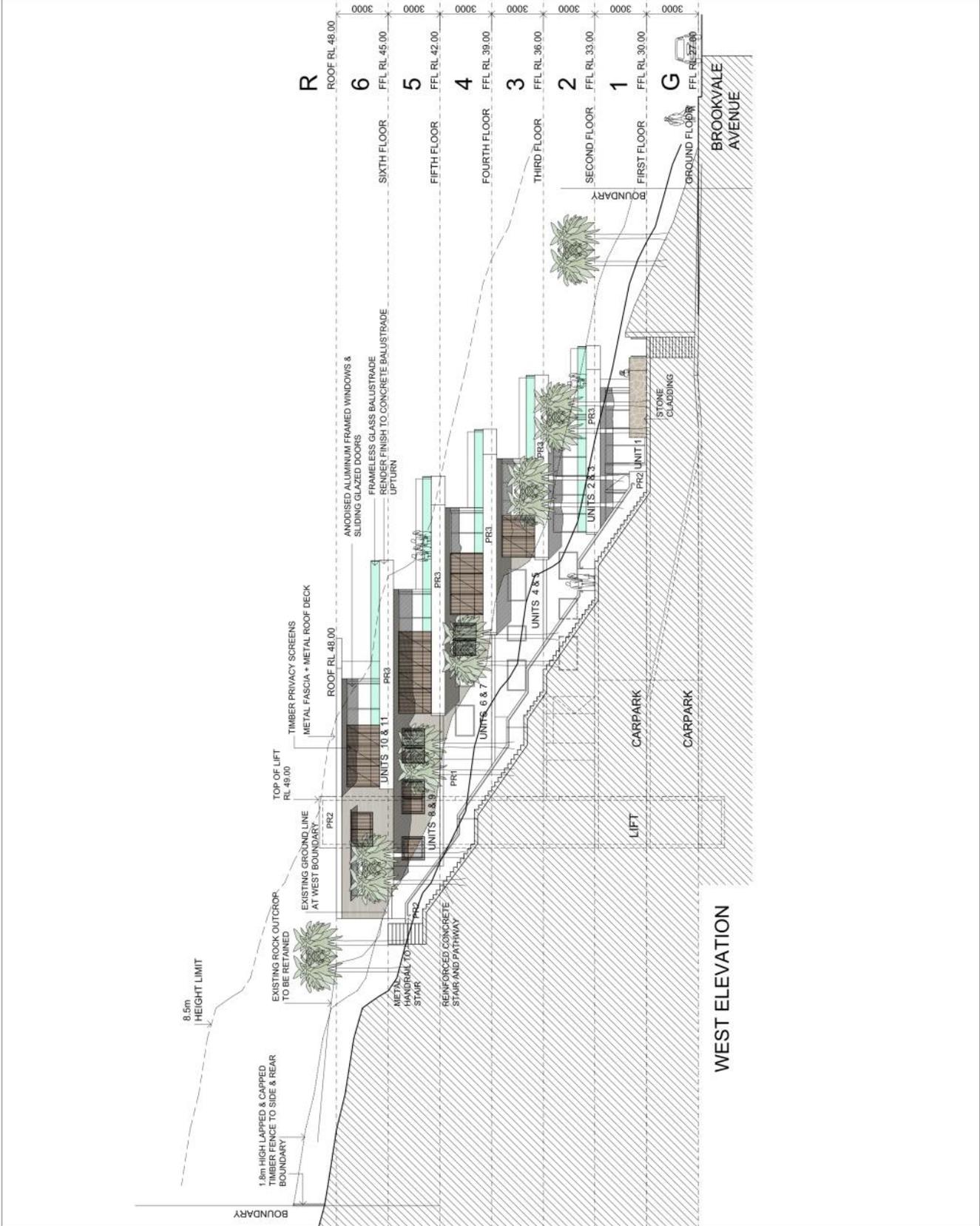
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Scale: 1:100
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 Job No: 1708
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 Drawing No: **A11**

