



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

**THURSDAY 29 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**

Paul Vergotis	Chair
Brian Kirk	Town Planner
Graham Brown	Town Planner
John Simmonds	Community Representative

## **Quorum**

A quorum is three Panel members

## **Conflict of Interest**

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel  
to be held on Thursday 29 August 2019  
in the Council Chambers, Civic Centre, Dee Why  
Commencing at 1.00pm**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 21 August 2019	
<b>3.0</b>	<b>DEVELOPMENT APPLICATIONS .....</b>	<b>5</b>
3.1	DA2018/1800 - 91-93 McIntosh Road, Narrabeena - Demolition of existing structures and construction of a shop top housing development, including ground floor commercial/retail and nine apartments, with basement parking and strata subdivision .....	5
3.2	DA2019/0135 - 4 Villiers Place, Cromer - Construction of additional warehouse units to an approved Industrial Warehouse Development (DA2018/1300) .....	91
3.3	DA2019/0167 - 1/13 & 2/13 Gondola Road, North Narrabeen - Use of premises associated with an indoor recreation facility .....	155

## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 21 AUGUST 2019**

---

#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 21 August 2019 were adopted by the chairperson and have been posted on Council's website.

---



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/1800
<b>Responsible Officer:</b>	Daniel Milliken
<b>Land to be developed (Address):</b>	Lot 102 DP 868560, 91 McIntosh Road NARRAWEENA NSW 2099 Lot 101 DP 868560, 93 McIntosh Road NARRAWEENA NSW 2099
<b>Proposed Development:</b>	Demolition of existing structures and construction of a shop top housing development, including ground floor commercial/retail and nine apartments, with basement parking and strata subdivision
<b>Zoning:</b>	Warringah LEP2011 - Land zoned B1 Neighbourhood Centre Warringah LEP2011 - Land zoned B1 Neighbourhood Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Salt & Pepper Projects Pty Ltd
<b>Applicant:</b>	Stefano Macri
<b>Application lodged:</b>	08/11/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	21/11/2018 to 08/12/2018
<b>Advertised:</b>	24/11/2018
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 39.35%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 3,853,502.00

### EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application No. DA2018/1800 for a three storey shop top housing development with basement car parking and strata subdivision located at Nos. 93 and 91 McIntosh Road, Narrabeena.



The subject site is zoned B1 Neighbourhood Centre under the provisions of Warringah Local Environmental Plan 2011 (WLEP 2011), and the proposed development is permissible with consent.

The public exhibition period generated only one submission raising concerns regarding the low number of shops within the new development. This matter has been addressed within the report, and overall, there were no matters raised that would warrant the refusal of the application in the public's interest.

The site has a unique history. A Deed of Agreement exists between Council and the owners. This deed dedicated land, that was previously part of the site, to Council for on-street car parking to service the surrounding neighbourhood centre. In exchange for this land dedication, the floor area lost as a result, would be taken into account in any future development application. However, as Section 4.15 of the EP&A Act 1979 does not call up deeds of agreement for consideration (i.e. it is not a VPA, draft EPI, etc), this deed cannot be considered in the assessment of this application, but forms important site specific background information that is relevant to the assessment.

The applicant has proposed a portion of the floor area lost as part of the deed, as an upper level (3rd storey). This results in the development exceeding the 8.5m height limit by a storey or 3.345m.

The proposal is therefore reliant upon a variation to the maximum building height development standard prescribed by clause 4.3 of WLEP 2011, with a maximum variation of 39.35%. The assessment of this variation cannot and does not consider the deed of agreement as the basis for assessing the variation.

The applicant's written request to vary this standard satisfactorily addresses the matters required (and does not reference the deed in its arguments), and overall, the consent authority can be satisfied that the relevant matters of clause 4.6 of WLEP 2011 have been properly addressed and the variation to the development standard is acceptable and worthy of support.

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

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

## ASSESSMENT INTRODUCTION

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

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



- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

### SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Development Control Plan - C3 Parking Facilities  
Warringah Development Control Plan - D8 Privacy

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 102 DP 868560 , 91 McIntosh Road NARRAWEENA NSW 2099 Lot 101 DP 868560 , 93 McIntosh Road NARRAWEENA NSW 2099
<b>Detailed Site Description:</b>	<p>The subject site is a corner lot, consisting of two properties (Nos. 91 and 93 McIntosh Road), on the southern side of McIntosh Road and the eastern side of Alfred Street.</p> <p>The site is rectangular in shape, however, its northern and western boundaries are set back further from the road when compared to surrounding sites. This is to accommodate on-street parking and will be discussed in more detail under 'Site History', below.</p> <p>Existing on the site is a part two storey part single storey shop top housing development containing nine retail tenancies and no apartments. There is a driveway along the eastern side of the site giving access to a rear service area with parking for five cars.</p> <p>The site is flood affected and slopes gently down towards the south east. There is on-street parking along the northern and western sides of the site (within the road reserve) as shown in the aerial photo below.</p> <p>The surrounding development consists of shop top housing to the west and south, residential development to the east and north east, and Narraweena Public School to the north west.</p>

Map:



## SITE HISTORY

### Deed of Agreement and Boundary Change

On 9 April 1997, a Deed of Agreement, between the owners and Council, was signed. This Deed stated, in part:

*"In consideration of the Owners agreeing to dedicate to the Council for road reserve that area so shown on the plan annexed hereto, the council agrees that the area of land so dedicated shall be taken into consideration in determining the development potential of the remainder of the land in Certificate of Title Volume 13300 Folio 199 should any Development Application or Applications be made to the Council in respect of the said remainder of the land."*

Simply, in exchange for dedicating land to Council to provide parking for this area of neighbourhood shops (not just for the subject site), Council agreed to take that area of land into account in the assessment of any future DAs. The amount of land dedicated to Council was 334sqm.

While this is a reason for the additional floor (and breach of the height limit), the deed cannot be used in the assessment of the variation. This will be discussed in more detail under Clause 4.6 in the WLEP 2011 section, below in this report.

### PLM2018/0129

This was a prelodgement meeting held with the applicant to discuss the current proposal. Relevant comments provided in the notes included:

*"The proposal has a number of substantial non-compliances and critical design issues that will not enable Council to support the proposal as presented. However, integrating the recommended changes advised in these notes will enable the substantial height and storey non-compliance to be addressed and supported. The upper floor (Level 2) must be substantially reduced (as detailed within these notes) to meet the planning considerations appropriate to the site, including the Deed of Agreement (dated 9 April 1997). This will require design changes detailed within these notes to address objectives for the*



*LEP 2011 B1 Neighbourhood Centre zone and Part F1 Local and Neighbourhood Centres under the DCP 2011 and SEPP 65 requirements.*

*Carparking and the additional upper floor elements are subject to considerations outlined within the Deed of Agreement, dated 9 April 1997, made in association with the road widening and street parking works undertaken in front of the site.*

*No building elements (above or below ground level) are to encroach within the stormwater easement along the southern boundary."*

The proposal has satisfactorily addressed the matters raised in the prelodgement meeting.

## **PROPOSED DEVELOPMENT IN DETAIL**

### **Amended Plans**

After a preliminary review of the proposal, Council met with the applicant to resolve a number of issues relating to stormwater and the urban design aspects of the development.

An amended design was submitted on 25 February 2019. This design did not completely resolve the issues and a further set of amended plans was submitted on 8 April 2019. This set of plans satisfactorily resolved the issues.

On 4 July 2019, the applicant submitted a further set of amended plans. This set only included changes to the basement and ground floor and increased the number of retail tenancies from three to four. This increase was enabled by changes to the BCA allowing sprinkler systems throughout the building, eliminating the need for a diesel pump & fire stairs exiting onto Alfred Street. The space previously occupied by these services has now been proposed as a fourth retail tenancy.

On 26 July 2019 a final change was made to the plans. This change involved the addition of two polycarbonate panels near the eastern boundary, adjacent to the neighbouring window at No. 89 McIntosh Road. The panels will prevent any unreasonable acoustic impacts to No. 89 McIntosh Road.

The description of the proposal, below, is based on the consolidated 26 July 2019 set of plans.

### **The Proposed Development**

The proposal seeks consent for a three storey shop top housing development with basement parking, and strata subdivision. The proposed development contains four retail tenancies, one commercial tenancy and nine apartments.

In detail the proposal includes:

#### Basement level - RL 71.77

- 12 x residential car spaces (including one accessible space),
- 2 x visitor spaces,
- 2 x commercial spaces (including one accessible space),
- 10 x bicycle spaces,
- Storage spaces,
- A plant room,
- A WC,
- Lift and stairwell core.



Ground floor - RLs 73.8, 74.21, 74.3 and 74.77

- 4 x retail tenancies,
- 1 x commercial tenancy,
- Driveway access,
- Waste rooms,
- Lift and stairwell core.

First floor - RL 78.17

- 1 x 3 bedroom apartment,
- 3 x 2 bedroom apartments,
- 2 x 1 bedroom apartments,
- Lobby,
- Lift and stairwell core.

Second floor - RL 81.27

- 1 x 3 bedroom apartment,
- 2 x 2 bedroom apartments,
- Lobby,
- Lift and stairwell core.

The development also includes:

- The construction of a new driveway and driveway crossing,
- The construction of acoustic panels adjacent to No. 89 McIntosh Road,
- Associated landscaping works, and
- Strata subdivision of the building.

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iii) – Provisions of any planning agreement	<p>No planning agreement exists on the site, however, as outlined above, there is a deed of agreement between the owners and Council.</p> <p>While this deed of agreement exists, it has not been considered in the assessment of this application (particularly the Clause 4.6 assessment) as it is not a formal planning agreement.</p>
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p>



Section 4.15 Matters for Consideration'	Comments
environment and social and economic impacts in the locality	<p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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	<p>While the development does include a breach of the height limit, it is a high quality design that will improve the streetscape and will not result in any unreasonable impacts to the adjoining or surrounding properties. This unique corner site requires a sensitive but prominent design that will provide a focal point for the neighbourhood shops. The proposal achieves this outcome.</p> <p>In this regard, no matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

#### **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

#### **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

#### **NOTIFICATION & SUBMISSIONS RECEIVED**

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

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

Name:	Address:
Dr Gordon Howard Packham	7 Gladys Avenue FRENCHS FOREST NSW 2086

The matters raised within the submission are addressed as follows:

- **Low number of proposed shops**  
The submission raised concerns that while there are currently nine shops on the site, the proposal only included three. This will impact on the village atmosphere.



Comment:

The amended plans submitted on 4 July 2019 increased the number of shops from three to four.

While there is no control requiring a maximum or minimum number of shops in a development, the objectives of the zone do seek to *'provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood'* and *'to ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians'*.

The ground floor of any development of this type must include service areas to cater for waste management, and access for pedestrians and vehicles. The design has minimised the spaces required for these functions and has maximised the available retail space including the amount of shop frontage to activate the streetscape.

The amount of retail space in the development will maintain a village-like atmosphere and there will be a good range of uses. While the applicant has chosen to divide this space into four retail tenancies and one commercial tenancy at this stage, it will be possible to divide this space into more, should a future owner wish to do so.

**REFERRALS**

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application proposes demolishing existing buildings on the site with subsequent excavation and construction of a new multi-use Shop Top Housing development. This generally consists of basement car parking, lift, five retail / commercial spaces and residential flat units above. No objections subject to conditions to ensure compliance with the Building Code of Australia.
Environmental Health (Acid Sulphate)	<p>Although the site is not listed as Acid Sulfate Soil the deep excavation that may be required, has resulted in the applicant consulting STS GeoEnvironmental Pty Limited (STS) for site advise especially if a second basement area is required for car parking.</p> <p>Management and further advise by STS GeoEnvironmental Pty Limited (STS) for this development should result in an appropriate outcome.</p> <p><i>Note: Roads/engineering may wish to comment on the ongoing pumping of the underground water flow to the street water table (if this is necessary it should be a connection to Council drainage system below ground level) so that water is not discharged visibly into the road way or car parking area. Similarly any pumps may need acoustic treatment if operating 24 hours a day.</i></p> <p>Recommendation - APPROVAL, subject to conditions</p>
Environmental Health (Industrial)	<p><u>Planners comment:</u></p> <p>The replacement of the window of the neighbouring dwelling cannot</p>



Internal Referral Body	Comments
	<p>form part of this application and is not recommended.</p> <p>To resolve the acoustic issues, a barrier along a portion of the driveway now forms part of the plans.</p> <p><u>Final Assessment 1.5.2019</u></p> <p>The applicant has complied with the acoustic report dated March 2019, adding a laminated glass window to the neighboring residence. We don't believe that this will eliminate or totally mitigate the extra noise expected from new tenants entering and exiting the property and mechanical plant that are likely associated with the development and so will place a set of noise conditions on the consent and some other conditions relating to the construction, demolition and operating phases.</p> <p>Further Recommendation - Approval, subject to conditions</p> <p><u>Second Assessment 16.4.2019</u></p> <p>Environmental Health has asked to review additional information received. Mechanical ventilation; noise odour etc and similar issues can be delta with as conditions of approval.</p> <p>However significantly the proposed impact of the driveway to be 24 hrs a day, beside the neighbouring dwelling cannot be accepted. The applicant is proposing that the neighbouring window (at 89 McIntosh Road ) be replaced with a suitable acoustic barrier. This property is not on the applicants title for the development site and Council nor the applicant has any powers to require a neighbour to allow or to carry out works as a result of the proposed development. The Development must "stand alone" in it compliance.</p> <p>Additionally vibration and acoustic measures assessed in theory, may not once constructed, be adequate to prevent noise penetrating the actual building through the building fabric or habitable windows which must be capable of being opened for ventilation for the inhabitants. Again this is most relevant in the 24 hour use of the driveway.</p> <p>Therefore proposed acoustic measures are outside the scope of the applicants entitlement and are inadequate in regard to the neighbours right to reasonable enjoyment of their property, due to 24 hour use, of undetermined driveway vehicle noise, particularly low frequency penetrating noise.</p> <p>Further Recommendation - REFUSAL</p> <p><u>Original assessment</u></p> <p>This matter has been referred to Environmental Health for comment .</p>

Internal Referral Body	Comments
	<p>Environmental Health generally support the proposal and make the following comments only in regard to noise.</p> <p>Due to the increased intensity of site use, noise implications to adjoining residences needs to be taken into consideration. No acoustic report has been submitted.</p> <p>This issue relates to mechanic mechanical ventilation particularly from the commercial occupancies, car park area ventilation and the proximity of the driveway to number 89 McIntosh Road where potentially increased vehicle numbers will be accelerating to leave up hill beside a dwelling. Historically the site originally operated 9-5pm and vehicle access will now be potentially 24 hours.</p> <p>It is clear that intended use of some of the commercial occupancies will be for food businesses which will require cooking and mechanical ventilation and a separate DA will be required, but these noise issues need addressing generally at the building approval stage.</p> <p>It is recommended before approval is given that the applicant submit an acoustic engineers report assessing the likely effect on adjoining residential occupancies of the driveway access; mechanical ventilation, and noise transmission/vibration to the residential components of the building.</p> <p>No other objections are raised but these matters should be resolved prior to approval as design implications may be involved.</p> <p>Recommendation - REFUSAL</p>
Landscape Officer	The DA is considered acceptable with regard to the relevant controls relating to landscape issues, subject to conditions.
NECC (Development Engineering)	<p>Reference is made to Development Engineering Referral Response dated 05/02/19 and 01/03/19 and additional information provided by the Applicant.</p> <p><u>Council's Stormwater Assets:</u></p> <p>Discussion has been held with Council's Stormwater Engineering section and the proposed easement width and vertical clearance is considered satisfactory. Further detail to be provided under S68 Local Government approval and shall be appropriately conditioned.</p> <p>No objections are raised to the proposed development, subject to conditions.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The development involves the demolition of existing structures and construction of a shop-top housing development, including ground floor commercial/retail and apartments, with basement parking.</p> <p>Subject to conditions, the development complies with Councils flood prone land requirements. The ground floor levels and the basement car park crest are at the relevant flood planning levels. There is no loss of flood storage below the 1% AEP flood level.</p>



Internal Referral Body	Comments
Strategic and Place Planning	<p>The intent of the deed, being to dedicate land for the purposes of road widening (for streetscape works/car spaces) in the centre, in return for the provision of floor space credit on any future DA on the site, is still supported.</p> <p><u>Planners comment:</u></p> <p>The deed of agreement has not been considered in the assessment of this application.</p>
Strategic and Place Planning (Urban Design)	<p><u>CURRENT RESPONSE 6.05.2019</u></p> <p>THE PROPOSED DEVELOPMENT CAN BE SUPPORTED CONDITIONAL UPON ADDRESSING THE FOLLOWING COMMENTS REGARDING RESOLUTION OF MATERIALS AS FOLLOWS;</p> <p>Face Brick (FBK 2) Council acknowledges the applicant has amended (agreed) to extent and use of the face brick detail to further extents of the building elevations, including to all elevations to the upper level external walls in place of the render face finish amending the small portion of the previously rendered finish which had previously only a piecemeal approach to the distribution and articulation of materiality. Currently the Macintosh Rd and Alfred St elevations are working very well with a coherent articulation of materiality that ties the project together as a whole. Drawings A-0201 Macintosh Rd Elevation and A-0202 Alfred St Elevation demonstrate a well resolved articulation and delineation of materials that contrast and complement each other. However this well resolved design is substantially diminished on the east and south elevations of the building.</p> <p>Drawings A-0203 (East Elevation) and A-0204 (South Elevation) both show large proportions of the rendered finish (RPN1 and RPN2) to large expanses of the facades that will be clearly in view both on the approach from the east along Macintosh Rd and approaching north on Alfred St. The use of face brick FBK2 to a very small portion of the East elevation on the upper level diminishes the clarity and holistic design resolution of the face brick treatment to the overall design by adding yet another element/material finish into the selection. The design of the project as a whole loses its clarity with the additional material finish of rendered wall which has the effect of unresolved elevations to the above mentioned aspects. Additionally the benefits of the face brick versus the ongoing maintenance requirements of the painted rendered walls over the life of the project cannot be underestimated.</p> <p>To refine and lift the resolution of the design of the project the lighter face brick (FBK 2) to all external façade walls in view is conditioned with documentation required to be amended prior to issue of the construction certificate. Refer conditions.</p>



Internal Referral Body	Comments
	<p><u>PREVIOUS RESPONSE</u></p> <p>The proposal in its current form cannot be supported for the following reasons:</p> <p><b>1. SEPP 65-Design Quality of Residential Apartment Development (ADG)</b></p> <p>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 been achieved in the proposed development;</p> <p><b>3D-1 Communal and Public Open Space</b> It is noted there is no allowance for communal open space. Design guidance under the ADG suggest . . . provision of communal open spaces elsewhere such as landscaped roof terrace or common room. . . . . provide larger balconies . . . , . . . demonstrate good proximity to public open space . . . where developments are unable to achieve the design criteria.</p> <p>The drawings demonstrate balconies that are of an average size. The pre-lodgement advice to reduce the bulk of development by setting back further from the building to a prescribed area within nominated grid lines could provide the opportunity to address the shortfall in communal space. If this area if unsuitable for additional apartments it could be activated with a rooftop terrace common open/semi open space, so as to better address the ADG requirement.</p> <p><b>4C Ceiling Heights</b> The ground floor commercial floor to ceiling height does not achieve the recommendations for tenancies that are cafes or restaurants. An increased floor to ceiling height of 4 metres should be achieved if there will be café or restaurant tenancies in the building. Refer figure 4C.1 page 86 of the ADG.</p> <p><b>4D Apartment Size and Layout of Rooms</b> The planning and the site constraints coupled with the requirement for every habitable room to have an external window has resulted in the issues discussed below in Acoustic Privacy. Options that have the living space oriented toward the open balconies or external walls, as recommended in the ADG, should be explored further.</p> <p><b>4H Acoustic Privacy</b> Units 4, 3 and 2 have bedrooms adjacent to neighbouring unit outdoor living area. To address issues of acoustic amenity the internal plans need to relocate bedrooms further back into the unit. Bedrooms should be relocated deeper within the floor plan to allow for balconies to be an extension of the living spaces. If the requirement for windows to habitable rooms discussed above outweighs the acoustic adjacency of balconies to bedrooms, the floor plan could be mirrored so no bedrooms are adjacent outdoor balconies with bedrooms mirrored back to back.</p>

Internal Referral Body	Comments
	<p>Universal Design Circulation door clearance templates should demonstrate compliance with Australian Standards (AS1428.1) and overlaid onto Unit 1 floor plan to demonstrate adequate compliance with the standard. The entrance door to Unit 1 has an expandable folding door/screen behind it with what seems like insufficient clearances either side of the door in accordance with door and latch-side clearances. As a rule the circulation template overlay on Accessible units demonstrating compliance with the standard should accompany any future submissions.</p> <p><b>Built Form Controls:</b></p> <p><b>2. WDCP 2011</b></p> <p><i>B2 - Number of Storeys</i> <i>Objectives</i></p> <ul style="list-style-type: none"> <li>• <i>To ensure development does not visually dominate its surrounds.</i></li> <li>• <i>To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.</i></li> <li>• <i>To provide equitable sharing of views to and from public and private properties.</i></li> <li>• <i>To ensure a reasonable level of amenity is provided and maintained to adjoining and nearby properties.</i></li> <li>• <i>To provide sufficient scope for innovative roof pitch and variation in roof design.</i></li> <li>• <i>To complement the height of buildings control in the LEP with a number of storeys control.</i></li> </ul> <p>Response The proposed design was subject to a pre-lodgement meeting with advice nominating a reduction to the upper level floor area to approx. 50% of the floor plate. The proposed development application demonstrates this advice has not been represented in the current plans and as such represents an over development of the site. The intent of the advice was to assess the DA on merit based on a reduced upper level footprint, which would be a breach of the height but reduced so as not to have impacts on the streetscape. As such the development cannot be supported given the building is in breach of the height control and has not considered the advice imparted in the pre-lodgement meeting to reduce the upper level building envelope.</p> <p><i>D9 – Building Bulk</i> <i>Objectives</i></p> <ul style="list-style-type: none"> <li>• <i>To encourage good design and innovative architecture to improve the urban environment.</i></li> <li>• <i>To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.</i></li> </ul>

Internal Referral Body	Comments
	<p><i>Requirements</i></p> <ol style="list-style-type: none"> <li>1. Side and rear setbacks are to be progressively increased as wall height increases.</li> <li>2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.</li> <li>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: <ul style="list-style-type: none"> <li>- The amount of fill is not to exceed one metre in depth.</li> <li>- Fill is not to spread beyond the footprint of the building.</li> <li>- Excavation of the landform is to be minimised.</li> </ul> </li> <li>4. Building height and scale needs to relate to topography and site conditions.</li> </ol> <p><i>Response</i></p> <p>The proposed design resolution and aesthetic of the development in terms of proportion and scale, and the general articulation, contrast and integrity of the materials selection is supported. Generally the building reads holistically in its contemporary and uniform finish. The face brick with its fenestrated finish assists to relieve the bulk. Continuation of the face brick parapet elevational treatment up to the height of the top of level 1 balustrade is recommended in lieu of the glazed balustrade evident on the perspective drawings.</p> <p>The mass and bulk of the form is over scale due in part to the upper level which is in breach of the height control. The advice offered in the pre-lodgement meeting to limit the upper level habitable floor plate to grid lines B-C and 2-5 has not been considered and as such the increased bulk as viewed from the pedestrian level urban environment is unsupported.</p> <p>Amendments to the internal planning of the units along with a reduction in building bulk will be required.</p>
Traffic Engineer	<p>The proposed development involves the demolition of the existing mixed-use development and the construction of new three storey mixed-use development comprising the following:</p> <ul style="list-style-type: none"> <li>• Three retail tenancies providing a total floor area of 233.6m<sup>2</sup>;</li> <li>• Two commercial tenancies providing a total floor area of 106.5m<sup>2</sup>; and</li> <li>• Nine residential apartments containing: <ul style="list-style-type: none"> <li>○ 2 x one bedroom dwellings;</li> <li>○ 4 x two bedroom dwellings; and</li> <li>○ 3 x three bedroom dwellings.</li> </ul> </li> </ul> <p>The retail and commercial tenancies are proposed to be provided at ground floor level, whilst the residential apartments are proposed to</p>

Internal Referral Body	Comments
	<p>be provided at first and second floor levels.</p> <p>The site is to be serviced by a single basement parking level, containing 16 parking spaces as follows:</p> <ul style="list-style-type: none"> <li>• 2 resident passenger vehicle parking spaces;</li> <li>• Two residential visitor parking spaces; and</li> <li>• Two retail / commercial staff parking spaces.</li> </ul> <p>No on-site retail / commercial customer parking is proposed, whereby the existing reliance on the adjoining public parking infrastructure is to be maintained.</p> <p><b>Traffic:</b> The additional trip generation is not anticipated to impact significantly on the operation of the local roads. The traffic Team raise no objection.</p> <p><b>Parking:</b> Parking provisions are in accordance with the DCP. No concerns are raised.</p> <p>As per previous discussions, the retail parking component is to be permitted to be accommodated on-street. As such, the Traffic Team raise no objection.</p> <p><b>Car Park:</b> The access and layout of the car park are in accordance with AS2890.1:2004. No concerns are raised.</p> <p><b>Waste:</b> No objection raised regarding waste servicing. Council's Waste Team to comment if any further concerns are noted.</p> <p><b>Local Amenity:</b> The applicant has engaged with RMS to discuss the potential for a 40k hpa. subject to the outcome of these discussions, the applicant will be responsible for the implementation of any agreed/approved scheme.</p>
Waste Officer	<p>Waste Services Referral</p> <p>The proposal does not comply with Council's Waste Management Guidelines for the following reasons</p> <p>The bin room cannot accommodate 11 x 240L bins as required for a 14 dwelling development.</p> <p>The bulk waste area must be a separate area and not shared with the residential waste room.</p>



Internal Referral Body	Comments
	<p><u>Planners comment:</u></p> <p>The proposal has been amended to satisfactorily address the above matters. The bin room has been increased in size and the dwelling numbers reduced. The bulk waste area is still in the same space as the bin room but is sufficient in size.</p>

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

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

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

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

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

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

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

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time. There are also no records of uses (eg: dry cleaners) that may contaminate the land nor are any of the existing uses considered to be a concern.

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

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

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

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

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



- (i) the erection of a new building,
  - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
  - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined, the proposal is for a three storey shop top housing development plus basement car parking for the provisions of nine 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 SEPP 65 Design Review Panel.

## DESIGN QUALITY PRINCIPLES

### Principle 1: Context and Neighbourhood Character

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

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

#### Comment:

The desirable elements of the existing character include the mix of single and two storey shops, nearby low scale detached residential dwellings and the open public domain, including the on-street parking that services the neighbourhood shops.



The site has a unique history. A Deed of Agreement exists between Council and the owners after land, that was previously part of the site, was dedicated to Council for on-street car parking to service the surrounding neighbourhood centre. In exchange for this land dedication, the floor area lost as a result, would be taken into account in any future development application. However, as Section 4.15 of the EP&A Act 1979 does not call up deeds of agreement for consideration (i.e. it is not a VPA, draft EPI, etc), this deed cannot be considered in the assessment of this application

The applicant has proposed a portion of the floor area lost as part of the deed, as an upper level. This results in the development exceeding the height limit by a storey (3.345m).

In order for the development to be considered suitable within the existing context of single and two storey shops, and detached dwellings, the overall design of the proposal, particularly the upper level, must be of a high quality and must sit well on the site and within the neighbourhood centre.

The upper level has been well set back from all boundaries, including the street frontages. These setbacks mean that the upper level, while it will be visible, will not dominate the street facing facades of the development. The upper level will add to the architectural style of the building and will add visual interest to the neighbourhood centre. The proposal will be a high quality outcome for this prominent corner site.

Furthermore, it is noted that this is a corner site and additional strengthening of the corner with some additional height is a sound urban design principle and the site sits opposite a public carpark and a school, as opposed to a traditional residential low density residential interface.

The development meets this design principle.

## **Principle 2: Built Form and Scale**

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

*Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*

### Comment:

The ground floor of the development will provide a high quality activation of the streetscape with shop fronts taking up most of the two street facades. This will help define the public domain and improve the village-like atmosphere of the neighbourhood centre.

The first floor will provide a strong band of brick work to define the development and provide a solid transition between the glass of the ground floor and the recessed upper level.

The upper level includes a lighter finish and has been set back from all boundaries. This will minimise the visibility of the top floor, will protect the amenity of the neighbouring sites and will provide an appropriate building alignment, given the particular circumstances that have led to the inclusion of this level.



As mentioned above, it is noted that this is a corner site and additional strengthening of the corner with some additional height is a sound urban design principle and the site sits opposite a public carpark and a school, as opposed to a traditional low density residential interface.

The development meets this design principle.

### **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 proposal seeks consent for nine apartments above the ground floor shops. This density is not considered excessive for this site. This is further demonstrated by the adequate parking provision (for residential spaces) and the full compliance of the apartments with the relevant sections of the ADG.

The internal amenity, discussed further below, is of a high quality with suitable apartment dimensions, sizes, private spaces and facilities.

The development meets this design principle.

### **Principle 4: Sustainability**

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



Comment:

All apartments receive adequate direct sunlight and six of the nine apartments are naturally cross ventilated. There are no south facing single aspect apartments. The development includes on-structure planting and meets all the relevant BASIX requirements.

The development meets this design principle.

**Principle 5: Landscape**

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

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

Comment:

The site is located in the B1 Neighbourhood Centre zone. The proposal is a shop top housing development (not a residential flat building) and the control allows nil setbacks to the front and side boundaries. In this regard, large, ground level, landscaped areas are inappropriate for this development.

The development includes suitable on-structure planting that will assist in breaking up the built form and providing visual interest.

The development meets this design principle.

**Principle 6: Amenity**

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

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

Comment:

The site adjoins a residential zoned property to the east. The protection of the amenity of this dwelling is critical if the proposal, and in particular the upper level, is to be considered worthy of support.

The wall of the upper level is set back 6.75m from the eastern boundary and the single small balcony at the northern end of the eastern elevation is set back 5.0m. The windows to the eastern elevation of the upper level are all well set back from the boundary and some are obscure glazing.

The internal amenity of the apartments within the development is acceptable and meets all the relevant



requirements in the ADG, as demonstrated in the table below.

As mentioned earlier, the site sits opposite a public carpark and a school, as opposed to a traditional residential low density residential interface, hence the potential amenity impacts are diminished in this respect.

Overall, the proposal will achieve a high level of internal and external amenity.

The development meets this design principle.

### **Principle 7: Safety**

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

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

#### Comment:

The residential entry and the customer entrances to the retail shops are separate. The open and active street frontage will provide a high quality public space that will maximise passive surveillance.

The development meets this design principle.

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

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

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

#### Comment:

The development includes a mix of one, two and three bedroom apartments. This will provide a choice of housing to suit the existing and future social mix of the area.

The development meets this design principle.

### **Principle 9: Aesthetics**

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

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



Comment:

The proposed development provides an open, active ground floor, a strong band of brick work across the first floor to provide a good transition, and a lighter, recessed upper level. This design outcome is considered to be appropriate for this prominent corner site.

The visual appearance of the proposal will fit within the local context of the neighbourhood centre and will add desirable elements to this locality.

The development meets this design principle.

**APARTMENT DESIGN GUIDE**

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

Development Control	Criteria / Guideline	Comments						
<b>Part 3 Siting the Development</b>								
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	<b>Consistent</b> Yes, the building is sited appropriately on the land, in relation to its setbacks and orientation.						
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<b>Consistent</b> Yes, the setbacks of the upper level result in a good outcome for the neighbouring properties.						
<b>Public Domain Interface</b>	Does the development transition well between the private and public domain without compromising safety and security?  Is the amenity of the public domain retained and enhanced?	<b>Consistent</b> Yes, the two street frontages are well activated and have minimised the service areas fronting the street.						
<b>Communal and Public Open Space</b>	Appropriate communal open space is to be provided as follows:  1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	<b>Acceptable on merit</b> No communal open space is provided as each dwelling contains their own private open space. The site is located in a zone where communal open space is not appropriate given the shop top housing development type.						
<b>Deep Soil Zones</b>	Deep soil zones are to meet the following minimum requirements:  <table border="1" data-bbox="478 1892 1037 1971"> <thead> <tr> <th>Site area</th> <th>Minimum dimensions</th> <th>Deep soil zone (% of</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of				<b>Acceptable on merit</b> The site only contains deep soil areas along the drainage easement. This is considered acceptable
Site area	Minimum dimensions	Deep soil zone (% of						

	<table border="1"> <tr> <td></td> <td></td> <td><b>site area)</b></td> </tr> <tr> <td>Less than 650m<sup>2</sup></td> <td>-</td> <td rowspan="4">7%</td> </tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td> <td>3m</td> </tr> <tr> <td>Greater than 1,500m<sup>2</sup></td> <td>6m</td> </tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td> <td>6m</td> </tr> </table>			<b>site area)</b>	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	as the development is for shop top housing and requires streetscape activation for both frontages.
		<b>site area)</b>												
Less than 650m <sup>2</sup>	-	7%												
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m													
Greater than 1,500m <sup>2</sup>	6m													
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m													
<b>Visual Privacy</b>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	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><b>Acceptable on merit</b></p> <p>The neighbouring property to the east contains a detached dwelling and the site to the south contains a shop top housing development.</p> <p>The zone allows nil setbacks to side boundaries (the southern and eastern boundaries are the sides for this site).</p> <p>The windows on the eastern elevation are set back a minimum of 3.0m for the first floor and 6.75m for the upper level.</p> <p>The windows on the southern elevation are set back a minimum of 1.4m for the first floor and 3.0m for the upper level.</p> <p>These setbacks do not comply with the ADG, however, the development is for shop top housing, not a residential flat building.</p> <p>Overall, the setbacks of the windows on both elevations will allow acceptable 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												
<b>Pedestrian Access</b>	Do the building entries and pedestrian access	<b>Consistent</b>												

<b>and entries</b>	connect to and addresses the public domain and are they accessible and easy to identify?  Large sites are to provide pedestrian links for access to streets and connection to destinations.	Yes, both street frontages are activated and all retail shops have separate customer entrances to the residential entrance.
<b>Vehicle Access</b>	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	<b>Consistent</b> Yes, the driveway has been located in the most appropriate position on the site.
<b>Bicycle and Car Parking</b>	For development in the following locations: <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<b>Consistent</b> The development provides adequate off-street car parking (see C3 Parking Facilities in the WDCP section of this report).
<b>Part 4 Designing the Building</b>		
<b>Amenity</b>		
<b>Solar and Daylight Access</b>	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter</li> </ul>	<b>Complies</b> All apartments will receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.  No apartments receive no direct sun.
<b>Natural Ventilation</b>	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:	<b>Complies</b> Three of the nine apartments are single aspect.

	<ul style="list-style-type: none"> <li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</li> <li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li> </ul>	<p>66.67% of the apartments are naturally cross ventilated.</p> <p>All apartments are less than 18m measured glass line to glass line.</p>												
<b>Ceiling Heights</b>	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</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><b>Complies</b></p> <p>The apartments all have minimum 2.7m floor to ceiling heights.</p> <p>The retail level has a 3.0m floor to ceiling height.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	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													
<b>Apartment Size and Layout</b>	<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>35m<sup>2</sup></td> </tr> <tr> <td>1 bedroom</td> <td>50m<sup>2</sup></td> </tr> <tr> <td>2 bedroom</td> <td>70m<sup>2</sup></td> </tr> <tr> <td>3 bedroom</td> <td>90m<sup>2</sup></td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p><b>Complies</b></p> <p>The minimum 1 bedroom internal area is: 56.75sqm.</p> <p>The minimum 2 bedroom internal area is: 84.6sqm.</p> <p>The minimum 3 bedroom internal area is: 103.25sqm.</p> <p>The development meets all other numerical requirements for this</p>		
Apartment type	Minimum internal area													
Studio	35m <sup>2</sup>													
1 bedroom	50m <sup>2</sup>													
2 bedroom	70m <sup>2</sup>													
3 bedroom	90m <sup>2</sup>													

	<p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> 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 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments</li> <li>• 4m for 2 and 3 bedroom apartments</li> </ul> <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	<p>clause.</p>															
<p><b>Private Open Space and Balconies</b></p>	<p>All apartments are required to have primary balconies as follows:</p> <table border="1" data-bbox="480 1288 1031 1512"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m<sup>2</sup></td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m<sup>2</sup></td> <td>2.4m</td> </tr> </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 15m<sup>2</sup> and a minimum depth of 3m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	<p><b>Complies</b></p> <p>The 1 bedroom apartments both include 8.0sqm balconies.</p> <p>The 2 bedroom apartments include balconies between 10sqm and 25.69sqm.</p> <p>The 3 bedroom apartments include balconies between 12.7sqm and 76.1sqm</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m <sup>2</sup>	-															
1 bedroom apartments	8m <sup>2</sup>	2m															
2 bedroom apartments	10m <sup>2</sup>	2m															
3+ bedroom apartments	12m <sup>2</sup>	2.4m															
<p><b>Common Circulation and Spaces</b></p>	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p><b>Complies</b></p> <p>The maximum number of apartments off a circulation core on a single level is six.</p>															
<p><b>Storage</b></p>	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1" data-bbox="480 1915 1031 1973"> <thead> <tr> <th>Dwelling Type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> </tr> </tbody> </table>	Dwelling Type	Storage size volume			<p><b>Complies</b></p> <p>Unit 1 (2 bed) - 12.34m<sup>3</sup> Unit 2 (2 bed) - 10.38m<sup>3</sup> Unit 3 (1 bed) - 9.74m<sup>3</sup></p>											
Dwelling Type	Storage size volume																

	<table border="1"> <tr> <td>Studio apartments</td> <td>4m<sup>2</sup></td> </tr> <tr> <td>1 bedroom apartments</td> <td>6m<sup>2</sup></td> </tr> <tr> <td>2 bedroom apartments</td> <td>8m<sup>2</sup></td> </tr> <tr> <td>3+ bedroom apartments</td> <td>10m<sup>2</sup></td> </tr> </table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Studio apartments	4m <sup>2</sup>	1 bedroom apartments	6m <sup>2</sup>	2 bedroom apartments	8m <sup>2</sup>	3+ bedroom apartments	10m <sup>2</sup>	<p>Unit 4 (1 bed) - 9.74m<sup>3</sup> Unit 5 (2 bed) - 13.49m<sup>3</sup> Unit 6 (3 bed) - 11.85m<sup>3</sup> Unit 7 (3 bed) - 16.01m<sup>3</sup> Unit 8 (2 bed) - 8.44m<sup>3</sup> Unit 9 (2 bed) - 19.35m<sup>3</sup></p>
Studio apartments	4m <sup>2</sup>									
1 bedroom apartments	6m <sup>2</sup>									
2 bedroom apartments	8m <sup>2</sup>									
3+ bedroom apartments	10m <sup>2</sup>									
<b>Acoustic Privacy</b>	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	<b>Consistent</b> The garage door is located within the basement and away from bedrooms.								
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	<b>Consistent</b> The layout of the development is appropriate to minimise the impacts of external noise and pollution and mitigate noise transmission.								
<b>Configuration</b>										
<b>Apartment Mix</b>	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	<b>Consistent</b> The development provides a mix of one, two and three bedroom apartments.								
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<b>Consistent</b> The ground level activated street frontages are suitable for the neighbourhood centre.  The architectural style of the building will be compatible with the area and will suit this prominent corner lot.								
<b>Roof Design</b>	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accommodation and open space.	<b>Consistent</b> The proposed roof is flat. This is considered appropriate to minimise the height and bulk of the development.								
<b>Landscape Design</b>	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<b>Consistent</b> A landscape plan was submitted for this development.								
<b>Planting on</b>	When planting on structures the following are	<b>Consistent</b>								

<b>Structures</b>	<p>recommended as minimum standards for a range of plant sizes:</p> <table border="1" data-bbox="467 472 1042 1189"> <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>150m<sup>3</sup></td> <td>1,200mm</td> <td>10m x 10m or equivalent</td> </tr> <tr> <td>Medium Trees</td> <td>8-12m high, up to 8m crown spread at maturity</td> <td>35m<sup>3</sup></td> <td>1,000mm</td> <td>6m x 6m or equivalent</td> </tr> <tr> <td>Small trees</td> <td>6-8m high, up to 4m crown spread at maturity</td> <td>9m<sup>3</sup></td> <td>800mm</td> <td>3.5m x 3.5m or equivalent</td> </tr> <tr> <td>Shrubs</td> <td></td> <td></td> <td>500-600mm</td> <td></td> </tr> <tr> <td>Ground Cover</td> <td></td> <td></td> <td>300-450mm</td> <td></td> </tr> <tr> <td>Turf</td> <td></td> <td></td> <td>200mm</td> <td></td> </tr> </tbody> </table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		<p>The planting located on the structure (first and upper levels) is within appropriately sized planter boxes.</p>
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent																																	
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent																																	
Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent																																	
Shrubs			500-600mm																																		
Ground Cover			300-450mm																																		
Turf			200mm																																		
<b>Universal Design</b>	<p>Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.</p>	<b>Complies</b>																																			
<b>Adaptive Reuse</b>	<p>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.</p>	<b>N/A</b>																																			
<b>Mixed Use</b>	<p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>	<b>Consistent</b> Yes, the development is on a public transport route.																																			
<b>Awnings and Signage</b>	<p>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.</p> <p>Signage must respond to the existing streetscape character and context.</p>	<b>Consistent</b> The proposal includes awnings along both street frontages that are of appropriate dimensions.  Specific signage is not proposed, only the indicative locations of the under awning signs are																																			



		shown.
<b>Performance</b>		
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	<b>Complies</b>
<b>Water Management and Conservation</b>	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<b>Complies</b>
<b>Waste Management</b>	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.	<b>Complies</b> Waste management plans have been lodged with the DA and will form part of the conditions of consent.
<b>Building Maintenance</b>	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	<b>Complies</b>

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

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

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

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

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

Comment:

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

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

(3) To remove doubt:

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



applies.