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LEGEND

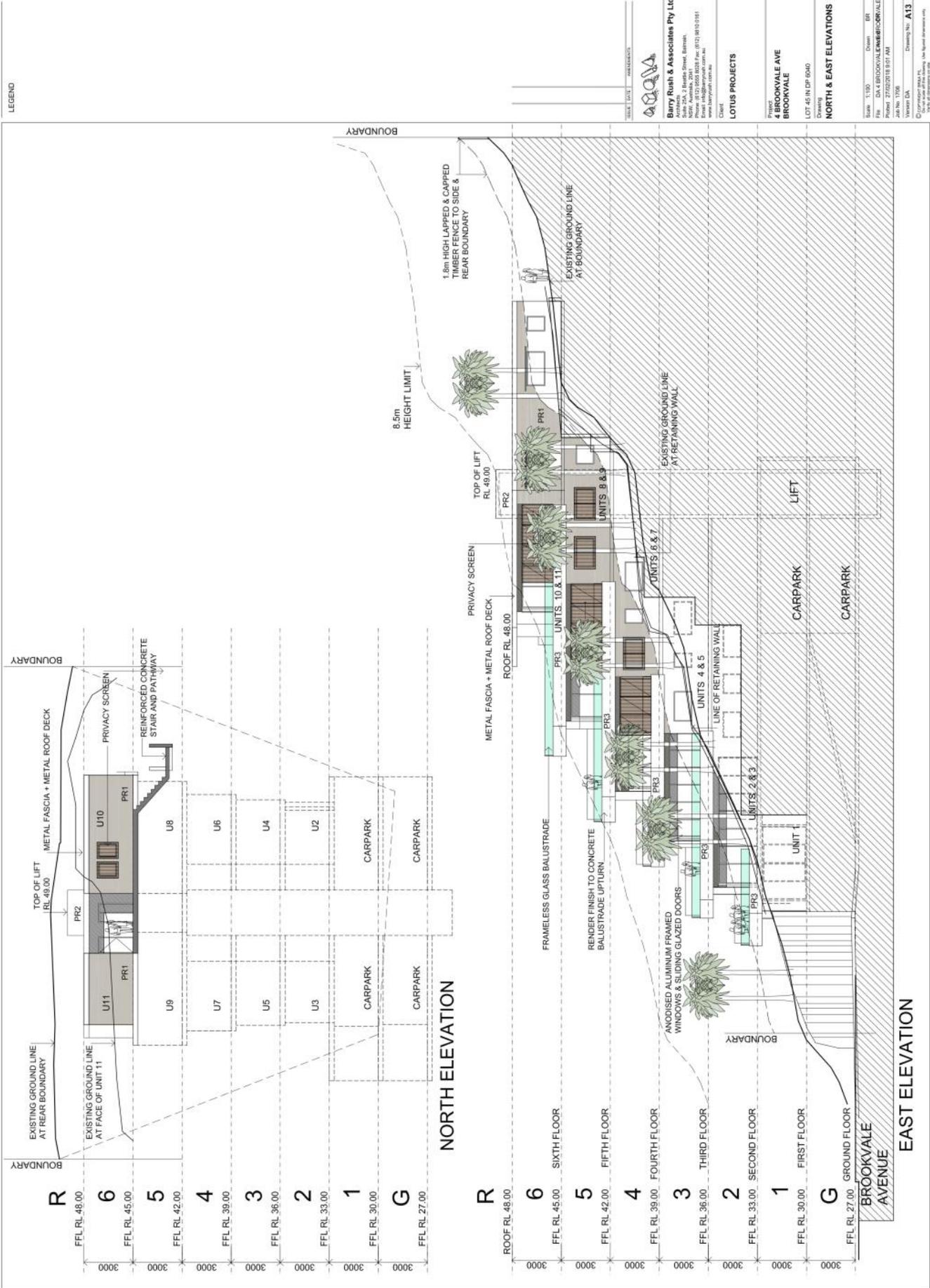


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LOTUS PROJECTS

Project: 4 BROOKVALE AVE
 BROOKVALE
 LOT 45 IN DP 8040
 Drawing: WEST ELEVATION

Scale: 1:100
 Date: 08/18/2019
 File: 04 - BROOKVALE WEST ELEVATION
 Project: 27/02/2018 9:51 AM
 Job No: 1708
 Version: 01A
 Drawing No: A12
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APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0222
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Responsible Officer:	David Auster
Land to be developed (Address):	Lot 2 DP 543531, 17 Cove Avenue MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA275/2017 granted for Alterations and Additions to an existing hospital
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes, under SEPP Infrastructure
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	MacQuarie Hospital Services Pty Ltd
Applicant:	C.D. P Services Pty Ltd MacQuarie Hospital Services Pty Ltd

Application lodged:	15/05/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Other
Notified:	28/05/2019 to 11/06/2019
Advertised:	Not Advertised
Submissions Received:	6
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Executive Summary

The proposed modifications relate to a change to the privacy treatments to the windows on both side elevations of the hospital. The NBLPP previously imposed a condition requiring 'pop-out' windows. The applicants have proposed fixed external louvres instead of the pop-out windows.

Submissions were received from neighbours to the south west, and neighbours to the rear. The main objection was in relation to privacy impacts. This issue has been addressed in the submissions section of this report. In summary, the proposal is considered to maintain a reasonable level of privacy.

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

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - Zone R1 General Residential

SITE DESCRIPTION

Property Description:	Lot 2 DP 543531 , 17 Cove Avenue MANLY NSW 2095
Detailed Site Description:	<p>The subject property is commonly known as 17 Cove Avenue, Manly and legally known as Lot 2 DP 543531.</p> <p>The site is located on the eastern side of Cove Avenue. The property is an irregular in shape and has a frontage of 42.46m to Cove Avenue, an average depth of 50.34m and an overall site area of 2046.9m².</p> <p>The property currently contains a 4 storey storey hospital building with vehicular access via a driveway from Cove Avenue Street to an existing undercroft parking area at the rear and southern side of the building .The property slopes from the east to the street frontage on Cove Avenue.</p> <p>The surrounding area includes a mix of residential accommodation in the form of residential flat buildings and dwelling houses.</p>

Map:



SITE HISTORY

DA275/2017 was approved by the Northern Beaches Local Planning Panel on 4 July 2018. The approved alterations and additions to the existing hospital included enclosure of the existing balconies of all rooms along the side elevations, and new windows to replace the existing windows. A condition was imposed by the NBLPP requiring these windows to be vertical floor to ceiling pop-out windows angled 45 degrees to the proposed extended wall line and orientated towards Cove Avenue, with window faces of no more than 450mm in width.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves deletion of the deferred commencement condition in the existing Notice of Determination for DA275/2017. This condition reads as follows:

A. Privacy

The proposed windows on the south-west and north-east elevations are to be vertical floor to ceiling pop-out windows angled 45 degrees to the proposed extended wall line and orientated towards Cove Avenue. The overall window face shall be no more than 450mm wide.

Reason: To maintain privacy.

The condition was imposed by the Northern Beaches Local Planning Panel (NBLPP), and replaced a condition recommended by the assessing officer that required fixed horizontal external louvres on the external faces of all windows on the north-eastern and south-western elevations of the building.

The current modification application proposes to provide fixed external horizontal louvres to the windows on the North Elevation plan, and fixed external vertical louvres to the South Elevation plan. The vertical louvres would be angled to the west towards the views of Sydney Harbour but prevent direct side views towards the south western neighbour.

Additional Information

At the request of Council, the applicants provided additional plans intended to demonstrate the difference in viewing angles between the conditioned pop-out windows, and the proposed louvres. These additional plans did not alter the proposal in any way, but simply provided more detail. As such, re-notification of the application was not considered necessary, and was waived in accordance with the DCP. The plans have been placed on Council's website with the other application documentation.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA275/2017, 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:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes 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 DA275/2017.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that	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 and Manly Development Control Plan.