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

Comment:

The proposed shop top housing development meets the design quality principles and adequately complies with the objectives specified in the Apartment Design Guide for the relevant design criteria.

The development is a high quality outcome for the site that balances the height of the structure, the need to protect the adjoining sites, the need to activate the ground floor and the necessity to improve the neighbourhood centre.

**SEPP (Infrastructure) 2007**

Ausgrid

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

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

Comment:

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

**Warringah Local Environmental Plan 2011**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.845m	39.35% (3.345m)	No



Compliance Assessment

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

Detailed Assessment

**4.6 Exceptions to development standards**

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.845m
Percentage variation to requirement:	39.35%



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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



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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

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

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



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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

**Applicants Written Request**

The applicants written request argues, in part:

*"As set out in Four2Five, when a development standard is sought to be varied, there is an onus on the Applicant to demonstrate that there are "sufficient environmental planning grounds" such that compliance with the development standard is unreasonable or unnecessary and these environmental planning grounds must be particular to the circumstances of the proposed development rather than grounds that could reasonably apply a similar development on any other land.*

*Preston CJ clarified in Micaul and Initial Action, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.*

*As outlined in Section 5.2.1, there is considered to be a lack of adverse amenity impacts arising from the proposal's non compliance, as it will not result in adverse overshadowing, overlooking, view,*



*acoustic, privacy or traffic impacts.*

*The height variation along Alfred Street varies between 1.27m – 2.0m and is well setback from the building alignment below making the upper level and variation not readily apparent or offensive on the streetscape when viewed from surrounding road network or public places.*

*It is also noted that some of the height variation is attributable to the need for raising the floor level to cater for a localised flood planning.*

*The consequence of strict compliance in the circumstances would necessitate the loss of an entire residential floor which would make the development economically unviable. The success of the development dependent on the additional level (i.e the variation) is important in terms of the positive social and economic impacts that it will have on the viability and sustainability of the local village, providing necessary active retail uses and additional residential population in the form of various housing mix contributing to the atmosphere and also providing additional security and surveillance.*

*In summary, the contravention of the HOB development standard is considered to have positive social and economic outcomes for the Site and the locality and positive residential amenity outcomes for existing residences and businesses in the immediate area, whilst minimising adverse amenity impacts to an acceptable level."*

And

*"This written request outlines sufficient environmental planning grounds to justify the contravention of the HOB development standard including:*

- *a lack of adverse environmental amenity impacts;*
- *providing a variety of unit types and sizes at the upper levels and allowing for generous setbacks;*
- *constructing a new contemporary building on a corner site that will enhance the built form and appearance of both streetscapes;*
- *providing a strongly defined base so that the building reads as a two storey podium to the street frontages consistent with and compatible with the existing and desired future character;*
- *the provision of high quality residential living within the small centre which will increase surveillance and perceived safety in the area.*
- *provision of basement parking for residents and commercial premises – not seeking to consume on-street areas for the development (except as existing retail credits).*
- *allowing for streetscape improvement works and on street carparking to benefit the general public.*
- *contributing to both the social and economic viability of the centre to create a village atmosphere as per Council's desired planning outcomes."*

Comment:

It is agreed that there will be no unreasonable amenity impacts arising from the proposal's non compliance, as it will not result in adverse overshadowing, overlooking, view, acoustic, privacy or traffic impacts.

It is agreed that the upper level of the development is reasonably set back from the boundaries, making the upper level not readily apparent or offensive to the streetscape when viewed from surrounding public spaces.

It is agreed that the floor levels have had to be raised to accommodate for flooding and that this has



resulted in some of the height breach.

It is not agreed that the economic viability of the development is relevant to this assessment. This matter has not been taken into account.

It is agreed that the development will have a positive impact on the neighbourhood shops and the locality.

Furthermore, it is noted that this is a corner site and additional strengthening of the corner with some additional height is a sound urban design principle and the site sits opposite a public carpark and a school, as opposed to a traditional low density residential interface, hence lessening the potential impacts on neighbours and interfaces.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B1 Neighbourhood Centre zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

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

Comment:

The applicant's Clause 4.6 request states, in response to this objective:



*"The built form within the surrounding B1 village presents predominantly as a 2 storey scale presentation to the street interface with some newer development exhibiting 3 storeys to the rear presentations. The proposed is considered to achieve this objective as the upper level has increased setbacks from the boundaries, creating a significant step and making the upper level recessive and non intrusive to most vantage points. The building does not draw attention to itself beyond that reasonably expected of a corner site within a neighbourhood precinct. It reads as a two storey building at the street frontages, consistent with the existing and likely future scale of buildings as defined by the 8.5m height controls. The development is respectful of its locational built form context and surrounding development and hence the non compliant element is benign."*

Additional comment:

The site is flood prone and this has resulted in the need to increase the floor levels and therefore the height.

The proposed upper level has been set back from all boundaries, including the street frontages. These setbacks mean that this floor, while it will be visible, will not dominate the street facing facades of the development. The top level is set back and has a lighter material finish, this will add to the architectural style of the building and the visual interest of the proposal.

Overall, the development is sufficiently compatible with the height and scale of surrounding and nearby development and, importantly, is appropriate for the site.

The development meets this objective.

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

Comment:

As discussed above, the visual impact of the development is considered acceptable, given the particular circumstances of the site.

The proposal will not result in any unreasonable view loss and, given the orientation of the site and the setbacks of the upper level, will not result in any unreasonable overshadowing to the residential property to the east or the shops to the south.

In relation to privacy, the site adjoins a residential zoned property to the east. The wall of the upper level is set back 6.75m from the eastern boundary and the single small balcony at the northern end of the eastern elevation is set back 5.0m. The windows to the eastern elevation of the upper level are all well set back from the boundary and some are obscure glazing. Overall, the proposal, and in particular the upper level, will not result in any unreasonable privacy impacts to the adjoining residential property.

The development meets this objective.

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

Comment:

The site is located in a neighbourhood centre surrounded by retail and residential properties. As such, the development will not adversely impact on the scenic quality of Warringah's coastal and



bush environments.

The development meets 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 proposed top floor has been set back from all boundaries, including the street frontages. These setbacks mean that the upper level, while it will be visible, will not result in an unacceptable visual impact when the development is viewed from the surrounding public spaces. The second storey will add to the architectural style of the development and the visual interest of the proposal.

The development meets this objective.

### Zone objectives

The underlying objectives of the B1 Neighbourhood Centre zone are:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

Comment:

The proposal contains four retail tenancies and one commercial space spread over 359.5sqm of GFA. This will provide a range of small-scale retail and commercial uses that serve the needs of people who live or work in the surrounding neighbourhood.

The development meets this objective.

- *To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*

Comment:

The retail and commercial tenancies cover most of the two street frontages and will provide a high level of activation of the streetscape. This will ensure a village-like atmosphere within the neighbourhood centre.

The development meets this objective.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Comment:

The site adjoins a residential zoned property to the east. The protection of the amenity of this dwelling and the residents is critical if the upper level is to be considered worthy of support.

The wall of the top floor is set back 6.75m from the eastern boundary and the single small balcony at the northern end of the eastern elevation is set back 5.0m.



The windows to the eastern elevation of the upper level are all well set back from the boundary and some are obscure glazing.

Overall, the proposal, and in particular the second floor, will not result in any unreasonable amenity impacts to the adjoining residential property.

The development meets this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B1 Neighbourhood Centre zone.

**Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

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

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

**Warringah Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
B5 Side Boundary Setbacks	East - Merit assessment	Basement - Nil Ground Floor - Nil First floor - 3.0m Second floor balcony - 5.0m Second floor apartments - 6.75m	Yes, on merit
	South - Merit assessment	Basement - 3.0m Ground Floor - 3.0m First floor - Between nil and 1.5m Second floor balcony - 1.5m Second floor apartments - 3.0m	Yes, on merit
B7 Front Boundary Setbacks	North - Nil	Basement - Nil Ground Floor - Nil First floor - Nil Second floor balcony - 0.85m Second floor apartments - 3.48m	Yes
	West - Nil	Basement - Nil Ground Floor - Nil First floor - Nil	Yes



	Second floor balcony - 0.85m Second floor apartments - 3.5m	
--	----------------------------------------------------------------	--

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
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	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

Detailed Assessment

**C3 Parking Facilities**



Merit consideration

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	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	2 x 3 bed = 3 spaces 5 x 2 bed = 6 spaces 2 x 1 bed = 2 spaces 9 apartments = 2 visitor spaces Total = 13 spaces	12 residential spaces 2 visitor spaces Total = 14 spaces	+1 spaces
Retail/Commercial	1 space per 16.4 m <sup>2</sup> GLFA (6.1 spaces per 100 m <sup>2</sup> GLFA).	359.5sqm GFA = 22 spaces	2 spaces	-20 spaces
<b>Total</b>		35 spaces	16 spaces	-19 spaces

Given the size of the site, it is impossible to fit 35 car spaces in the development unless the basement and ground floors are taken up by parking or an additional basement level is added. Both of these options would result in an unacceptable design.

In order to achieve compliance, the retail GFA could be substantially reduced, however, this would result in the development not achieving the zone objectives and not providing a suitable range of shops to create a village-like atmosphere.

There are 20 perpendicular parking spaces on the street (in the area of land that was part of the Deed of Agreement) in front of the northern and western elevations of the site. This is one more than the number of deficient spaces in the table above. There are a further 17 on-street parking spaces in the vicinity, in front of other sites, that service the neighbourhood centre.

Overall, the parking spaces within the development and on the street surrounding the site will be sufficient to provide adequate on-street parking.

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



Comment:

The proposed parking facility is in the basement and will therefore have a minimal visual impact on the streetscape.

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

Comment:

The proposed parking facility is in the basement and will therefore not dominate the streetscape.

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

## 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 an elevated terrace on the eastern side of the ground floor. This terrace does include screen planting (in a planter box) along its eastern edge, but still has the potential to result in overlooking into the rear yard of the dwelling at No. 89 McIntosh Road.

While this terrace will not be heavily used, it is important to protect the neighbouring residential property by ensuring the screen planting is suitable.

A condition requiring the planting to be of suitable species that can grow to a minimum height of 1.65m above the floor level of the terrace is recommended to be included in the conditions of consent. This will ensure that reasonable privacy is maintained.

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

Comment:

Overall, the development is an innovative solution to deal with the constraints of the site and will improve the urban environment.

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

Comment:

The development will provide reasonable personal and property security for occupants and



visitors.

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

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

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

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

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

#### **POLICY CONTROLS**

##### **Northern Beaches Section 7.12 Contributions Plan 2019**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$38,535 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$3,853,502.

#### **CONCLUSION**

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

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

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

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

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



The application seeks consent for a three storey shop top housing development with basement car parking and strata subdivision located at Nos. 93 and 91 McIntosh Road, Narraweena.

The site has a unique history. A Deed of Agreement exists between Council and the owners after land, that was previously part of the site, was dedicated to Council for on-street car parking to service the surrounding neighbourhood centre. In exchange for this land dedication, the floor area lost as a result, would be taken into account in any future development application. However, as Section 4.15 of the EP&A Act 1979 does not call up deeds of agreement for consideration (i.e. it is not a VPA, draft EPI, etc), this deed, while part of the history of the site, has not formed part of the assessment of this application.

The applicant has proposed a portion of the floor area lost as part of the deed, as an upper level. This results in the development exceeding the height limit by a storey (3.345m). The proposal therefore has a variation of 39.35% to the Height of Buildings Development Standard. A detailed assessment of this non-compliance is within this report. In summary, the development will be a positive element within the neighbourhood centre, will not result in any unreasonable amenity impacts and is of a good design.

Furthermore, it is noted that this is a corner site and additional strengthening of the corner with some additional height is a sound urban design principle and the site sits opposite a public carpark and a school, as opposed to a traditional low density residential interface.

The variation to the development standard is acceptable and worthy of support.

The public exhibition period generated only one submission raising concerns regarding the low number of shops within the new development. This matter has been addressed within the report.

The development has been assessed against SEPP 65 and the Apartment Design Guide and has been found to satisfactorily meet the design principles and the relevant numerical requirements.

The development meets the aims and reasonably complies with the controls within the WLEP 2011 and the WDCP 2011.

The development is a high quality urban design that will minimise the impacts to surrounding properties, activate the streetscape, and bring an attractive building onto this prominent corner site within the neighbourhood centre.

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.

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

## RECOMMENDATION

Council is satisfied that:

1) the applicant's written request under clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of clause 4.3 Height of Buildings development standard, has adequately addressed and demonstrated that:

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



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

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2018/1800 for Demolition of existing structures and construction of a shop top housing development, including ground floor commercial/retail and nine apartments, with basement parking and strata subdivision on land at Lot 102 DP 868560, 91 McIntosh Road, NARRAWEENA, Lot 101 DP 868560, 93 McIntosh Road, NARRAWEENA, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A-0006 Issue A	September 2018	Benson McCormack Architecture
A-0101 Issue C	April 2019	Benson McCormack Architecture
A-0102 Issue C	April 2019	Benson McCormack Architecture
A-0103 Issue C	April 2019	Benson McCormack Architecture
A-0104 Issue C	April 2019	Benson McCormack Architecture
A-0105 Issue C	April 2019	Benson McCormack Architecture
A-0201 Issue C	April 2019	Benson McCormack Architecture
A-0202 Issue C	April 2019	Benson McCormack Architecture
A-0203 Issue C	April 2019	Benson McCormack Architecture
A-0204 Issue C	April 2019	Benson McCormack Architecture
A-1301 Issue C	April 2019	Benson McCormack Architecture
A-2051 Issue C	April 2019	Benson McCormack Architecture



A-2052 Issue C	April 2019	Benson McCormack Architecture
1821-3-A Strata Plan Sheet 1 of 3	10 October 2018	Robert Shaw Friend
1821-3-A Strata Plan Sheet 2 of 3	10 October 2018	Robert Shaw Friend
1821-3-A Strata Plan Sheet 3 of 3	10 October 2018	Robert Shaw Friend

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Geotechnical Investigation	June 2018	STS GeoEnvironmental Pty Ltd
Construction Management Plan	Not dated	Dream Build
Flood Study Report	21 October 2018	Dawes Consulting Engineers
Statement of Compliance - BCA Access Provisions	11 October 2018	Accessible Building Solutions
Parking & Traffic Impact Assessment	October 2018	Stanbury Traffic Planning

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

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

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
LS01 Sheet 1 of 3 Issue B	25 February 2019	Melissa Wilson
LS01 Sheets 2 and 3 of 3 - all Issue A	10 October 2018	Melissa Wilson

<b>Waste Management Plan</b>		
<b>Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	19 October 2018	Stefano Macri

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

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

## 2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work,



subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
  - A. the name and licence number of the principal contractor, and
  - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
  - A. the name of the owner-builder, and
  - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement

### 3. General Requirements

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



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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



- v) For any work/s that is to be demolished

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2008
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in seweried areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

#### 4. **Traffic Management.**

Traffic management procedures and systems must be in place and practiced during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans.

**Note:** A plan of traffic management is to be submitted to and approved by Council.

Reason: To ensure pedestrian safety and continued efficient network operation. (DACTRBOC1)

## FEES / CHARGES / CONTRIBUTIONS

#### 5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019



A monetary contribution of \$38,535.02 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$3,853,502.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

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

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

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

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

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

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

#### 7. **Construction, Excavation and Associated Works Bond (Drainage)**

The applicant is to lodge a Bond of \$100,000 as security against any damage or failure to complete the construction of Stormwater drainage works as part of this consent. Details



demonstrating payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

8. **Construction, Excavation and Associated Works Bond (Crossing / Kerb)**

The applicant is to lodge a Bond of \$60,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent. Details demonstrating payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

9. **Construction, Excavation and Associated Works Bond (Maintenance for civil works)**

The developer/applicant must lodge with Council a Maintenance Bond of \$10,000 for the construction of stormwater drainage. The Maintenance Bond will only be refunded on completion of the six-month Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing practical completion.

Reason: Protection of Council's infrastructure.

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

10. **Stormwater Disposal from Low Level Property**

The Applicant is to demonstrate stormwater from the new development within this consent shall be disposed of in accordance with Northern Beaches Council's Warringah Water Management Policy PL 850 in particular the Stormwater Drainage from Low Level Properties Technical Specification. Details demonstrating compliance with the Northern Beaches Council's Warringah Water Management Policy PL 850 are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

11. **Pump-Out System Design for Stormwater Disposal**

The design of the pump-out system for stormwater disposal will be permitted for drainage of hard surfaces areas such as driveways and basement pavement areas only, and must be designed in accordance with AS/NZS 3500. The Applicant is to provide engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site.



12. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for Infrastructure works on Councils roadway. Engineering plans for the new development works within the road reserve within this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the design of civil works which shall be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer.

The design must include the following information:

1. Relocation of Council's stormwater pipeline and associated works. Proposed relocation works shall be supported by a detailed hydrologic and hydraulic assessment.
2. Provision of layback and vehicular crossing 6m wide.
3. Removal of one on-street parking bay and relocation of kerb.
4. Provision of any streetscape works in accordance with Council's Warringah Public Space Design Guidelines, including any bike racks, wheels stops, infill paving etc.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

13. **Tanking of Basement Level**

The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking are to be prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority.

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

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

14. **Structural Adequacy and Excavation Work**

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

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

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



to the issue of the Construction Certificate.

Reason: To provide public and private safety.

15. **Sub-Soil Seepage**

The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line within the property and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

- o Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- o Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.)

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

Reason: To ensure appropriate drainage and stormwater management on site to protect amenity of residents.

16. **Shoring of Adjoining Property**

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

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

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

17. **Traffic Management and Control**

The Applicant is to submit plans an application for Traffic Management Plan to Council for approval. The Traffic Management Plan shall be prepared to RMS standard by an appropriately certified person. An approval from Council is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

18. **Stormwater Drainage Application**

The Applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of stormwater drainage which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's



website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/stormwater-drainage-approval/4022-stormwater-drainage-approval.pdf>

The design must include the following information:

1. Relocation of Council's stormwater pipeline and associated works. Proposed relocation works shall be supported by a detailed hydrologic and hydraulic assessment.
2. Appropriate access to the easement is provided, including a minimum vertical clearance of 4 metres as determined in consultation with Council.
3. Gate/fencing shall be in accordance with Council's Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

#### 19. **Structures Located Adjacent to Council Pipeline or Council Easement**

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

Reason: Protection of Council's infrastructure.

#### 20. **Flooding**

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

##### Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

##### Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Probable Maximum Flood level of 75.0m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

##### Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 74.77m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices



installed cut electricity supply during flood events.

Flood Emergency Response – E2

Appropriate access to shelter in place refuge should be available from all areas of the new development.

Floor Levels – F1

New floor levels within the development shall be set at or above the Flood Planning Level of 74.77m AHD.

Car parking – G3

All access, ventilation and any other potential water entry points (except the entry ramp) to the basement car park shall be at or above the Flood Planning Level of 74.77m AHD. The entry ramp crest to the basement car park shall be at or above the level of 74.2m AHD.

Recommendations

The development must comply with all recommendations outlined in:

- The Flood Study Report prepared by Dawes Consulting Engineers dated 21 October 2018.

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

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

21. **Pre-commencement Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction/demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

22. **Compliance with Standards**

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

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

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



23. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

24. **Construction Traffic Management Plan.**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the certifying Certifying authority Authority prior to issue of any Construction Certificate.

For use when in a Town Center or major commuter congested location.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The CTMP must address following:-

- The proposed phases of construction works on the site, and the expected duration of each construction phase;
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored on site, at all times;
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, form-work and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Specify that, due to the proximity of the site adjacent to Narraween Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners will be kept advised of the time frames for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners



prior to the implementation of any temporary traffic control measure.

- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practicing Structural Engineer, or equivalent;
- Proposed protection for Council and adjoining properties;
- The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner’s property rights and protects amenity in the locality, without unreasonable inconvenience to the community. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site. (DACTRCPC1)

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

### 25. Public Liability Insurance - Works on Public Land

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

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

### 26. Tree protection



- (a) Existing trees which must be retained
- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
  - ii) Trees located on adjoining land
  - iii) All street trees
- (b) Tree protection
- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by the Project Arborist on site.
  - ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by the Project Arborist on site.
  - iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
  - iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
  - v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

27. **Project Arborist**

- i) A Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works.
- ii) The Project Arborist is to oversee all tree protection measures in accordance with relevant conditions of consent and AS4970-2009 Protection of trees on development sites.
- iii) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

Reason: to ensure protection of vegetation proposed for retention on and adjacent to the site.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

28. **Road Reserve**

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

Reason: Public Safety.

29. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 and Section 68 approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

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

30. **Notification of Inspections**

The Applicant shall notify Council's Development Engineering and Certification team is to be



given 48-hour notice when the works reach the following stages:

- a) Installation of Silt and Sediment control devices
- b) Prior to backfilling of pipelines
- c) Prior to pouring of stormwater gully pits
- d) Prior to pouring of kerb and gutter
- e) Subgrade level / basecourse level / subbase
- f) All layers of the road formation are to be proof rolled to Council's satisfaction
- g) Sealing road pavement

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

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

31. **Waste Management During Development**

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

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

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

32. **Acid Sulfate Soil Management**

Any new information, based on the assessment by STS GeoEnvironmental Pty Limited (STS), which comes to light during , excavation or construction works which has the potential to alter previous conclusions about the uncovering of Acid Sulfate Soil must be notified to the Certifier as soon as reasonably practicable. This will also require an Acid Sulfate Soil Management Plan, including disposal of affected soil to an approved facility, to be submitted to the certifier, before work continues.

Reason: To ensure potential Acid Sulfate Soil is appropriately managed

33. **Dust and air pollution**

Dust (and air pollution) from construction and demolition to be managed in accordance with the Construction Management Report prepared by Dream Build.

Reason: Protect Public Health (DACHPEDW1)

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

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

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

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

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

35. **Condition of retained vegetation**

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

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

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites, and protect the existing amenity that trees and/or bushland vegetation provide.

36. **Stormwater Disposal**

The Applicant shall submit a certificate from a suitably qualified person that the stormwater drainage works have been constructed/installed in accordance with all relevant Australian Standards and Codes. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

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

37. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

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

Reason: Protection of Council's Infrastructure.

38. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.



A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

39. **Certification of Tanking of Basement**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed tanking of basement areas had been undertaken in accordance with this consent and the approved Construction Certificate plans. Civil Engineer demonstrating compliance is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure compliance of works.

40. **Post-Construction Dilapidation Report**

The applicant must submit a post-construction dilapidation report prepared by suitably qualified civil engineer. The report must clearly detail the final condition of all public property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure.

The post-construction / demolition dilapidation report must be submitted to Council for review after the completion of all building works. Any damage to Council's infrastructure is to be rectified to the satisfaction of Council prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council.

41. **Mechanical Ventilation certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

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

Reason: To ensure that the mechanical ventilation system complies with the design requirements. (DACHPFPOC4)

42. **Mechanical Plant**

Mechanical plant situated externally must be acoustically treated, installed and operated at all times to ensure not to cause 'offensive noise' as defined by the Protection of the Environment Operations Act 1997.

Domestic air-conditioners must not be audible in nearby dwellings between 10:00PM to 7:00AM Monday to Friday, and 10:00PM to 8:00AM on Saturdays, Sundays and public holidays.

Details are to be submitted to Council / the Accredited Certifier prior to the issue of the Occupation Certificate.

Reason: Protect residential acoustic amenity



43. **Certification of Civil Works and Works as Executed Data**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 68 and Section 138 plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits.

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

44. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

45. **Waste Management Confirmation**

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

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

46. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

47. **Screen Planting**

The species within the planter box on the eastern side of the terrace must grow to a minimum height of 1.65m above the finished floor level of the terrace.

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

Reason: To protect the privacy of the adjoining property.



48. **Local Safety Infrastructure**

The applicant is to install in the public reserve, at no cost to Council or RMS, any facilities approved as part of discussions regarding improving safety in and around the town centre. This will be subject to the outcome of their discussions with RMS and Council and will be confirmed in writing. The applicant shall provide the written concurrence from Council and RMS demonstrating the required infrastructure, if any.

Reason: To ensure improved safety in and around the Town centre prior to additional impacts of residents and retail/office use. (DACTRFPOC1)

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

49. **Food Businesses**

a) Separate Development Consent from Council is required for the design, fit-out, construction and use of each tenancy as food businesses,

b) Each development application must provide details to Council demonstrating compliance with Standard 3.2.3 of the Australia and New Zealand Food Standards Code, the Food Act 2003 and AS 4674 'Design, construction and fit out of food premises' and AS1668.2,

c) Details must include plans for the design, construction and fit-out and of all kitchens, wet areas, garbage storage rooms, food store areas, kiosks/stalls used for sale of food and beverages, and requirements for mechanical ventilation.

Reason: To ensure that all food premises comply with the design requirements. (DACHPGOG5)

50. **Noise for air-conditioners**

Any air conditioning unit on the site must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the Protection of the Environment Operations Act 1997. Domestic air conditioners must not be audible in nearby dwellings between 10:00pm to 7:00am on Monday to Saturday and 10:00pm to 8:00am on Sundays and Public Holidays.

Reason: To ensure compliance with legislation and to protect public health.

51. **Fit-out of Shops**

Separate Development Consent from Council is required for the design, fit-out, construction and use of each tenancy as a Skin Penetration services business.

Reason: Ensure compliance with legislation

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

52. **Easement for Drainage**

The Applicant shall create a 3 metre wide easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the land to ensure all drainage infrastructure is located within the appropriate easement(s). Details demonstrating compliance are to be submitted to the



Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of and access to Council's infrastructure.



PLANNING | DEVELOPMENT | URBAN DESIGN

# CLAUSE 4.6 VARIATION REQUEST TO CLAUSE 4.3 OF THE WARRINGAH LEP 2011

## PROPOSED SHOPTOP HOUSING DEVELOPMENT 91 M<sup>c</sup>INTOSH ROAD NARRAWEENA



## 1 Introduction

---

### 1.1 Commission

*JVUrban Pty Ltd* has been commissioned by *DreamBuild Pty Ltd* ("the Applicant"), to prepare a written request ('Variation Request') pursuant to cl4.6 of *Warringah Local Environmental Plan 2011* (the LEP) in respect of a proposed development for shop top housing development comprising ground floor retail/commercial and nine (9) residential apartment, at 91 – 93 McIntosh Street, Narraweena (the Site).

The Proposal is described in detail in Section 3 of the Statement of Environmental Effects (SEE) prepared by *JVUrban Pty Ltd* dated November, 2018 and generally comprises:

- demolition of all structures on site;
- site excavation for basement level;
- construction of shop top housing above basement car parking and services.

The Proposal exceeds the 8.5m maximum Height of Buildings (HOB) development standard under cl4.3 of the WLEP having a maximum building height of 12.15m in the south east corner.

Notwithstanding the contravention of the development standard, the proposal and the requisite variation to the height standard is considered to be consistent with the objectives of the development standard and the objectives of the zone within which the development is to be carried out and there are sufficient environmental planning grounds to justify the contravention in this instance including the lack of adverse amenity impacts and positive social and economic considerations as a result of the development.

This written request has been prepared to provide a detailed assessment in accordance with the statutory requirements of cl4.6 so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the HOB development standard.

Whilst the Variation is drafted under specific headings, it is drafted to be relied upon its totality to satisfy the relevant tests and heads of consideration rather than limited to the text under any specific heading.

### 1.2 Material Relied Upon

This Variation Request has been prepared based on the Architectural Drawings prepared by *Benson McCormack Architecture* dated September 2018 and also relies upon a Deed of Agreement between the owner and Council which is appended to the Statement of Environmental Effects

This Variation Request should be read in conjunction with the detailed environmental planning assessments contained in the DA documentation submitted with the DA and documents appended thereto.

---

## 2.1 Warringah Local Environmental Plan 2011

### 2.1.1 Clauses 2.2-2.3 – Zoning and Permissibility

Clause 2.2 and the Land Zoning Map of the LEP provide that the entire Site is zoned B1 Neighbour Centre Zone and the Land Use Table in Part 2 of the LEP specifies the objectives of this zone as follows:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

The proposed land use is defined as a shop top housing which is permissible with development consent in the B1 Zone pursuant to the WLEP 2011.

### 2.1.2 Clause 4.3 – Height of Buildings (HOB)

Clause 4.3 of the W LEP 2011 sets out the HOB development standard as follows:

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

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

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

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

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

*(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.”*

The Height of Buildings Map designates a maximum 8.5m height limit for the Site (see **Figure 1**).

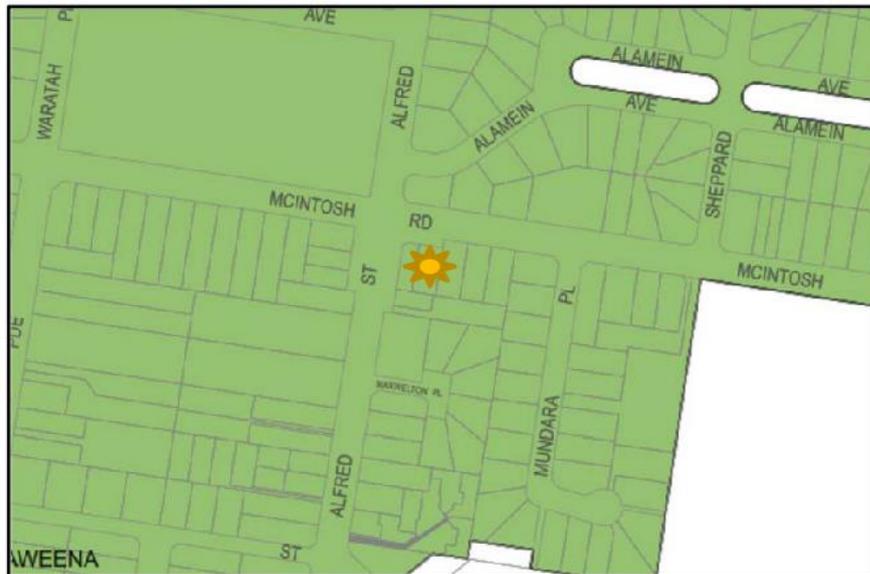


Figure 1 Extract of WLEP 2011 Map (HOB\_10A)

The WLEP Dictionary contains the following definitions:

**Height of Buildings Map** means the Warringah Local Environmental Plan 2011 Height of Buildings Map.

**building height (or height of building)** means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

### 2.1.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of the LEP states the objectives of the clause 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.

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (“Initial Action”) (see Section 4.7), Preston CJ ruled that there is no provision that requires the applicant to demonstrate compliance with these objectives for the consent authority to be satisfied that the development achieves these objectives. Furthermore, neither cl4.6(3) nor cl4.6(4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”.

**Clause 4.6 Variation - 91 McIntosh Road NARRAWEENA - JVUrban**

Accordingly, the remaining subclauses of cl4.6 provide the operational provisions and preconditions which must be satisfied before a consent authority may grant development consent to a development that contravenes a development standard imposed by an environmental planning instrument.

Clause 4.6(2) provides that:

- (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.*

The HOB development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The proposed development does not comply with the HOB development standard pursuant to cl4.3 of the WLEP2011. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed in Section 5.1.

In addition, there are considered to be sufficient environmental planning grounds to justify contravening the development standard as detailed in Section 5.2.2.

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

- (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.*

Sections 5.2 and 5.3 of this written request address the matters required under cl4.6(4)(a) of the LEP and Section 5.4 addresses cl4.6(4)(b).

Clause 4.6(5) provides that:

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

Section 5.5 of this written request addresses the matters required under cl4.6(5) of the LEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development and cl4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

The proposed shop top housing development will result in a maximum height above existing ground level of 12.15m at the south east corner, constituting a non-compliance of up to 3.65m. The extent of the variation is depicted in the architectural drawings.

The proposed variation to the development standard has been considered in light of the evolving methodology and “tests” established by the NSW Land & Environment Court (the Court) and the following subsections provide a brief summary of key Judgments in regard to variations under the former SEPP 1 and cl4.6 of the SILEP that are of relevance.

#### 4.1 **Winten Developments Pty Ltd v North Sydney Council [2001]**

Through the Judgment in *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46* (“Winten”) the Court established a ‘5-part test’ for considering whether strict compliance with a development standard is unreasonable or unnecessary in a particular case. The elements of this test can be summarised as:

- Is the planning control a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*?
- Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?
- Is the objection well founded?

The 1<sup>st</sup> 'test' continues to be relevant and is a precondition for the application of cl4.6 – see Section 5.1.

The 2<sup>nd</sup> 'test' is required to be demonstrated under cl4.6(4)(a)(ii) – see Section 5.2.1.

The 3<sup>rd</sup> 'test' was specific to cl3 of SEPP 1 and has not been transferred to cl4.6 of the SILEP. Notwithstanding, in Initial Action (see below), Preston CJ indicated that it is reasonable to infer that “environmental planning grounds” as stated in under cl4.6(3)(b), means grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EP&A Act – see Section 5.2.2.

The 4<sup>th</sup> 'test' is required to be demonstrated under cl4.6(3)(a) - see Section

5.1. The 5<sup>th</sup> 'test' is analogous to cl4.6(4)(a) – see Section 5.3.

#### 4.2 **Wehbe v Pittwater Council [2007]**

The 5-part test under Winten was later supplemented by the Judgment in *Wehbe v Pittwater Council [2007] LEC 827* (“Wehbe”) where Chief Justice Preston expressed the view that there are 5 different ways in which an objection to a development standard may be assessed as being well founded and that approval of the objection may be consistent with the aims of SEPP 1. These included:

1. Notwithstanding the non-compliance, is the proposal consistent with the relevant environmental or planning objectives?
2. Is the underlying objective or purpose of the development standard not relevant to the development with the consequence that compliance is unnecessary?
3. Would the underlying objective or purpose of the development standard be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable?
4. Has the development standard been virtually abandoned or destroyed by the consent authority's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable?
5. Is the zoning of the particular land unreasonable or inappropriate such that the development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and therefore, compliance with the standard would be unreasonable or unnecessary?

#### 4.3 **Four2Five Pty Ltd v Ashfield Council [2015]**

In the Judgment of *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (“Four2Five”) Pearson C expanded on the earlier Judgments of Winten and Wehbe, indicating that whilst consistency with zoning and standard objectives of the development standard is addressed specifically in cl4.6(4)(a)(ii), there remains an onus of also demonstrating that there are “sufficient environmental planning grounds” such

**Clause 4.6 Variation - 91 McIntosh Road NARRAWEENA - JVUrban**

that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

The environmental planning grounds that support the proposed variation to the standard in this circumstance are detailed in the SEE submitted with the DA, and S5.2.2 below.

#### 4.4 **Randwick City Council v Micaul Holdings Pty Ltd [2016]**

In his Judgment of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* ('Micaul') Preston CJ made it clear that development consent cannot be granted for a development that contravenes a development standard unless the consent authority:

- (a) has considered a written cl 4.6 objection seeking to vary the development standard as required by cl4.6(3) of the SILEP;
- (b) is satisfied that the cl4.6 objections adequately addressed the matters required to be demonstrated by cl4.6(3) (as required by cl4.6(4)(a)(i));
- (c) is satisfied that the development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone to be carried out as required by cl4.6(4)(a)(ii).

In addition, Preston CJ elucidated that the consent authority does not have to be directly satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – only that it be indirectly satisfied that the applicant's written request adequately addresses the matters in cl4.6(3) that compliance with the development standard is unreasonable or unnecessary.

Furthermore, Preston CJ confirmed that an established means of demonstrating that compliance with a development standard is unreasonable or unnecessary is to establish that a development would not cause environmental harm and is consistent with the objectives of the development standard.

#### 4.5 **Moskovich v Waverley Council [2016]**

Providing further guidance on the interpretation of cl4.6 compared to its predecessor SEPP 1, the Judgment in *Moskovich v Waverley Council [2016] NSWLEC 1015* ('Moskovich') outlines that cl4.6(3)(a) is similar to cl 6 of SEPP 1 and the ways of establishing that contravention of a development standard is well founded expressed in *Wehbe* (e.g. "achieving" the objectives of the development standard) are equally appropriate for the consideration of cl4.6(3)(a).

However, cl4.6(4)(a)(ii) has different wording to SEPP 1 and requires the consent authority to be satisfied that the proposed development is in the public interest because it is "consistent" with objectives of the development standard and objectives for the zone rather than "achieving" the objectives. Consequently, the considerations of cl4.6(3)(a) and cl4.6(4)(a)(ii) are different with the achievement test being more onerous and requiring justification in 'ways' such as those expressed in *Wehbe*.

**Clause 4.6 Variation - 91 McIntosh Road NARRAWEENA - JVUrban**

Notwithstanding the Judgments in Winten and Wehbe related to variation requests under SEPP 1, the methodology and reasoning expressed in those Judgments continues to be the accepted basis upon which to assess variation requests pursuant to cl 4.6.

#### 4.6 Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and standard.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "better environmental planning outcome" relative to a development that complies with the development standard. In fact, there is no provision in SILEP that gives substantive effect to the objectives of cl4.6 stated in cl4.6(1)(a) and (b). That is to say, neither cl4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development".

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

#### 4.7 Summary of the Case Law Methodology and Tests

The collective methodology and tests described above has been applied to the assessment at Section 5 and can be summarised in the following steps:

1. Step 1 - Is the planning control that the applicant seeks to contravene a development standard?
2. Step 2 - Is the consent authority satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required by cl 4.6(3) by demonstrating that:
  - (a) compliance is unreasonable or unnecessary; and
  - (b) there are sufficient environmental planning grounds to justify contravening the development standard?
3. Step 3 - Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out?

4. Step 4 - Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Step 5 - Where the consent authority is the Court, has the Court considered the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

#### 5.1 Step 1 - Is the planning control a development standard?

This question is the 1<sup>st</sup> 'test' in Winten. The HOB control in cl4.3 of the WLEP 2011 is a development standard, defined in Section 1.4 of the EP&A Act as follows:

*“development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:...*

*(d) the cubic content or floor space of a building”*

The development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted pursuant to cl4.6.

#### 5.2 Step 2 – Pursuant to cl4.6(4)(a), is the consent authority satisfied that the written request adequately addresses the matters in Clause 4.6(3)?

##### 5.2.1 Clause 4.6(3)(a) – compliance is unreasonable or unnecessary in the circumstances of the case

To demonstrate that compliance with the height of buildings development standard is unreasonable or unnecessary, this written request relies upon:

1. The 2<sup>nd</sup> 'test' in Winten and the 1<sup>st</sup> and 2<sup>nd</sup> 'ways' in Wehbe – i.e. the underlying objectives or purpose of the standard is satisfied or the objectives are not relevant; and
2. The 4<sup>th</sup> 'way' in Wehbe - the development standard has been virtually abandoned or destroyed by the consent authority's own actions.

These aspects are discussed in the following paragraphs.

##### **The underlying objectives or purpose of the standard**

Clause 4.3(1) of the LEP states the objectives of the Height development standard as follows:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

**Clause 4.6 Variation - 91 McIntosh Road NARRAWEENA - JVUrban**

---

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

**Comments**

**Objective (a)** is to ensure building is compatible with height and scale surrounding and nearby development.

In considering compatibility, this does not necessitate sameness as advocated by Roseth SC in Project Ventures Developments v Pittwater Council [2005] NSWLEC 191:

*22. There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing in harmony. Compatibility is this deferent from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve."*

The built form within the surrounding B1 village presents predominantly as a 2 storey scale presentation to the street interface with some newer development exhibiting 3 storeys to the rear presentations. The proposed is considered to achieve this objective as the upper level has increased setbacks from the boundaries, creating a significant step and making the upper level recessive and non intrusive to most vantage points. The building does not draw attention to itself beyond that reasonably expected of a corner site within a neighbourhood precinct. It reads as a two storey building at the street frontages, consistent with the existing and likely future scale of buildings as defined by the 8.5m height controls. The development is respectful of its locational built form context and surrounding development and hence the non compliant element is benign.

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

The design and layout of the building address each of these amenity considerations and achieves a development that respects the adjoining and surrounding development. The additional height does not create unreasonable adverse effects. There is no view impact. The windows in the upper level facing east are restricted to bedroom windows only and are setback 5m from the boundary. These windows look over, and not into adjoining properties. Shadow diagrams similarly confirm that no living areas or private open space areas of adjoining properties are unreasonably overshadowed by the non compliant elements. In terms of visual impacts, these are minimized through setting back the upper level and careful attention to articulation and selection materials and colours.