Section 4.55(1A) - Other Modifications	Comments
requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	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:

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 6 submission/s from:

Name:	Address:
Colco Consulting Pty Ltd	29 A Amiens Road CLONTARF NSW 2093
Mrs Susan Ruth Morgan	3 / 19 Cove Avenue MANLY NSW 2095
Ms Susan Dorothy Spradbrow	1 / 19 Cove Avenue MANLY NSW 2095
Mr Jason Brian Boyle Susan Boyle	43 Addison Road MANLY NSW 2095
Mr Simon Thomas Herbert	45 Addison Road MANLY NSW 2095
Mr Daniel Henry George Baird	10 / 39 Addison Road MANLY NSW 2095

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

- Privacy and amenity
- Australasian Health Facility Guidelines
- Noise
- Objections to original development application
- Purchase of 37 Addison Road
- External roof area
- Views

The matters raised within the submissions are addressed as follows:

- **Privacy and amenity**

Privacy and amenity concerns were raised by the owners of units at number 19 Cove Avenue, and 43 and 45 Addison Road. 'Amenity' was not specifically defined by the submissions, so it is taken in this case to refer to visual privacy, and noise (which is addressed separately below). The proposed louvres will not result in any solar access impacts, will reduce any view impacts compared to the conditioned pop-out windows, and are not considered to result in any unreasonable visual impacts.

Comment:

The proposal only relates to the side elevations of the building. On the north eastern side, horizontal louvres are proposed to limit downwards viewing towards neighbours. On the south western side vertical louvres angled towards the front of the property are proposed, to take advantage of the views towards Sydney Harbour, and to limit direct horizontal viewing towards the neighbouring site.

A site inspection has been undertaken, which included standing on all existing balconies to be enclosed, and viewing the neighbouring properties from each window location. The applicants have also provided additional plans demonstrating the difference in viewing angles between the conditioned pop-out windows, and the proposed horizontal and vertical louvres.

To the north east, the proposed horizontal louvres will largely limit downwards viewing towards the rear yard area of 15 Cove Avenue (a strata property containing four units). From the hospital rooms near the rear of the hospital it will still be possible in some locations to view towards the

rear deck areas of the building at 15 Cove Avenue. However, the conditioned pop-out windows will not limit viewing from these areas, and will in fact make it the main direction of view for anyone looking out of those windows. From other locations higher up in the hospital, the proposed horizontal louvres will fully block views towards this area, which would not be blocked with the floor to ceiling pop-out windows currently conditioned. As such, the proposal is considered to result in a somewhat better privacy outcome for number 15 Cove Avenue. The properties to the rear at 43 and 45 Addison Road who have made objections, are located a minimum of 12m from the hospital building to the rear corner of number 43. The views in that direction are on an angle to the rear, and are largely screened by existing vegetation. Further, the distance from the windows of the hospital to these rear yard areas is generally well in excess of 12m to the rear private open spaces. The proposal is not considered to result in any unreasonable privacy impacts in that direction.

To the south west, number 19 Cove Avenue is a strata property containing four units. This building is largely very well screened by its own privacy screening attached to the building and the primary private open spaces. On the site visit conducted it was noted that views towards any of the primary private open spaces of this building were highly limited even from the existing balconies. The enclosure of these balconies, with the addition of a solid wall to the 900mm sill height, and fixed external vertical louvres angled towards the front of the property is considered to maintain a reasonable level of privacy. It is noted that the conditioned pop-out windows angled at 45 degrees would still allow for a person in a hospital room to look directly sideways across the side boundary, compared to the proposed louvres which will prevent any direct views to the side, making only angled views towards the harbour possible. Further, the addition of a sill height of 900mm will help to prevent casual downwards viewing towards the neighbouring property, where the conditioned pop-out floor to ceiling windows will not. Given these considerations, the proposal is considered to result in an improved privacy outcome compared to the pop-out windows in this direction also.

Given these considerations, the submissions with regard to privacy and amenity are not supported. The proposed fixed external louvres are considered to generally limit overlooking of neighbours to a higher degree in many cases than the conditioned pop-out windows would.

It is noted that plan A1DA showing the sections and louvres in detail, seems to indicate that the vertical louvres are to be angled towards the rear. A condition is therefore recommended to ensure that the vertical louvres be angled to allow views through towards the front boundary (and the Harbour), and not towards the rear and towards the south western neighbours. Subject to this condition, the proposal is supported with regard to privacy.