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

The subject site is located within a highly urbanized environment. There will be no impact on the coastal, bush or scenic amenity of the environment. The proposal is neutral in terms of this objective.

---

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

The proposal is located on a busy intersection within a designated neighbourhood centre. The development will be visible from the surrounding street system. The proposal is a fresh, contemporary building that will rejuvenate the small neighbourhood centre. The addition of residential accommodation on this site is considered a positive outcome in terms of passive surveillance of both street frontages and activation of the centre through more residential activity during and outside of business hours. The external appearance of the new development is modern, varied and interesting. The palette of materials, colors and finishes, together with the strong podium and recessed upper level ensure that the visual impact when viewed from surrounding public places is not intrusive.

**5.2.2 Clause 4.6(3)(b) – There are sufficient environmental planning grounds to justify contravening the development standard**

As set out in Four2Five, when a development standard is sought to be varied, there is an onus on the Applicant to demonstrate that there are “*sufficient environmental planning grounds*” such that compliance with the development standard is unreasonable or

unnecessary and these environmental planning grounds must be particular to the circumstances of the proposed development rather than grounds that could reasonably apply a similar development on any other land.

Preston CJ clarified in *Micaul and Initial Action*, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.

As outlined in Section 5.2.1, there is considered to be a lack of adverse amenity impacts arising from the proposal's non compliance, as it will not result in adverse overshadowing, overlooking, view, acoustic, privacy or traffic impacts.

The height variation along Alfred Street varies between 1.27m – 2.0m and is well setback from the building alignment below making the upper level and variation not readily apparent or offensive on the streetscape when viewed from surrounding road network or public places.

It is also noted that some of the height variation is attributable to the need for raising the floor level to cater for a localized flood planning.

The consequence of strict compliance in the circumstances would necessitate the loss of an entire residential floor which would make the development economically unviable. The success of the development dependent on the additional level (i.e the variation) is important in terms of the positive social and economic impacts that it will have on the viability and sustainability of the local village, providing necessary active retail uses and additional residential population in the form of various housing mix contributing to the atmosphere and also providing additional security and surveillance.

In summary, the contravention of the HOB development standard is considered to have positive social and economic outcomes for the Site and the locality and positive residential amenity outcomes for existing residences and businesses in the immediate area, whilst minimising adverse amenity impacts to an acceptable level.

**5.3 Step 3 - Pursuant to cl4.6(4)(b), is the consent authority satisfied that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone?**

As outlined in Section 5.2.1, the Proposal achieves and is therefore consistent with the relevant objectives of the height of buildings development standard.

However, the consent authority must also be satisfied that the development will be consistent with the objectives of the B1 Neighbourhood Centre Zone which are expressed in the Land Use Table to cl2.3 of the LEP as follows:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

The Proposal is consistent with the objectives of the B1 Zone for the following reasons:

The first objective is to provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood. The development includes 4 retail outlets and 2 commercial premises. Each is sized to focus on small community services and the needs of locals. The objective is achieved.

The second objective is to ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians. The proposal seeks to maintain and improve the activation of the corner of the Narraweena Neighbourhood Centre. Both street frontages have active frontages, improved pedestrian access is provided (including disabled access to the ground floor premises), a continuous awning is to be provided along each street frontage for the comfort of pedestrians, street trees are to be retained, the upper level units will provide passive surveillance of both street frontages thereby achieving CPTED of the area. The objective is achieved.

The third objective is to minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses. The design, layout, materials and finishes of the building have taken into account the adjoining and adjacent landuses, addressing each element of amenity – privacy, overlooking, overshadowing to a satisfactory level.

Accordingly, it follows that the proposed development is in the public interest because it is consistent with the objectives of the HOB development standard under the WLEP 2011 and the objectives of the B1 Neighbourhood Centre Zone under the WLEP 2011.

#### 5.4 Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the SILEP or SEPP 1 subject to certain conditions.

As WLEP 2011 adopts cl4.6 of the SILEP and the conditions of the Notice are not relevant in this instance, the consent authority for the Proposal may assume concurrence in respect of the variation requested to the HOB development standard under the LEP.

In addition, the Court has power to grant development consent to the proposed development even though it contravenes the HOB development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

#### 5.5 Step 5 - Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

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

Furthermore, in *Initial Action*, Preston CJ clarified that, notwithstanding the Court's powers under s39(6) of the Court Act, the Court should still consider the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard:

Accordingly, the proposed contravention of the HOB development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular Site and this design is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 5.3, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. In this regard it should be noted that the dedication of land for public purpose including carparking and streetscape improvements need to be considered as part of the benefits.

The proposed development contravenes the Height of Building development standard under cl4.3 of Warringah LEP 2011.

The height of building control under cl4.3 of the WLEP is a development standard and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.3 of the WLEP 2011 and is consistent with the relevant objectives of the B1 Neighbourhood Centre Zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposed shop top housing development will not result in adverse environmental harm in that the amenity of neighbouring properties will be reasonably maintained and there will be no adverse impacts on the landscape or scenic amenity of the locality;
- There are direct social and economic benefits for the property owner and the local residents and businesses with new shops replacing old, tired premises, activation of the street frontages, an attractive contemporary development, increased passive surveillance and the opportunity for small businesses in the area to occupy new, fresh and modern premises.

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the HOB development standard including:

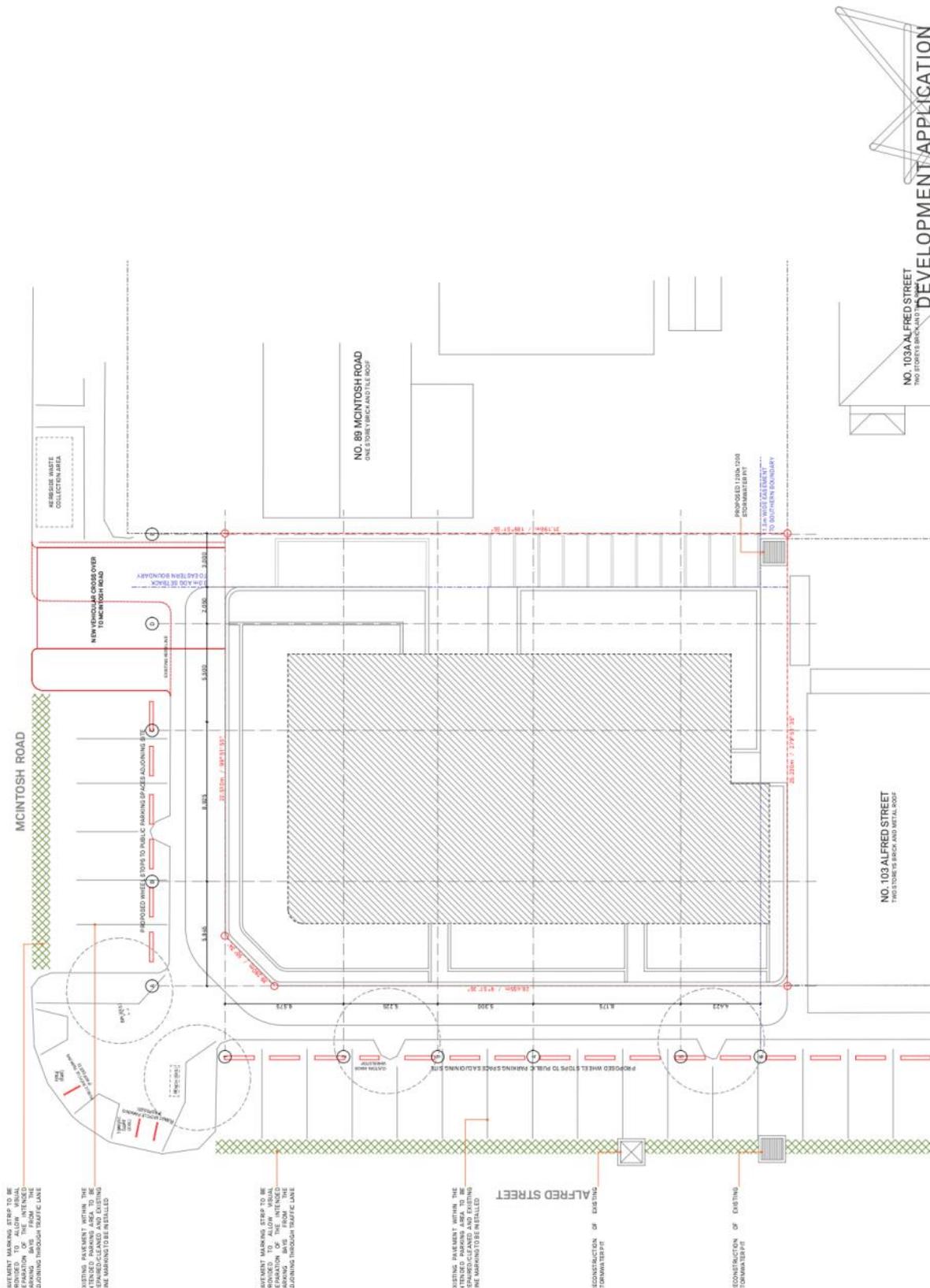
- a lack of adverse environmental amenity impacts;
- providing a variety of unit types and sizes at the upper levels and allowing for generous setbacks;
- constructing a new contemporary building on a corner site that will enhance the built form and appearance of both streetscapes;
- providing a strongly defined base so that the building reads as a two storey podium to the street frontages consistent with and compatible with the existing and desired future character;
- the provision of high quality residential living within the small centre which will increase surveillance and perceived safety in the area.
- provision of basement parking for residents and commercial premises – not seeking to consume on-street areas for the development (except as existing retail credits).
- allowing for streetscape improvement works and on street carparking to benefit the general public

- contributing to both the social and economic viability of the centre to create a village atmosphere as per Council's desired planning outcomes

Accordingly, this written request can be relied upon by the consent authority in accordance with cl4.6 of the LEP to grant development consent to the proposed development notwithstanding the contravention of the development standard.

Joe Vescio

12.08.19



91M

NO. 103 ALFRED STREET  
THIS SITE IS BRICK AND METAL ROOF

NO. 89 MCINTOSH ROAD  
ONES FOR BRICK AND TILE ROOF

NO. 103 ALFRED STREET  
THIS SITE IS BRICK AND METAL ROOF

ARCHITECT  
P: + 61 2 9818 0777  
F: + 61 2 9819 0776  
STUDIO 5, 505 PASCALL ROAD  
NEWCASTLE NSW 2260  
WWW.BENSONMCCORMACK.COM

ISSUE  
A

PROJECT NO. 1816A  
DRAWING NO. A-0006  
DRAWING TITLE: SITE PLAN

SCALE 1:200 @ A3

PROJECT NORTH

PROJECT DETAILS  
91M  
81-93 MCINTOSH ROAD  
NARRARA NSW 2599

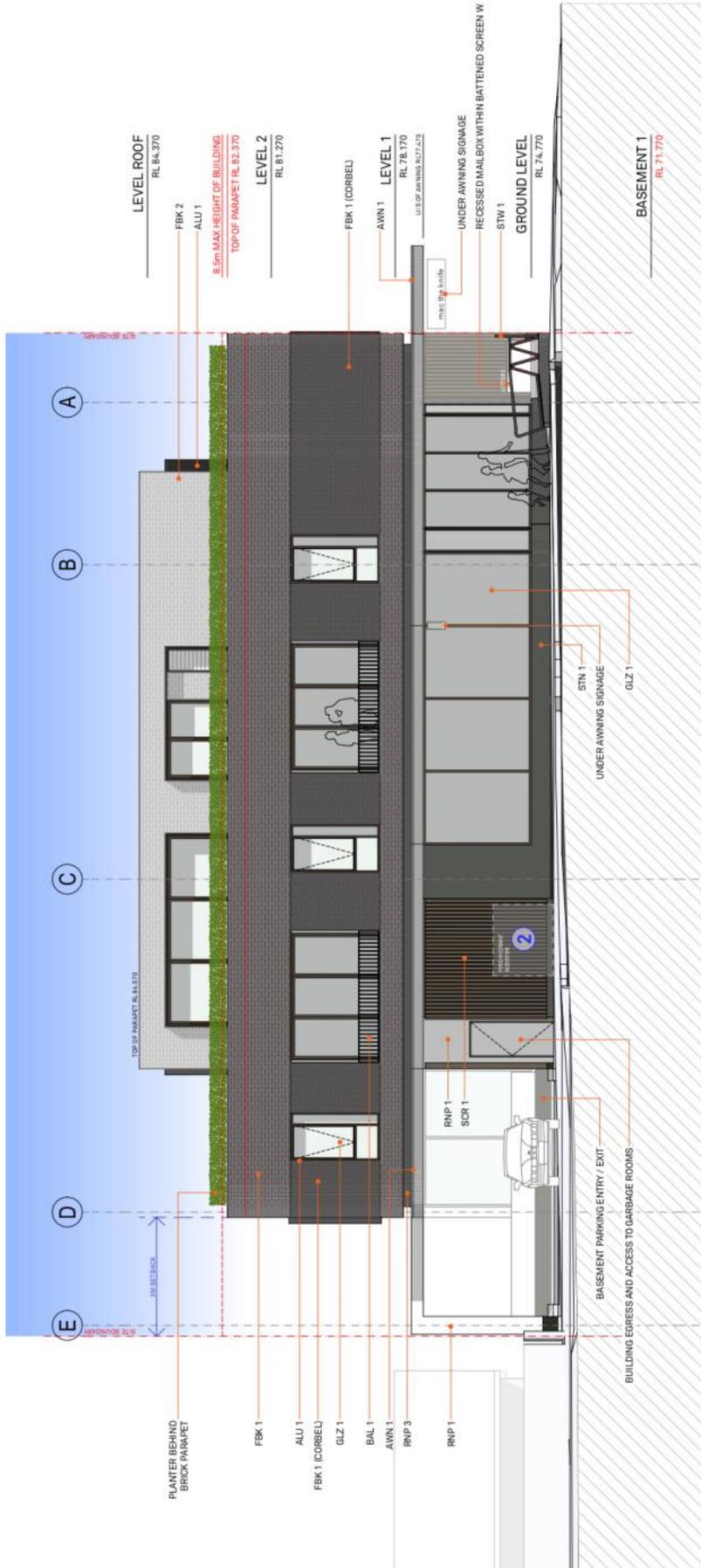
CLIENT  
DREAMBUILD  
8/37A KING STREET  
NEWCASTLE NSW 2267

REV DATE ISSUE  
A SEPT 18/18 ISSUE 01

NOTES  
This drawing is issued under the condition that it is not to be used for any other project without the written consent of Benson McCormack Architects.  
DO NOT SCALE DRAWINGS.

DEVELOPMENT APPLICATION

BENSON  
MCCORMACK  
ARCHITECTURE



**SCHEDULE OF CHANGES**  
2. PROPOSED LOCATION OF FIRE HYDRANT BOOSTER



91M

**NOTES**  
This drawing is issued under the conditions of the contract and is not to be used for any unauthorised purposes without the written consent of Benson McCormack Architects.  
DO NOT SCALE DRAWINGS.

REV	DATE	ISSUE
A	09/18	DA ISSUE 01
B	02/19	AMENDMENTS AS NOTED
C	04/19	AMENDMENTS AS NOTED
		AND RESSUED TO COUNCIL

**CLIENT**  
DREAMBUILD  
6/37A KING  
STREET  
WINDSBY  
NSW 2027

**PROJECT DETAILS**  
91M  
81-93 MCINTOSH ROAD  
NARRARA NSW 2599

**SCALE**  
1:100 @ A3

**PROJECT NO.**  
1816A

**DRAWING NO.**  
A-0201

**DRAWING**  
MCINTOSH RD ELEVATION

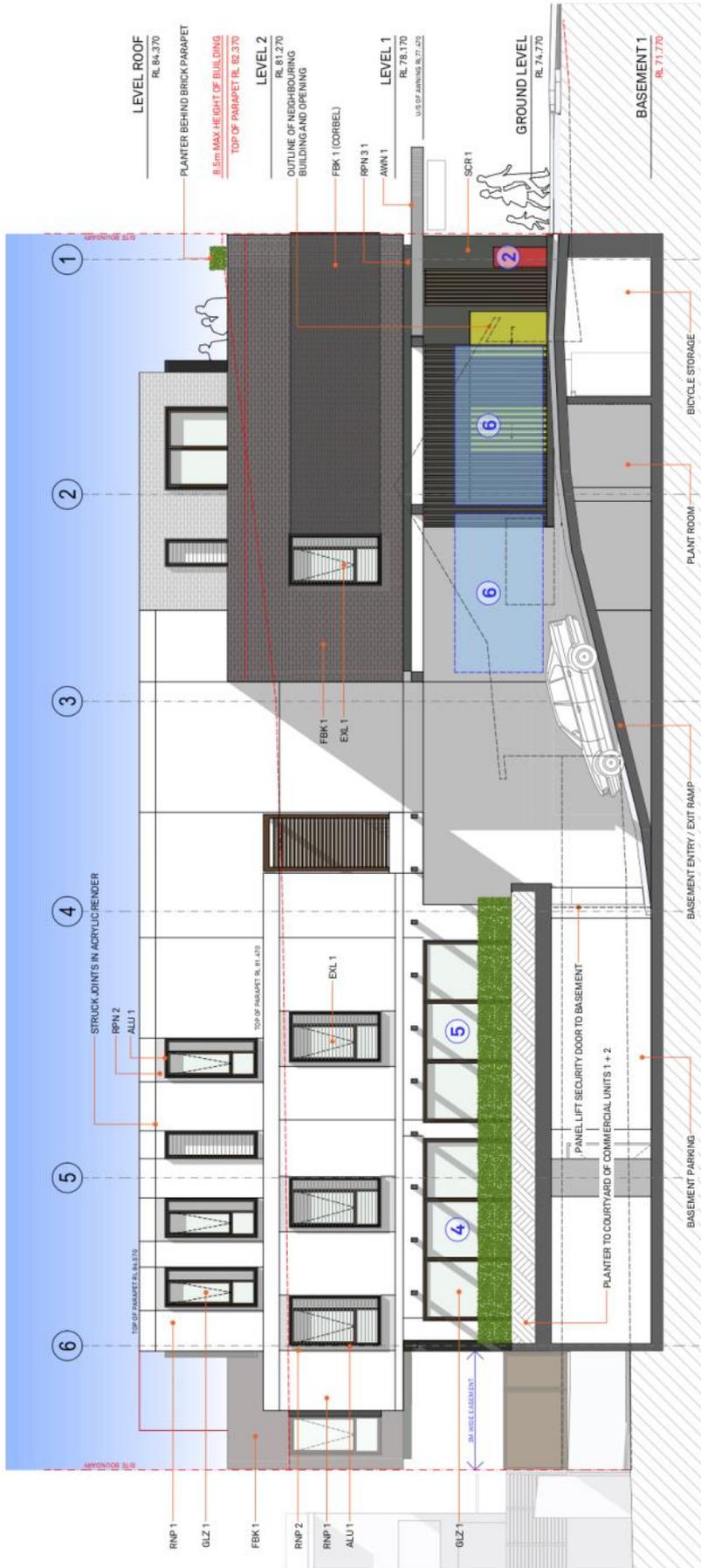
**ISSUE**  
C

**DEVELOPMENT APPLICATION**

**ARCHITECT**  
BENSON  
McCORMACK  
ARCHITECTURE

**ARCHITECT**  
P: + 61 2 9818 0777  
F: + 61 2 9818 0778  
STUDIO 5, 505 PACEMAN RD  
NARRARA NSW 2599  
WWW.BENSONMCCORMACK.COM.AU





**SCHEDULE OF CHANGES**

2. PROPOSED LOCATION OF FIRE HYDRANT BOOSTER
4. PROPOSED AREA OF RETAIL 04
5. PROPOSED AREA OF COM1 AND REMOVAL OF COM 2
6. PROPOSED POLYCARBONATE ACOUSTIC BARRIER AT 2.2M (HEIGHT) x 4M (LENGTH) x 10MM (THICK) TO ACOUSTIC CONSULTANT SPECIFICATION



91M

REV	DATE	ISSUE
A	09/18	DA ISSUE 01
B	02/19	AMENDMENTS AS NOTED
C	04/19	AMENDMENTS AS NOTED

DO NOT SCALE DRAWINGS.

<b>CLIENT</b>	<b>PROJECT DETAILS</b>	<b>PROJECT NORTH</b>
DREAMBUILD 6/37A KING STREET, WILSONSBY NSW 2027	91M 81-93 MCINTOSH ROAD NARRARAENA NSW 2599	PROJECT NORTH

<b>SCALE</b>	<b>PROJECT NO.</b>	<b>DRAWING NO.</b>	<b>DRAWING</b>
1:100 @ A3	1816A	A-0203	EAST ELEVATION

<b>ISSUE</b>	<b>ARCHITECT</b>
C	P -+ 61 2 8818 0077 F -+ 61 2 8819 0776 STUDIO 5, 505 PASCALL RD MARRICKVILLE NSW 2122

DEVELOPMENT APPLICATION

**BENSON  
McCORMACK  
ARCHITECTURE**





## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/0135
----------------------------	-------------

<b>Responsible Officer:</b>	Daniel Milliken
<b>Land to be developed (Address):</b>	Lot 3 DP 397714, 18 Inman Road CROMER NSW 2099 Lot 6 DP 201553, 18 Inman Road CROMER NSW 2099 Lot 7 DP 201553, 18 Inman Road CROMER NSW 2099 Lot 27 DP 28882, 69 Middleton Road CROMER NSW 2099 Lot 9 DP 201553, 6 Villiers Place CROMER NSW 2099 Lot 10 DP 201553, 7 Villiers Place CROMER NSW 2099 Lot 8 DP 201553, 4 Villiers Place CROMER NSW 2099
<b>Proposed Development:</b>	Construction of additional warehouse units to an approved Industrial Warehouse Development (DA2018/1300)
<b>Zoning:</b>	Warringah LEP2011 - Land zoned IN1 General Industrial Warringah LEP2011 - Land zoned IN1 General Industrial
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	Yes
<b>Owner:</b>	Cromer Central Pty Ltd
<b>Applicant:</b>	Trend Living Pty Ltd

<b>Application lodged:</b>	15/02/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Industrial
<b>Notified:</b>	06/03/2019 to 22/03/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	7
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 61.27%
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 2,450,000.00
---------------------------------	-----------------

### EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application No. DA2019/0135 for the construction of additional warehouse units, an increase in the height of existing approved warehouse units and other minor works to an approved Industrial Warehouse Development located at Nos. No. 18 Inman Road, No. 69 Middleton Road and Nos. 4, 6 and 7 Villiers Place, Cromer.

The subject site is zoned IN1 General Industrial under the provisions of Warringah Local Environmental Plan 2011 and the proposed development is permissible with consent.

The public exhibition period generated seven (7) submissions, raising concerns around; height, traffic impacts and safety, noise and light pollution, trees, construction impacts and view loss. These matters have been addressed within the report, and some have warranted including them as reasons for refusal of the application.

The site has a long and complicated history. However, the relevant matters are that the previous development application (DA2018/1300) on the subject site also included the works which are the subject of this current application, in a very similar form to the current design. During the assessment of that application, the specific works were found to be problematic and the Applicant agreed to delete the works from the application. The applicant submitted amended plans for the balance of the proposed development and the application was subsequently approved by the Northern Beaches Local Planning Panel on 19 December 2018.

The proposed development exceeds the 11.0m height limit by up to 6.74m. The proposal is therefore reliant upon a variation under Clause 4.6 of WLEP 2011 to the maximum building height development standard prescribed by clause 4.3 of WLEP 2011, with a maximum variation of 61.27%.

The applicant's written request to vary this standard has not satisfactorily addressed the matters required, and overall, the consent authority cannot be satisfied that the relevant matters of clause 4.6 of WLEP 2011 have been properly addressed and that the variation to the development standard is acceptable and worthy of support. This has formed a reason for refusal of the application.

The proposed development is an over-development of the site, it significantly exceeds the height of buildings standard, is not compatible with other buildings within the industrial zone, results in unacceptable impacts on surrounding residential properties and would set an undesirable precedent in the IN1 General Industrial zone.

As such, the proposal has been found to be inconsistent with the Aims of The Plan of the WLEP 2011, the objectives of the IN1 General Industrial zone, the provisions of Clause 4.6 of the WLEP 2011, the Objectives of the Warringah Development Control Plan 2011 and the provisions of clause D9 Building Bulk of the WDCP 2011. In this regard, approval of the development is not in the public interest.

The application has been referred to the Northern Beaches Local Planning Panel for determination in accordance with the direction issued by the Minister for Planning on 23 February 2018, as the application seeks consent for an industrial development that involves a variation to the building height development standard greater than 10%.

## ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report)

taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

### **SUMMARY OF ASSESSMENT ISSUES**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Local Environmental Plan 2011 - Zone IN1 General Industrial  
 Warringah Development Control Plan - A.5 Objectives  
 Warringah Development Control Plan - C3 Parking Facilities  
 Warringah Development Control Plan - D3 Noise  
 Warringah Development Control Plan - D7 Views  
 Warringah Development Control Plan - D9 Building Bulk

### **SITE DESCRIPTION**

<b>Property Description:</b>	<p>Lot 3 DP 397714 , 18 Inman Road CROMER NSW 2099          Lot 6 DP 201553 , 18 Inman Road CROMER NSW 2099          Lot 7 DP 201553 , 18 Inman Road CROMER NSW 2099          Lot 27 DP 28882 , 69 Middleton Road CROMER NSW 2099          Lot 9 DP 201553 , 6 Villiers Place CROMER NSW 2099          Lot 10 DP 201553 , 7 Villiers Place CROMER NSW 2099          Lot 8 DP 201553 , 4 Villiers Place CROMER NSW 2099</p>
<b>Detailed Site Description:</b>	<p>The site comprises of seven (7) allotments located between Middleton Road, Inman Road and Villiers Place. The site has a combined surveyed area of 11,626.8m<sup>2</sup>.</p> <p>The site has three street frontages:</p> <ul style="list-style-type: none"> <li>• Middleton Road of approximately 13m in length;</li> <li>• Inman Road of approximately 22m in length;</li> <li>• Villiers Place of approximately 69m in length.</li> </ul> <p>The site experiences undulating topography that can be best described through the following RLs:</p> <ul style="list-style-type: none"> <li>• RL 22.34 (Middleton Road entrance)</li> <li>• RL 33.91 (north-western corner of 69 Middleton Road)</li> </ul>

- RL 43.16 (eastern-most corner of 69 Middleton Road)
- RL 28.42 (northern Villiers Place entrance)
- RL 27.51 (western Villiers Place entrance)

Existing on the northern portion of the site is an under-construction industrial warehouse development. The remaining parts of the site are mostly cleared with the previous buildings having been demolished. Large retaining structures border the northern perimeter of 69 Middleton Road.

The surrounding development consists of industrial buildings to the south and west, and residential properties to the north and east. There are two public reserves to the west and north of the site, and a public stairway running along the western boundary.

Map:



## SITE HISTORY

### DA2007/0974

Development application for demolition works and construction of an industrial/warehouse building containing 54 units with ancillary office spaces and car parking on a similar site, comprising of 69 Middleton Road and 6 Villiers Place.

The application was approved by the Warringah Development Assessment Panel (WDAP) on 27 August 2008. The consent has been activated and has not been surrendered, However, the surrender of this consent has been requested at the time of writing this report.

### MOD2008/0299

Application to amend conditions of consent of the approved development was approved on 10

December 2008.

#### **DA2017/0256**

A development application was lodged with Council on 23 March 2017 for construction of building comprising of storage units on LG and 25 warehouse units on upper floor.

On 9 May 2017, the applicant advised Council that they had commenced Class 1 proceedings of "deemed refusal" with the Land and Environment Court of New South Wales (LEC) on 5 May 2017 (four days after the cessation of the notification period).

Council's Statement of Facts and Contentions (SOFC) was filed on 30 May 2017 which concluded that all issues pertaining to the development application are engineering related and could be resolved via condition or additional information.

Following the filing of the SOFC, a number of requests for additional information were sent to the applicant, with each piece of information provided by the Applicant being unsatisfactory to Council's Development Engineers.

A Section 34 Conference was held on 11 September 2017, which did not resolve the engineering issues. In accordance with the directions made at the Section 34 Conference, Council provided the applicant with a set of draft conditions on 25 September 2017.

#### **Revised Concept for DA2017/0256**

On 16 October 2017, by way of email, the applicant provided a letter and a revised concept proposal which added an additional two storeys (warehouse and mezzanine) atop the proposed development. The two additional storeys comprised of an additional 18 warehouse units and associated car parking. This revised scheme had not been the subject of any previous discussion with Council.

Council met with the applicant on 9 November 2017 to discuss the concept plan in greater detail (beyond the conceptual nature of what had been provided). Following the meeting, the applicant provided additional plans to Council on 6 December 2017. The plans were insufficient for a detailed assessment as they did not include adequate drawings (i.e. site plan, sections or elevations).

Given the significant changes that were proposed as a part of the new concept compared to the original development, Council re-notified the application on 16 February 2018. Four (4) additional submissions were received objecting to the proposal.

By way of a Conciliation Conference on 4 May 2018, the application was determined by way of approval by the LEC. A condition of consent was included in the Consent issued by the Court which required Development Consent No. DA2007/0974 to be surrendered.

DA2017/0256 was surrendered on 14 August 2019.

#### **DA2018/1300**

This DA was lodged with Council on 3 August 2018 and sought consent for demolition works, excavation, stormwater infrastructure works and the construction of a mixed use building containing storage premises and industrial warehouse units with associated car parking, signage, site amalgamation and stratum subdivision.

On 25 September 2018, the applicant commenced Class 1 proceedings in relation to the Deemed Refusal of the application with the LEC.

Following a preliminary review of the development application, Council wrote to the applicant on 6

November 2018, requesting that the application be withdrawn or amended to resolve concerns pertaining to the proposed "**central warehouse building**" (Upper Ground Floor Level, Units 38 to 43).

Discussions held between the Applicant and Council resolved that the central warehouse building on the upper level of the development was to be deleted in its entirety and replaced with car parking and landscaping.

The application was subsequently approved by the Northern Beaches Local Planning Panel on 19 December 2018.

This is now the operational consent for the subject site.

#### **DA2019/0135 (Current Development Application)**

The current application now seeks consent for the "**central warehouse building**" (along with other changes and additions) that was deleted from the proposed development under DA2018/1300.

On 2 April 2019, the applicant filed Class 1 proceedings in relation to the Deemed Refusal of the application with the LEC (the application was 46 days old at the time the appeal was lodged). This LEC process is on-going.

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

The proposal includes:

- The construction of six (6) new industrial warehouse units with mezzanine levels at the upper ground floor level;
- The addition of mezzanine levels in nine (9) of the approved industrial warehouse units at the upper ground floor;
- A change to the building identification sign above the Villiers Street entry to reduce the height of the signage.

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

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

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any	Warringah Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration'	Comments
development control plan	
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 an industrial warehouse development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	The proposal does not satisfy the objectives of the Height of Buildings Development Standard or the IN1 General Industrial zone. The approval of such a significant variation to the Height of buildings Development Standard would result in an undesirable precedent and an argument that the development standard had been abandoned. The non-compliant height will directly result in impacts to surrounding residential properties

Section 4.15 Matters for Consideration'	Comments
	<p>and the public domain. The proposal is an over-development of the site. Compliance with the Height of buildings Development Standard is not considered to be either unreasonable or unnecessary in these circumstances.</p> <p>This assessment has found the proposal to be contrary to the relevant requirement(s) of the WLEP 2011 and WDCP will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.</p>

#### **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

#### **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

#### **NOTIFICATION & SUBMISSIONS RECEIVED**

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

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Mr Steven Keith Ball	102 Parkes Road COLLAROY PLATEAU NSW 2097
Alison Clinch	3 Orlando Road CROMER NSW 2099
Mrs Jennifer Gail Brien	90 Parkes Road COLLAROY PLATEAU NSW 2097
Mrs Michelle Therese Ball	102 Parkes Road COLLAROY PLATEAU NSW 2097
Mr Paolo Salotto	24 Gilmore Avenue COLLAROY PLATEAU NSW 2097
Mrs Helen Marie Ward	13 Villiers Place CROMER NSW 2099
Mr Stephen John Brindle	11 Villiers Place CROMER NSW 2099

The following issues were raised in the submissions:

- **Height**
- **Traffic impacts and safety**
- **Noise and light pollution**
- **Trees**
- **Construction impacts**
- **View loss**

The matters raised within the submissions are addressed as follows:

- **Height**

The submissions raised concerns that the height of the proposal is unreasonable and would result in additional visual impact and bulk when viewed from the surrounding residential properties.

Comment:

It is agreed that the height of the proposal is unreasonable and has not been adequately justified and this has formed a reason for refusal in the recommendation.

- **Traffic impacts and safety**

The submissions raised concerns that the increase in traffic from the additional warehouse units would result in traffic impacts to the local roads, safety impacts for cars and pedestrians and an increased demand for on-street parking.

Comment:

The additional warehouse space will only generate approximately 16 additional vehicle trips per hour during the peak periods and less outside these times. This increase is not considered to be an unreasonable burden on the local roads.

As it must be assumed that drivers will obey traffic laws and parking restrictions, these additional trips are not expected to increase the safety risk to other vehicles or pedestrians.

The parking issue has been discussed in detail under Part C3 Parking Facilities in this report. In summary, the proposal would provide sufficient off-street parking.

This matter does not form a reason for refusal of the application.

- **Noise and light pollution**

The submissions raised concerns that the additional warehouse units will result in unreasonable noise and light pollution.

Comment:

It is agreed that the additional warehouse units will result in an increase in noise and lighting pollution occurring from the upper level of the development.

Council's Environmental Health Officers reviewed the Noise Report, raising issues with how heavy vehicles were dealt with.

The applicant submitted a revised Acoustic Assessment (dated 12 April 2019) and a Site Management Plan (dated 10 April 2019). The Acoustic Assessment addresses heavy vehicles in its conclusion and the Site Management Plan includes the following:

*"No deliveries, loading or unloading associated with the warehouse units, or waste collection for the entire premises, is to take place between 7pm and 7am.*

*Notwithstanding the above hours, heavy vehicles must not access the site after 6pm."*

And

*"In order to provide security to the development and enforce the operating hours, particularly the use of "heavy" vehicles, CCTV cameras are to be installed throughout the development."*

Whilst it is acknowledged that this will not negate all impacts, Council is satisfied that the proposal, if approved, would be able to effectively manage noise emissions and light pollution so that they are not unreasonable.

This matter does not form a reason for refusal of the application.

- **Tree Loss**

The submissions raised concerns that the existing construction has resulted in the loss of trees around the escarpment and that these trees have not been replaced.

Comment:

This is a matter that cannot be dealt with under this current application as the proposed works do not involve the escarpment or come close enough to impact any trees.

The complaints regarding trees have been referred to Council's Compliance Team and are under investigation.

This matter does not form a reason for refusal of the application.

- **Construction impacts**

The submissions raised concerns that the impacts the residents have already been experiencing during the construction of this development (over the last two years) will continue and get worse as the building gets higher.

Comment:

It is acknowledged that there have been numerous complaints made against the on-going construction of the already approved development. Many of these complaints have led to enforcement action by Council.

If this proposal is approved, appropriate conditions around construction impacts will be imposed and any complaints will be investigated.

This matter, while clearly distressing for the surrounding residents, cannot form a reason for refusal of the application.

- **View loss**

The submissions raised concerns that the proposal would result in the unreasonable loss of views.

Comment:

This matter has been discussed in detail under Part D7 Views, below in this report. In summary, the loss of views, while relatively minor, are a direct result of the non-compliance with the height of buildings development standard. Therefore, view impacts do form a reason for refusal in the recommendation.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application generally proposes the construction of six (6) new warehouse units with mezzanine levels as well as the addition of mezzanine levels within nine (9) warehouse units on the upper ground level of the Building as approved under Consent DA2018/1300. The building can comply with the National Construction Code and therefore Building Certification Team has No objections subject to conditions</p>
Environmental Health (Industrial)	<p><u>General Comments</u></p> <p>This DA seeks consent from Northern Beaches Council to amend the approved development under DA-2018/1300 as follows :</p> <ul style="list-style-type: none"> <li>• Construction of six (6) new industrial warehouse units with mezzanine levels at the upper ground floor level;</li> <li>• Additional of mezzanine levels in nine (9) of the approved industrial warehouse units at the upper ground floor;</li> <li>• Amended building identification sign above the Villiers Street entry to reduce the width (vertically) of the signage.</li> </ul> <p>The application has been considered in its own right although it is acknowledge that it is in conjunction with a previous DA which has been approved subject to conditions.</p> <p>The SEE is by City Plan February 2019.</p> <p>Noise and dust from excavation works has been addressed in a construction management plan this plan should/can form part of conditions of approval.</p> <p>Noise implications are potentially significant due to the natural amphitheater and residents above and have been addressed in a comprehensive acoustic assessment by Renzo Tonin and Associates 16 Jan 2019.</p> <p>As the proposal is in the future, the assessment is based on predictions only and an extensive list of recommendations has been provided, however it is noted that one comment within the report on access to the site by heavy vehicles past 6pm leading to failure to comply with noise nuisance criteria, is to be addressed in a management plan (not observed).</p>

Internal Referral Body	Comments
	<p>The acoustic assessment's final recommendations do not include further reference to this issue. A management plan has not been submitted at this time and it is not clear how heavy vehicles (and what definition determines a heavy vehicle) is to be effectively restricted on site; whether this will be signage or some physical supervised barrier, number plate recognition, this needs to be resolved before any approval is given as simple signage with multiple users may not be adequate.</p> <p>Based on similar vehicle noise problems elsewhere in this geographic area, signage may not be sufficient to prevent heavy vehicles from entering or leaving the site and hence exceeding noise limits and complaints to Council left to enforce.</p> <p>Therefore details of the site management plan specifically relating to heavy vehicles (and defining heavy vehicles) needs to be robust and submitted prior to any approval been granted.</p> <p>With regard to other plant in a equipment noise, this can be dealt with using the acoustic assessment as a basis of conditions with a satisfactory outcome. Post construction noise assessment review will be required. Individual Warehouses will require separate DA's and the Renzo Tonin and Associates 16 Jan 2019 acoustic assessment will be the reference report.</p> <p>Recommendation - REFUSAL subject to additional information</p> <p><u>Planners comment:</u></p> <p>The applicant submitted a revised Acoustic Assessment (dated 12 April 2019) and a Site Management Plan (dated 10 April 2019). The Acoustic Assessment addresses heavy vehicles in its conclusion and the Site Management Plan includes the following:</p> <p><i>"No deliveries, loading or unloading associated with the warehouse units, or waste collection for the entire premises, is to take place between 7pm and 7am.</i></p> <p><i>Notwithstanding the above hours, heavy vehicles must not access the site after 6pm."</i></p> <p>And</p> <p><i>"In order to provide security to the development and enforce the operating hours, particularly the use of "heavy" vehicles, CCTV cameras are to be installed throughout the development."</i></p> <p>In this regard, sufficient information has been provided for Council to be satisfied that the proposal, if approved, would be able to effectively manage noise emissions.</p>
NECC (Development	

Internal Referral Body	Comments
Engineering)	<p><u>Note to Planner:</u></p> <p>The proposed development relies upon the final occupation of the existing approved development under DA2018/1300. Please ensure appropriate conditions are applied for the timing of occupation of the current proposed development.</p> <p>No objections are raised to the proposed development, subject to conditions.</p>
Strategic and Place Planning (Urban Design)	<p>The site is located at the base of a hilly slope overlooked by residential properties on the higher part of the slope. DA2018/1300 was granted consent in December 2018 allowing a maximum RL41.20 to one of the building (Warehouse 50 and 51) which is located on the higher part of the hill slope next to development entry point from Villiers Place. The current proposal seeks to put additional built forms on the roof deck of the approved DA to align with RL41.20 despite being located on the lower part of the hill slope.</p> <p>The proposed additional bulk was previously part of DA2018/1300 but was taken away to achieve a more complying built form. The applicant is now seeking to have the additional bulk added to the approved built form.</p> <p>The proposal cannot be supported for the following reasons:</p> <ol style="list-style-type: none"> <li>1. The objectives of the WLEP 2011 building height development standard are set out below: <ol style="list-style-type: none"> <li>a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</li> <li>b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,</li> <li>c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,</li> <li>d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.</li> </ol> </li> </ol> <p>The proposal exceeds the 11m building height by up to 6.74m. The breached building bulk is visible from Middleton Road and Villiers Place. The proposal of landscaping on top of the breached area does not help in minimising the scale of the development.</p> <p>The biggest building bulk breach is created from the proposed addition of the double-storey warehouses. This exceeded bulk is most visible when viewed from the public staircase on the western boundary as illustrated from the 'before and after' photo montages supplied by the applicant.</p> <p>The additional building bulk has blocked out distant view affecting the scenic quality experience for users of the public stairs. The immediate adjacent houses' view corridors are also partially affected. As such, the objectives of the standard have not been complied with.</p>