- **Australasian Health Facility Guidelines**

Concerns were raised that the reasons used by the applicant to justify the change in window treatment were misleading with regard to the Australasian Health Facility Guidelines (AusHFG).

Comment:

The application states that the pop-out windows as conditioned will not achieve the requirements of the AusHFG. The submission states that the application has misrepresented the necessity to comply in full with the AusHFG, that it is a guideline only, and that the AusHFG states that it may not be possible to comply in full for refurbishment of existing buildings.

The submission is correct in that the AusHFG states that *"The AusHFG are intended to be used to inform the planning and construction of new health facilities. When facilities are refurbished, it will not always be possible to apply all space and design requirements within the constraints of the existing facility"*. Further, the AusHFG states that *"Project teams should consult with local*

jurisdictions to confirm the status (e.g. regulatory, guidance, minimum standards) and the extent of the application of the AusHFG (e.g. public health service and/or private health service capital projects) prior to commencing a capital development”.

It is therefore open to Council to refuse the current modification application. However, the issue with full compliance or otherwise with the AusHFG is not the central issue for consideration under the current application. The central issue is whether or not the proposed fixed louvres will maintain a reasonable level of privacy. Should the panel decide that the louvres will not reasonably maintain privacy, then as stated above it would not be unreasonable to refuse the application on that basis, regardless of the requirements of the AusHFG.

The issue is not considered to warrant refusal or amendment of the modification application, nor does it limit Council in its decision making ability.

- **Noise**

Concerns were raised regarding noise impacts of the development.

Comment:

The proposed change to the privacy treatments of the windows are unlikely to cause any significant change to the amount of noise emanating from the hospital. The proposed louvres are fixed and external to the windows. The conditioned pop-out windows do not include a requirement that the windows be fixed closed. Further, a hospital room is not considered to be a significant source of noise.

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

- **Objections to original development application**

Concerns were raised with the original application with regard to the notification, views, and general permissibility and impacts in a residential area.

Comment:

This assessment report relates only to the proposed modifications. The original application appears to have been notified correctly, in accordance with the requirements of the Manly DCP. The notification letters dated 15 December 2017 on file in Council's database include letters addressed to the objectors who have stated that they were not notified (Boyle and Herbert & Tasker). Council appears to have fulfilled its obligations in this regard.

With regard to views, the current modification to replace the pop-out style windows required by condition with fixed external louvres may be expected to slightly reduce any impacts on views, as the proposed louvres will not protrude from the walls to such an extent.

The original development as approved was permissible pursuant to Division 10 of State Environmental Planning Policy (Infrastructure) 2007. The impacts of the development on the surrounding area were considered as part of the assessment of that application.

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

- **Purchase of 37 Addison Road**

Concerns were raised that the hospital operators had purchased the neighbouring property at 37 Addison Road.

Comment:

This issue has no bearing on the current proposal to modify the window treatments under DA275/2017. No further consideration is required in this regard.

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

- **External roof area**

Concerns were raised that the original plans show solar panels and air conditioning units on the roof.

Comment:

The proposed modifications do not relate to the roof. An existing condition of consent (condition 3A) states that "No approval is granted for any new rooftop plant equipment". This condition is not proposed to be modified. No further consideration is required in this regard.

- **Views**

Concerns were raised regarding impacts on view corridors.

Comment:

The proposed louvres are external to the windows and walls. However, they will not protrude as far from the walls as the pop-out windows approved by condition of consent would. Further, the louvres will be limited in vertical height compared to the floor to ceiling pop-out windows. In this regard the proposal will reduce the impacts on views of neighbours. A reasonable sharing of views is therefore considered to be maintained by the proposed modifications.

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

REFERRALS

No referrals were sent in relation to this application

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated.

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

Is the development permissible?	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

The proposed modification to the window treatments does not alter the height of the building or the floor space ratio.

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes

Detailed Assessment

Zone R1 General Residential

The original development as approved was permissible under Division 10 - clause 57 of State Environmental Planning Policy (Infrastructure) 2007. The proposed modifications do not alter the use of the building, and the development remains permissible under the SEPP.