Internal Referral Body	Comments
	<p>2. The proposed additional bulk will be visible from both Villiers Place and Middleton Road. The 11m building height plane following the natural hill slope is to ensure development built forms will step down the slope hugging the terrain. This intention has not been achieved. The proposal will also result in built forms which are taller than the adjacent developments.</p> <p>3. The proposal will result in 6 additional double-storey warehouse units and 9 additional mezzanine-storeys all breaching the 11m building height plane which is meant to limit the amount of development using envelope control. These will result in an overdevelopment of the site setting an undesirable precedent.</p>
Traffic Engineer	<p>The proposal is for an additional 1,318m<sup>2</sup> GFA of warehouse space above the previously approved DA (DA2018/1300). The proposal will also reduce the parking on-site by 20 spaces from 151 to 131 parking spaces. The access driveways will remain unchanged.</p> <p>Reviewing the SOEE and traffic reports, there is an inconsistency in the proposed warehouse units GFA in the two reports. It should be noted the parking assessment has been undertaken taking the SOEE report into consideration.</p> <p>Given the nature of the industrial use in the surrounding area, the proposal additional 16 vehicle trips per peak hour is not considered to have significant adverse impact on the surrounding road network.</p> <p>The self-storage component of the proposed development, which remains unchanged, was approved in the previous DA with no parking provision.</p> <p>Applying the Warringah DCP parking rate, the proposed 11,612m<sup>2</sup> GFA will require the provision of 158 parking spaces (an additional 7 spaces to the previously approved 151).</p> <p>As the proposed development includes the removal of 20 parking spaces, the proposed shortfall of 27 parking spaces is not supported.</p> <p><u>Planners comment:</u></p> <p><i>The Self Storage Association of Australia (SSAA) commissioned a traffic and parking study of self-storage facilities around Australia to address the lack of specific guidelines used by Council and developers to determine an appropriate number of car parking spaces for self-storage units. The study (<i>Self-Storage Facility Traffic and Parking Study</i> prepared by <i>Aurecon Australia</i> dated 2009) determines that, for the type of development being proposed, there is no actual car parking requirement for vehicles.</i></p> <p>The study determines that an appropriate provision of car parking is 5 spaces for facilities with an area between 3,000m<sup>2</sup> and 6,000m<sup>2</sup>.</p> <p>The proposed development provides no car parking facilities in the</p>

Internal Referral Body	Comments
	<p>lower ground level self storage unit premises, and is therefore deficient of the comparison by 5 spaces.</p> <p>Despite being numerically non-compliant with the required number of car parking spaces, the application is considered satisfactory and will not result in adverse traffic and parking implications both in the facility itself and on surrounding roads.</p> <p>Given the use within the premise as self-storage, it is anticipated (in the Self-Storage Facility Traffic and Parking Study) that vehicles will park directly in front of their allocated storage unit for loading and unloading purposes, thus negating the functionality and likely usage of dedicated car parking spaces elsewhere on the site. Further, the concept of loading and unloading directly in-front of the allocated unit presents a safer pedestrian environment, rather than manoeuvring many items to and from dedicated car parking spaces to the storage unit.</p> <p>The aisles of the development are 5.8m in width which is sufficient to allow the potential for a parked car to be passed by another car. Further to this, in the event that a car is blocking the driveway (either by size or as a result of bad parking), there are alternate exits (aisles) throughout the development for vehicles to traverse through, and the likely length of trips to the development is not anticipated to be so great that congestion will become an issue internally.</p> <p>As such, the provision of car parking for the subject development is considered satisfactory.</p>

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

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

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

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

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

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

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

The proposed works are located entirely above already approved structures and will not involve any

earthworks or other disturbance of the site.

In addition, this matter was extensively dealt with under DA2018/1300.

Based on the reports submitted for DA2018/1300, Council is satisfied that the land can be made suitable for the purpose for which the development is proposed to be carried out.

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

### SEPP (Infrastructure) 2007

#### Ausgrid

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

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

#### Comment:

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

### Warringah Local Environmental Plan 2011

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	17.74m	61.27%	No

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No

Clause	Compliance with Requirements
	(see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

#### **Zone IN1 General Industrial**

The underlying objectives of the IN1 General Industrial zone are addressed as follows:

- *To provide a wide range of industrial and warehouse land uses.*

Comment:

The proposal will provide additional industrial and warehouse uses and therefore meets this objective.

- *To encourage employment opportunities.*

Comment:

The proposal will provide additional employment opportunities and therefore meets this objective.

- *To minimise any adverse effect of industry on other land uses.*

Comment:

The proposal will result in additional adverse impacts on the residential properties to the north and east. The surrounding residential properties will be exposed to additional visual impacts, additional noise and additional light spill. These impacts have not been minimised, as evidenced by the excessive height and visual impact of the proposal.

The development does not meet this objective.

- *To support and protect industrial land for industrial uses.*

Comment:

The proposal is for an industrial use on industrial land and therefore meets this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

Comment:

The proposal does not limit other land uses on other sites and therefore meets this objective.

- *To enable a range of compatible community and leisure uses.*

Comment:

The proposal does not limit community and leisure uses on other sites and therefore meets this objective.

- *To maintain the industrial character of the land in landscaped settings.*

Comment:

The development provides very minimal landscaping. However, the proposed works are located entirely within the already approved footprint and will not result in a reduction of deep soil planting. Some vegetation in planter boxes will be lost, however, this is not considered to result in the proposal not meeting this objective.

#### 4.6 Exceptions to development standards

**Description of non-compliance:**

Development standard:	Height of buildings
Requirement:	11m
Proposed:	17.74m
Percentage variation to requirement:	61.27%

**Assessment of request to vary a development standard:**

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

**Clause 4.6 Exceptions to development standards:**

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

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

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

Comment:

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

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

*justify the contravention of the development standard by demonstrating:*

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

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

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

*(a) the consent authority is satisfied that:*

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

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

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

#### **Clause 4.6 (4)(a)(i) (Justification) assessment**

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

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

#### Comment:

The Applicant's written request (attached to this report as an Appendix) has not demonstrated that the objectives of the development standard are achieved.

In this regard, 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).

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

#### Comment:

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

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

s 1.3 of the EPA Act reads as follows:

### 1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

*"There is robust justification through the SEE and accompanying documentation to support the overall development and contend that the outcome is appropriate on environmental planning grounds.*

Some additional specific environmental grounds to justify the breach of the standard are summarised as follows:

1. *The varying topography of the site, including a steep slope from the northern and eastern boundaries of the site to the southern and south-western boundaries ranging between RLs 22.34 up to 43.16 (20.82 metres), results in a breach of the height of buildings development standard as it relates to the site. The varying topography of the site is related to both natural processes as well as an altered ground level due to development of the land over time and is significantly lower than Villiers Place and the public stairs which traverse upwards along the western boundary. The maximum breach of the height standard is located in the centre of the site where the topography follows an existing drainage line. The variation towards the southern portion of the site, near Villiers Place, is a result of the land sloping in this direction, and the level change on the site compared to the immediately adjacent streetscape which is 1m-2m higher than the site.*
2. *The site is subject to a building that has been approved with a maximum R.L of 41.2, noting that this part of the building is within the Villiers Place frontage and visible from adjoining properties and the public domain. The proposed works have an R.L of 41.2, however, are setback from the edges of the street frontages by between 8m and 19m (approximately), to minimise their visibility.*
3. *The variation to the standard allows for a consistent built form on the site as opposed to a fragmented one. In this respect, the upper level contains warehouse units that include mezzanine levels. The proposed variation to the standard allows the remaining warehouses on the upper level to include mezzanine levels. The proposed additional warehouse units are located centrally on the site where their visibility is limited, however, is where the standard is varied the most due to the sloping nature of the site and natural drainage line directly below the proposal.*

4. *The site is subject to natural drainage occurring across the site due to its topography. Subsequently, the portion of the proposed development located on 69 Middleton Road and 6 Villiers Place is required to provide a minimum finished floor level 300mm above the natural over-land flow path during flooding events as previously approved under DA 2018/1300 and detailed in the approved Overland Flow Analysis that was submitted as part of that application. The portion of the proposed development located on 18 Inman Road and 4 and 7 Villiers Place is required to provide a minimum floor level of 300mm above (freeboard), consistent with the remainder of the building on 69 Middleton and 6 Villiers Place. The requirement for these finished floor levels results in a higher building and contributes to the extent of the variation.*
5. *The variation to the standard will provide additional ongoing employment opportunities on the site and contributing to the Cromer Industrial Area, which directly satisfies the objectives of the zone. Further, the variation allows for the additional employment/industrial floorspace to be included on a site that has been considered suitable for this particular use and is compatible with the zone and surrounding properties.*
6. *A large portion of the proposed building is recessed from the street and screened. Any potential visual impact is offset by this setback and will not be easily visible. The proposed variation will not give rise to any adverse visual impact, overshadowing, sunlight access or loss of privacy to any residential properties in the north.*
7. *The proposed additional employment floor space will have a marginal increase to traffic to the site, and is considered to have no unacceptable traffic implications in terms of road and network capacity as concluded in the Traffic and Parking Assessment Report prepared by Varga Traffic Planning Pty Ltd which is provided at Annexure 11 of the Statement of Environmental Effects for this DA."*

Each of the Applicants reasons is addressed as follows:

1. **Topography of the site**

The topography of the site is not so varied, steep or undulating so as to make compliance with the development standard impossible or unreasonable.

The topography of the site has already been dealt with in the previous applications and the approvals issued and is not a sufficient reason to justify such a significant variation to the development standard under the current application.

2. **Existing approval**

The already approved development on the site does include a portion at RL 41.2 (the maximum height of the proposal), however, this element is almost entirely underneath the 11.0m height limit as the land is near its highest point adjacent to Villiers Place. The existing approved development is a built form and height that can be reasonably expected on the site. The proposed new elements are almost entirely above the 11.0m height limit and will have additional impacts on the private and public domain.

Using a mostly compliant element of the building to justify the proposed development is not a sufficient reason for such a significant variation to the development standard.

3. **Consistent built form**

The existing development positioned the highest warehouses (in terms of height, not RLs) around the rear of the site where the land starts to step up and where they can be "nestled" below the escarpment. The proposal seeks new warehouses and mezzanine elements in the centre of the site and nearer the street frontages, which is not consistent with the built form on the northern side of Middleton Road. This design will add additional bulk where it will be highly visible from the private and public domains.

A site with a significant rise in slope from front to rear, requires a development that steps down with that topography and responds to its context and setting, not a development that ignores it.

This reason is not sufficient to justify such a significant variation to the development standard.

4. **Drainage line**

Similar to the topography argument above, the natural drainage line was a factor in the previous approvals on the site and has no relevance to the current application. The requirement for the lower floor level to be 300mm above the over-land flow path, may be sufficient to justify a minor (i.e. 300mm) height variation, but not a 6.74m non-compliance.

This reason is not sufficient to justify such a significant variation to the development standard.

5. **Employment Opportunities**

The argument that a variation to the height of buildings development standard should be granted so as to create additional employment opportunities is not a relevant consideration under Clause 4.6 and is not supported. Each site within the industrial area contributes to jobs in a manner consistent with the adopted planning controls and consistent with the public interest.

Zoning and heights are set on a strategic basis in order to not overload the infrastructure of the area and maintain character and amenity. If such an argument was suitable for this site, it should be suitable for every similar site, which would have the effect of undermining the planning controls, would set an uncontrollable and undesirable precedent and render the development standard meaningless and redundant.

This is not a sufficient reason to justify such a significant variation to the development standard.

6. **Impact**

It is not concurred with that *"the proposed variation will not give rise to any adverse visual impact, overshadowing, sunlight access or loss of privacy to any residential properties in the north"*.

The proposed development will have an additional visual impact from the residential properties to the north and east of the site. The development will also have additional visual impacts from the public domain.

This is not a sufficient reason to justify such a significant variation to the development standard.

7. **Traffic impacts**

It is not concurred with that the development *"will have no unacceptable traffic implications in terms of road and network capacity"*.

The additional traffic movements in and around the site will result in additional amenity impacts

to the surrounding residential properties. These impacts would include noise and light spill. The additional traffic will increase the demand for on-street parking and movements on the road network as a direct result of the additional floor space proposed above the height limit.

This is not a sufficient reason to justify such a significant variation to the development standard.

Therefore, 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).

Therefore, Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3) and the application should be refused on these grounds.

#### **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 IN1 General Industrial zone. An assessment against these objectives is provided below.

#### **Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

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

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

#### Comment:

The vast majority of industrial buildings (and other development) in the vicinity are below or well below the 11.0m height limit.

The largest nearby building is on No. 14 Inman Road, bordering the south of the subject site. This development was approved (via DA2013/0708 and DA2014/0577) with a maximum height of 12.0m. The majority of this building is below the 11.0m height limit. No. 14 Inman Road demonstrates a more suitable built form that is considered compatible with the height and scale of surrounding and nearby development.

The proposed development will far exceed the maximum height of all surrounding industrial buildings, to the point where the development cannot be considered to be compatible with the

height and scale of surrounding and nearby development.

The development does not meet this objective.

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

Comment:

The proposed development will result in adverse impacts on other land uses, directly as a result of the non-compliance with the height of buildings development standard. The surrounding residential properties will be exposed to additional visual impacts, additional noise and additional light spill. These impacts have not been minimised as evidenced by the excessive height of the proposal.

The development does not meet this objective.

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

Comment:

While the existing development of this site has impacted on the bush environment on the escarpment surrounding the northern and eastern sides of the site, the proposed development will not unreasonably impact on the scenic quality of Warringah's coastal and bush environments.

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

Comment:

The additional bulk will be most visible when viewed from the public staircase on the western boundary of the site. The proposal will block out distant views, affecting the users of the public stairs.

The development will be highly visible from both Villiers Place and Middleton Road, resulting in visual impacts as a direct result of the non-compliant proposal, from these public areas.

The development does not meet this objective.

## Zone objectives

The underlying objectives of the IN1 General Industrial zone are:

- *To provide a wide range of industrial and warehouse land uses.*

Comment:

The proposal will provide additional industrial and warehouse uses and therefore meets this objective.

- *To encourage employment opportunities.*

Comment:

The proposal will provide additional employment opportunities and therefore meets this objective.

- *To minimise any adverse effect of industry on other land uses.*

Comment:

The proposal will result in additional adverse impacts on the residential properties to the north and east. The surrounding residential properties will be exposed to additional visual impacts, additional noise and additional light spill. These impacts have not been minimised as evidenced by the excessive height of the proposal.

The development does not meet this objective.

- *To support and protect industrial land for industrial uses.*

Comment:

The proposal is for an industrial use on industrial land and therefore meets this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

Comment:

The proposal does not limit other land uses on other sites and therefore meets this objective.

- *To enable a range of compatible community and leisure uses.*

Comment:

The proposal does not limit community and leisure uses on other sites and therefore meets this objective.

- *To maintain the industrial character of the land in landscaped settings.*

Comment:

The existing approved development provides very minimal landscaping. However, the proposed works are located entirely within the already approved footprint and will not result in a reduction of deep soil planting. Some vegetation in planter boxes will be lost, however, this is not considered to result in the proposal not meeting this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the IN1 General Industrial zone.

**Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

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

to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the standard and the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard cannot be assumed.

### Warringah Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	Complies
B5 Side Boundary Setbacks	Merit assessment	South - Nil West - Minimum of 20.44m East - Minimum of 31.05m	Yes (on merit)
B7 Front Boundary Setbacks	4.5m	Middleton Road - Minimum of 34.21m Inman Road - Minimum of 41.15m Villiers Place - Minimum of 8.64m	Yes
B9 Rear Boundary Setbacks	Merit assessment	North - Minimum of 28.06m	Yes (on merit)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B6 Merit Assessment of Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes

#### Detailed Assessment

#### **A.5 Objectives**

The overriding objective of the WDCP is to create and maintain a high level of environmental quality throughout the area covered by the DCP. Development should result in an increased level of local amenity and environmental sustainability.

The other objectives of this plan are:

- *To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood.*
- *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.*
- *To inspire design innovation for residential, commercial and industrial development.*
- *To provide a high level of access to and within development.*
- *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.*
- *To achieve environmentally, economically and socially sustainable development for the community of Warringah.*

#### Comment:

The proposed development does not respond to the characteristics and topography of the site as it does not step down with the slope of the land.

The development involves a substantial breach of the height limit and cannot be considered to be a good neighbour or contribute to the street.

While the site is not in an environmentally sensitive area, the proposal is considered to be an overdevelopment of the site and will be visually intrusive.

Overall, the proposal does not meet the objectives of the WDCP.

#### **C3 Parking Facilities**

#### Merit consideration

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 (+/-)
Warehouse or Distribution Centre	1.3 spaces per 100m <sup>2</sup> * *including up to 20% of floor area as office premises space component. Office premises component above 20% determined at office premises rate.	Warehouse (6,823m <sup>2</sup> excluding 1,940m <sup>2</sup> internal loading area): 88 spaces Mezzanine office (2,322m <sup>2</sup> @ warehouse rate – i.e. 20% of total): 30 spaces	Warehouse: 88 spaces Mezzanine office: 30 spaces	0
Office Premises	1 space per 40m <sup>2</sup> GFA	Mezzanine office (527m <sup>2</sup> @ office rate – i.e. area in excess of 20% of total): 13 spaces	Mezzanine office: 13 spaces	0
Self Storage Facility	Not included	5 spaces for facilities with an area between 3,000m <sup>2</sup> and 6,000m <sup>2</sup>	0	-5
<b>Total</b>		136	131	-5

The *Self Storage Association of Australia* (SSAA) commissioned a traffic and parking study of self-storage facilities around Australia to address the lack of specific guidelines used by Council and developers to determine an appropriate number of car parking spaces for self-storage units. The study (*Self-Storage Facility Traffic and Parking Study* prepared by *Aurecon Australia* dated 2009) determines that, for the type of development being proposed, there is no actual car parking requirement for vehicles.

The study determines that an appropriate provision of car parking is 5 spaces for facilities with an area between 3,000m<sup>2</sup> and 6,000m<sup>2</sup>.

The proposed development provides no car parking facilities in the lower ground level self storage unit premises, and is therefore deficient of the comparison by 5 spaces.

Despite being numerically non-compliant with the required number of car parking spaces, the application is considered satisfactory and will not result in adverse traffic and parking implications both in the facility itself and on surrounding roads.

Given the use within the premise as self-storage, it is anticipated (in the Self-Storage Facility Traffic and Parking Study) that vehicles will park directly in front of their allocated storage unit for loading and uploading purposes, thus negating the functionality and likely usage of dedicated car parking spaces elsewhere on the site. Further, the concept of loading and unloading directly in-front of the allocated unit presents a safer pedestrian environment, rather than manoeuvring many items to and from dedicated car parking spaces to the storage unit.

The aisles of the development are 5.8m in width which is sufficient to allow the potential for a parked car to be passed by another car. Further to this, in the event that a car is blocking the driveway (either by size or as a result of bad parking), there are alternate exits (aisles) throughout the development for vehicles to traverse through, and the likely length of trips to the development is not anticipated to be so great that congestion will become an issue internally.

As such, the provision of car parking for the subject development is considered satisfactory.

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

Comment:

The parking areas have already been approved under DA2018/1300. The proposed parking changes will have a minimal visual impact on the street frontage.

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

Comment:

The parking areas have already been approved under DA2018/1300. The proposed parking changes will not dominate the street frontage.

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

### **D3 Noise**

#### Merit consideration

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

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

Comment:

The proposal is not considered to be an innovative design solution that will improve the urban environment. The request for additional height and bulk that will result in additional noise impacts to surrounding residential properties.

- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

Comment:

Council's Environmental Health Officers have commented:

*"As the proposal is in the future, the assessment is based on predictions only and an extensive list of recommendations has been provided, however it is noted that one comment within the report on access to the site by heavy vehicles past 6pm leading to failure to comply with noise nuisance criteria, is to be addressed in a management plan (not observed).*

*The acoustic assessment's final recommendations do not include further reference to this issue. A management plan has not been submitted at this time and it is not clear how heavy vehicles (and what definition determines a heavy vehicle) is to be effectively restricted on site; whether this will be signage or some physical supervised barrier, number plate recognition, this needs to be resolved before any approval is given as simple signage with multiple users may not be adequate.*

*Based on similar vehicle noise problems elsewhere in this geographic area, signage may not be sufficient to prevent heavy vehicles from entering or leaving the site and hence exceeding noise limits and complaints to Council left to enforce.*

*Therefore details of the site management plan specifically relating to heavy vehicles (and defining heavy vehicles) needs to be robust and submitted prior to any approval been granted."* The applicant submitted a revised Acoustic Assessment (dated 12 April 2019) and a Site Management Plan (dated 10 April 2019). The Acoustic Assessment addresses heavy vehicles in its conclusion and the Site Management Plan includes the following:

*"No deliveries, loading or unloading associated with the warehouse units, or waste collection for the entire premises, is to take place between 7pm and 7am.*

*Notwithstanding the above hours, heavy vehicles must not access the site after 6pm."*

And

*"In order to provide security to the development and enforce the operating hours, particularly the use of "heavy" vehicles, CCTV cameras are to be installed throughout the development."*

In this regard, sufficient information has been provided for Council to be satisfied that the proposal, if approved, would be able to effectively manage noise emissions.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the

Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## D7 Views

### Merit consideration

Concerns have been raised by some surrounding residents that the proposal would result in the unreasonable loss of views.