Manly Development Control Plan

Built Form Controls

The proposed modifications to the window treatments do not alter the overall built form, other than to slightly increase the side setbacks compared to the 'pop-out' windows required by the deferred commencement condition proposed for deletion. The approved location of the walls the window treatments are attached to will not be altered. Given that the side setbacks of the window treatments will slightly increase, and that there are no other changes to the built form proposed, the proposed modifications are considered acceptable with regard to side setbacks and all other built form controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part 3	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

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 Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0222 for Modification of Development Consent DA275/2017 granted for Alterations and Additions to an existing hospital on land at Lot 2 DP 543531, 17 Cove Avenue, MANLY, subject to the conditions printed below:

A. Delete Deferred Commencement Condition A. Privacy

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA300	25/01/2019	Imagescape Design Studios
A1 DA	31/01/2019	Imagescape Design Studios

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

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

The fixed external vertical louvres located on the windows on the South Elevation plan are to be angled at 45 degrees to allow views through in a direction towards the front boundary, not towards the rear.

Reason: To ensure privacy is protected.



Location Satellite View
1:500

Advertisement Issue: No. _____ Description _____ Date _____	 imagescape design studios <small>Imagescape Design Studios Pty Ltd, Suite 10, 114-116, 118-120, 122-124, 126-128, 130-132, 134-136, 138-140, 142-144, 146-148, 150-152, 154-156, 158-160, 162-164, 166-168, 170-172, 174-176, 178-180, 182-184, 186-188, 190-192, 194-196, 198-200, 202-204, 206-208, 210-212, 214-216, 218-220, 222-224, 226-228, 230-232, 234-236, 238-240, 242-244, 246-248, 250-252, 254-256, 258-260, 262-264, 266-268, 270-272, 274-276, 278-280, 282-284, 286-288, 290-292, 294-296, 298-300, 302-304, 306-308, 310-312, 314-316, 318-320, 322-324, 326-328, 330-332, 334-336, 338-340, 342-344, 346-348, 350-352, 354-356, 358-360, 362-364, 366-368, 370-372, 374-376, 378-380, 382-384, 386-388, 390-392, 394-396, 398-400, 402-404, 406-408, 410-412, 414-416, 418-420, 422-424, 426-428, 430-432, 434-436, 438-440, 442-444, 446-448, 450-452, 454-456, 458-460, 462-464, 466-468, 470-472, 474-476, 478-480, 482-484, 486-488, 490-492, 494-496, 498-500, 502-504, 506-508, 510-512, 514-516, 518-520, 522-524, 526-528, 530-532, 534-536, 538-540, 542-544, 546-548, 550-552, 554-556, 558-560, 562-564, 566-568, 570-572, 574-576, 578-580, 582-584, 586-588, 590-592, 594-596, 598-600, 602-604, 606-608, 610-612, 614-616, 618-620, 622-624, 626-628, 630-632, 634-636, 638-640, 642-644, 646-648, 650-652, 654-656, 658-660, 662-664, 666-668, 670-672, 674-676, 678-680, 682-684, 686-688, 690-692, 694-696, 698-700, 702-704, 706-708, 710-712, 714-716, 718-720, 722-724, 726-728, 730-732, 734-736, 738-740, 742-744, 746-748, 750-752, 754-756, 758-760, 762-764, 766-768, 770-772, 774-776, 778-780, 782-784, 786-788, 790-792, 794-796, 798-800, 802-804, 806-808, 810-812, 814-816, 818-820, 822-824, 826-828, 830-832, 834-836, 838-840, 842-844, 846-848, 850-852, 854-856, 858-860, 862-864, 866-868, 870-872, 874-876, 878-880, 882-884, 886-888, 890-892, 894-896, 898-900, 902-904, 906-908, 910-912, 914-916, 918-920, 922-924, 926-928, 930-932, 934-936, 938-940, 942-944, 946-948, 950-952, 954-956, 958-960, 962-964, 966-968, 970-972, 974-976, 978-980, 982-984, 986-988, 990-992, 994-996, 998-1000</small>	Tile Sheet Project number: Health09 Date: 25/01/2019 Drawn by: MA Checked by: Chester Scale @ A1: 1:500 Version: 01