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

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

#### Comment:

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

#### **1. Nature of the views affected**

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

#### Comment to Principle 1:

The affected properties surround the northern and eastern boundaries of the subject site and sit at a higher RL (approximately 20m to 30m higher). There are 11 residential properties that adjoin the site or the public pathway that runs down the western boundary of the site.



Given this height difference, the views to be affected consist of industrial buildings, some vegetation and Middleton Road, to the south, south west and west (depending on which property the viewer is standing), as show in the below photos.

Looking south west:



Looking west:



Views will also be affected from the public pathway and stairs that run along the western boundary of the site. These views include a small portion of district views to the south east.

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

*“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing*

*or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".*

Comment to Principle 2:

The views are obtained from the rear yards and any rear facing balconies and windows of the 11 properties, and from the public pathway.

The views are mostly from standing positions, however, some sitting views are obtained from most of the adjoining properties. The views from the residential properties are over their rear boundaries.

### 3. Extent of impact

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

Comment to Principle 3:

Given the extensive district views obtained from the 11 properties and the low value views that will be affected, the impact to the residential properties is considered to be minor.

Given the minimal amount of district and overall views that will be affected from the pathway, the impact to the pathway and stairs is considered to be minor.

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

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

Comment to Principle 4:

The views that will be lost from the residential properties consist of industrial buildings, some vegetation and Middleton Road. These views are not considered to be desirable. No district views will be affected due to the elevation difference between the subject site and the residential properties to the rear.

The views that will be lost from the public pathway consist of some vegetation and a small portion of district views. These views make up a small portion of the overall views obtained from the pathway.

Despite the points above, the loss of views from both the residential properties and the pathway,

while minor, is a direct result of the height of the structure and the non compliance with the standard.

In this regard, the development cannot be considered to be reasonable, especially considering the level of the height breach.

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

Comment:

The development, given the substantial breach of the height limit is not considered to be an innovative design solutions that will improve the urban environment.

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

Comment:

No canopy trees will be affected by the proposal.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **D9 Building Bulk**

### Merit consideration

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

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

Comment:

The proposal is not considered to be an innovative design solution that will improve the urban environment. It is a request for additional height and bulk, above what the controls envisage for the site, that will result in visual impacts to surrounding residential properties.

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

Comment:

The proposal will add additional bulk, almost entirely above the prescribed height limit.

The additional bulk will be visible when viewed from the surrounding residential properties and the public staircase on the western boundary of the site. The proposal will block out distant views from the stairs, affecting the users of the public stairs.

The development will be highly visible from both Villiers Place and Middleton Road, resulting in visual impacts, as a direct result of the non-compliant proposal, from these public areas.

The development does not meet this objective.

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

This application seeks consent for the construction of additional warehouse units and a increase in the height of existing approved warehouse component of the approved Industrial Warehouse Development.

This application is effectively a re-submission of a similar proposal that was previously found to be unsatisfactory in relation to the main development application DA2018/1300 that was approved by the Northern Beaches Local Planning Panel on 19 December 2018.

The proposed development exceeds the 11.0m height standard by up to 6.74m, having a maximum height of 17.74m, which represents a variation of 61.27%. The applicant's written request to vary this standard has not satisfactorily addressed the mandatory matters under Clause 4.6 of WLEP 2011 and

so the consent authority cannot be satisfied that the relevant matters have been properly addressed. Therefore, the variation to the development standard is not acceptable and not worthy of support. This has formed a reason for refusal of the application.

The proposed development represents an over-development of the site. In this regard, the proposal substantially exceeds the height of buildings control, it is not compatible with other buildings on neighbouring industrial sites and more broadly within the industrial zone, it will result in negative impacts on surrounding residential properties and its approval would set an undesirable precedent for taller buildings which are out of character.

The public exhibition period generated seven (7) submissions, raising concerns around height, traffic impacts and safety, noise and light pollution, trees, construction impacts, and view loss. These matters have been addressed within the report and many are concurred with and have been included as reasons for refusal of the application.

As such, the proposal has been found to be inconsistent with the provisions of the WLEP 2011 in relation to height and the unsupported Clause 4.6 Variation and inconsistent with the provisions and the WDCP 2011 in relation to Building Bulk and Views.

On balance, the proposal is unsatisfactory in relation to its height non-compliance, the negative impacts on neighbouring residential properties, the fact that it is out of character with industrial development generally in the zone and is contrary to maintaining and protecting the public interest.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be refused.

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 DA2019/0135 for the Construction of additional warehouse units to an approved Industrial Warehouse Development (DA2018/1300) on land at Lot 3 DP 397714, 18 Inman Road, CROMER, Lot 6 DP 201553, 18 Inman Road, CROMER, Lot 7 DP 201553, 18 Inman Road, CROMER, Lot 27 DP 28882, 69 Middleton Road, CROMER, Lot 9 DP 201553, 6 Villiers Place, CROMER, Lot 10 DP 201553, 7 Villiers Place, CROMER, Lot 8 DP 201553, 4 Villiers Place, CROMER, 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 Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone IN1 General Industrial of the Warringah Local Environmental Plan 2011.
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.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.
6. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.



## Clause 4.6 Variation Request

Height of Buildings

(Clause 4.3) Warringah LEP 2011

Alterations and Additions to Industrial Warehouse  
Development

69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers  
Place, Cromer

Submitted to Northern Beaches Council  
On Behalf of Trend Living Pty Ltd

February 2019



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

## REPORT REVISION HISTORY

Revision	Date Issued	Revision Description
01 Draft	12/02/19	Un-reviewed Draft
		<b>Prepared by</b>
		Michael Watson <i>Associate</i>
		<b>Verified by</b>
		-
02 Final	15/02/19	Final
		<b>Prepared by</b>
		Michael Watson <i>Associate</i>
		<b>Verified by</b>
		 Susan E Francis <i>Executive Director</i>

### Certification

This report has been authorised by City Plan Strategy & Development P/L, with input from a number of other expert consultants. To the best of our knowledge the accuracy of the information contained herein is neither false nor misleading. The contents have been based upon information and facts that were correct at the time of writing.

Copyright © City Plan Strategy & Development P/L  
ABN 58 133 501 774

All Rights Reserved. No material may be reproduced without prior permission. While we have tried to ensure the accuracy of the information in this publication, City Plan Strategy & Development P/L accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication.

**City Plan Strategy & Development P/L**  
Suite 6.02, 120 Sussex St, Sydney NSW 2000  
P +61 2 8270 3500  
[CITYPLAN.COM.AU](http://CITYPLAN.COM.AU)

M:\Projects\CP2019\19-010 69 Middleton Rd, Cromer\4. Draft\Clause 4.6 Variation Request\_190215.docx

Page | i



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

## TABLE OF CONTENTS

1. Introduction .....	3
2. Extent of variation .....	5
3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. [cl.4.6 (3)(a)] .....	10
3.1. Achieves the objectives of the standard .....	10
4. There are sufficient environmental planning grounds to justify contravening the standard. [cl. 4.6(3)(b)] .....	16
5. The Proposal will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone. [cl.4.6(4)(a)(ii)] .....	18
6. Contravention of the development standard does not raise any matter of significance for State or regional environmental planning. [cl. 4.6(5)(a)] .....	20
7. There is no public benefit of maintaining the standard. [cl. 4.6(5)(b)] .....	21
8. Conclusion .....	22

## FIGURES

No table of figures entries found.

## TABLES

Table 1: Achievement of Development Standard Objectives .....	11
Table 2: Consistency with Zone Objectives. ....	18



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

## 1. INTRODUCTION

This is a formal written request that has been prepared in accordance with clause 4.6 of the Warringah *Local Environmental Plan 2011* (WLEP 2011) to support an amending Development Application (DA) submitted to Northern Beaches Council (Council) for the provision of six (6) new warehouse units with mezzanines on the upper ground floor and the addition of mezzanines within nine (9) of the approved warehouse units on the upper ground floor of an approved unconstructed mixed-use building at 69 Middleton Road, 18 Inman Road and 4-6 Villiers Place, Cromer ("the site") under DA-2018/1300. The original DA was granted development consent by Council on 19 December 2018 subject to numerous conditions.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the circumstances of this application.

The development standard that this request seeks approval to vary is the Height of Buildings control in Clause 4.3 of the *Warringah Local Environmental Plan 2011* (WLEP).

The numeric value of the Height of Buildings development standard applicable to the site is 11 metres.

The development standard is not specifically excluded from the operation of Clause 4.6 of WLEP 2011.

This request has been prepared having regard to the Department of Planning and Environment's *Guidelines to Varying Development Standards* (August 2011) and relevant decisions in the New South Wales and Environment Court and New South Wales Court of Appeal<sup>1</sup>.

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 Chief Justice Preston provided further clarification on the application of Clause 4.6 and the matters which must be satisfied for consent to be granted pursuant to Clause 4.6(4). That is, the consent authority must form two positive opinions, as summarised below:

- the written request has adequately demonstrated that the matters under Clause 4.6(3) are satisfied, being that compliance with the standard is unreasonable or unnecessary, and there are sufficient environmental planning grounds to justify contravening the development standard. It is not the consent authority's role to directly form an opinion as to whether these matters are satisfied, rather indirectly by the satisfaction that the written request has addressed these matters.
- be directly satisfied that the proposed development satisfies clause 4.6(4)(a)(ii), being the proposed development will be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. The consent authority must form this opinion directly, rather than indirectly satisfied that the written request has adequately addressed these matters.

The consent authority must also ensure that the Concurrence has been obtained from the Secretary (4.6(4)(b)). The matters of concurrence are outlined in Planning Circular PS 18-003.

In Sections 3 and 4 of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by Clause 4.6 to be addressed in a written request from the applicant. In Sections

<sup>1</sup> Relevant decisions include: *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46; *Wehbe v Pittwater Council* [2007] NSWLEC 827; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248; and *Moskovich v Waverley Council* [2016] NSWLEC 1015



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

3, 4, 5, 6 and 7 we address additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

## 2. EXTENT OF VARIATION

The site has a maximum building height standard of 11 metres as specified under Clause 4.3 of the Warringah LEP as shown under **Figure 1**.

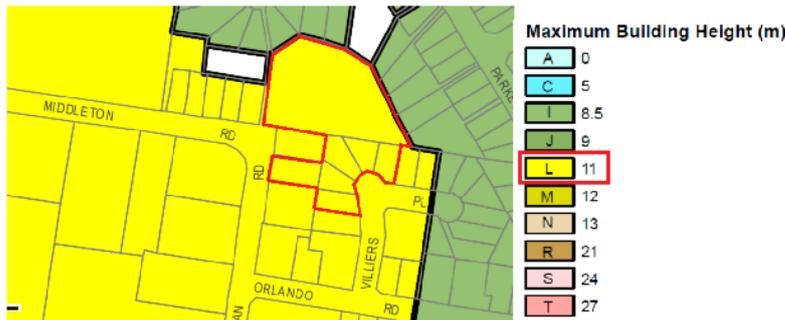


Figure 1: Extract of the WLEP 2011 Height of Buildings Map (Source: NSW Legislation)

As demonstrated on the plans prepared by PBD Architects, the proposed development has a maximum height at RL 41.2, which represents a maximum building height of 17.74 metres measured from the lowest point of the existing ground level below (i.e. RL23.46). Subsequently, the proposed development breaches the 11-metre maximum building height development standard prescribed for the site by 6.74 metres (i.e. 61% variation). However, it is important to note that the maximum variation is only for a minor portion of the development, with the remainder of the variation being significantly less (approximately 2m or lower). The maximum breach of the standard is situated at the lowest part of the site where it follows the former drainage line towards the northern portion of the site (refer to **Figure 3**).

The approved building under DA2018/1300 had a maximum height of 16.55m, with a building RL of 40.65 and existing ground level of 24.10 below. Important to note is the approved building had a maximum R.L of 41.2, and complied with the height standard due to the sloping topography at this point.

The proposed development seeks to introduce six (6) additional warehouse units on the upper level, as well as provide mezzanine levels to nine (9) of the approved warehouses. The proposal seeks to provide a consistent built form on the upper level to that already approved under DA2018/1300. The proposal does have a greater building height in metres than the approved building by up to 1.19m for the following reasons:

- The proposed warehouses are located centrally on the upper level, and situated on the site where it dips the most as a result of the existing natural drainage channel on the site. The existing ground level below the proposed development is lower by up to 640mm than the approved building and its maximum building height. The ground level at this location is not perceivable from surrounding properties of the public domain as it is beneath the approved building.
- The R.L related to the maximum building height under DA2018/1300 was RL 40.65, where as the proposed maximum RL is 41.2 which is 550mm higher. Notwithstanding, the approved development has a maximum R.L of 41.2, however, the building was below the height standard for this part of the building. The reason the proposed warehouses subject to this DA have an R.L of 41.2 (as opposed to RL 40.65) is due to the need to have an appropriately angled roof (minimum 2 degrees) to convey stormwater. To achieve the required 2 degree angle, the height of the structures had to be increased due to their width



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

so that the minimum internal floor to ceiling height clearances could be achieved across the full width of the warehouses.

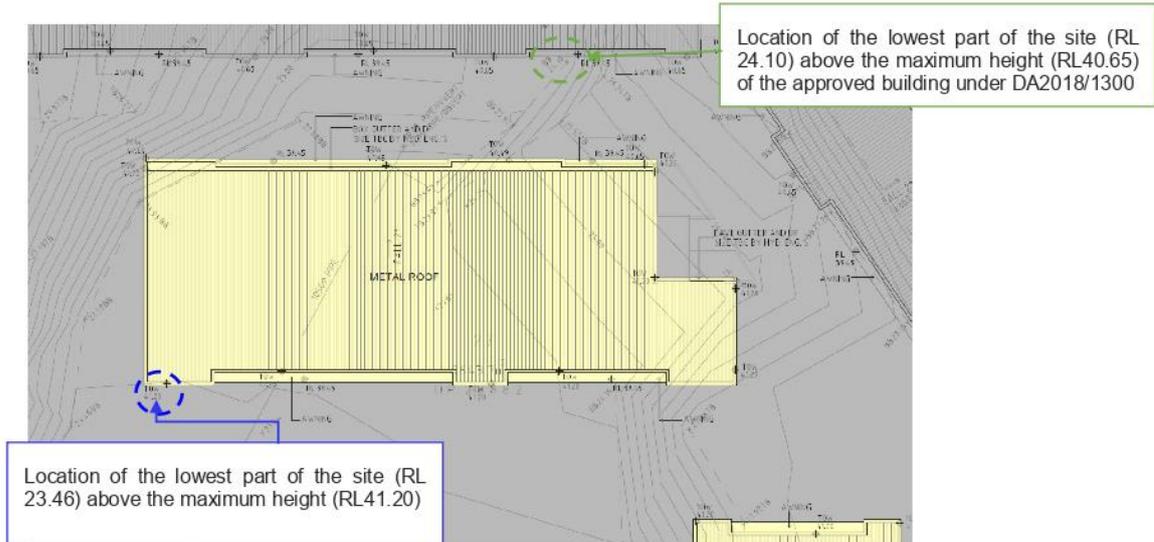


Figure 2: Indication of the maximum building height as measured from ground level 'existing' (Source: Beveridge Williams and PBD Architects).

The parts of the building that exceed the maximum height are shown in **Figures 4 to 9** below.





Figure 5. Elevation looking east adjacent to the public stairs demonstrating the proposed variation (outlined in red). (Source: PBD Architects)

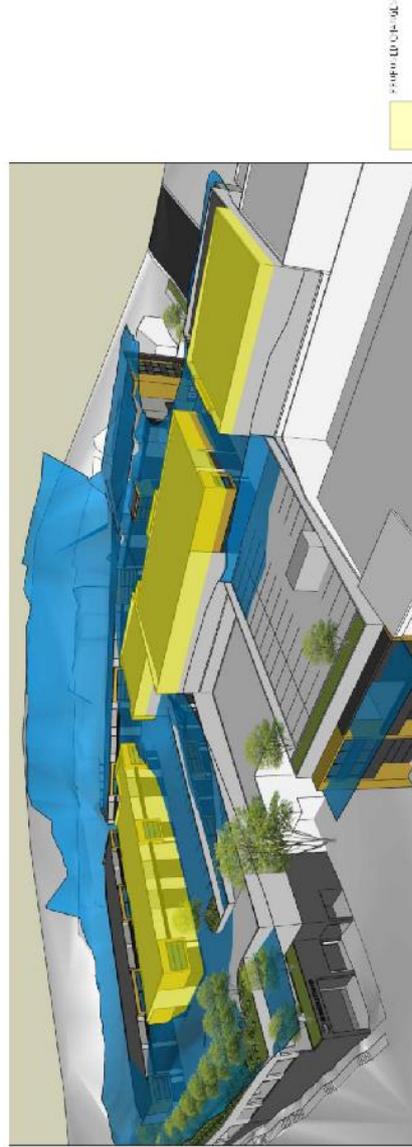


Figure 6. Height Plan View Diagram 01 showing the height plane in blue and the portions of the building above the height standard subject to this DA (Source: PBD Architects)

**CITY PLAN**

**Clause 4.6 Variation Request**

69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019



Figure 7: Height Plan View Diagram 02 showing the height plane in blue and the portions of the building above the height standard subject to this DA (Source: PBD Architects)



Figure 8: Height Plan View 02 showing the height plane (blue) and portions of the building above the height standard subject to this DA (Source: PBD Architects)



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

The above figures demonstrate that the breach of the maximum building height development standard is predominantly related to the steeply sloping topography of the site which is related to natural processes as well as the altered nature of the ground level over time. The proposed development is for alterations and additions to the approved building under DA2018/1300. DA2018/1300 was approved with variations to the height standard. The approved building located on 69 Middleton Road and 6 Villiers Place is required to have finished floor levels that satisfies the minimum 300mm freeboard required due to the overland flow path of a 100-year ARI storm event. Furthermore, the part of the building located on 18 Inman Road and 4 and 7 Villiers Place is required to have finished floor levels at 300mm above (freeboard) also. The proposal seeks to provide additional warehouses and mezzanine levels to 9 of the approved warehouses on the upper level, and maintains the same approved maximum R.L height to the development under DA 2018/1300.

The proposed additions under this DA are setback from the boundaries of the street. Subsequently, the maximum breach of the standard will not be distinguishable given the lowest point of the site is not evident as viewed from the street or public footpath.

### **3. COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THIS CASE. [cl.4.6 (3)(a)]**

#### **3.1. Achieves the objectives of the standard**

Compliance with the Height of Buildings development standard is unreasonable or unnecessary in the circumstances of this case because, as explained in Table 1 (below), the objectives of the development standard are achieved, notwithstanding non-compliance with the standard<sup>2</sup>

<sup>2</sup> In *Wehbe v Pittwater Council* [2007] NSWLEC 827 Preston CJ identified 5 ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established. Although the decision concerned SEPP 1, it remains relevant to requests under clause 4.6 as confirmed by Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, notwithstanding that if the first and most commonly applied way is used, it must also be considered in 4.6(4)(a)(ii). The 5 ways in *Wehbe* are: 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; 3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; or 5. The zoning of the land is unreasonable or inappropriate.



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

Table 1: Achievement of Development Standard Objectives.

<b>Objective</b>
(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
<b>Comment</b>
<p>Buildings in the surrounding area are predominantly characterised by industrial/commercial type uses that range in scale between one and two storeys in height. The building approved under DA2018/1300 is three (3) storeys in height (excluding mezzanine), and will form the future character of the area. The approved upper ground level includes a total of twenty four (24) warehouse units on the upper level; and includes, fourteen (14) warehouse units with mezzanine levels around the northern perimeter of the building, and ten (10) warehouse units without mezzanines setback from the boundaries.</p> <p>The proposed development will result in six (6) additional warehouse units with mezzanine levels located centrally on the upper level, as well as including mezzanine levels to nine (9) of the approved warehouses. Of relevance, approved warehouse 52 is not proposed to have a mezzanine level to ensure the buildings bulk is reduced as viewed from the public domain. As demonstrated below in <b>Figures 8 to 12</b>, the proposed works are compatible with the surrounding and nearby development. It is worth noting that the approved building has a maximum R.L of 41.2, and this part of the building is located on the Villiers Street frontage. The proposed works do have a maximum R.L of 41.2, consistent with the approved building, however, have been setback from the street frontages to minimize their visibility from the public domain.</p> <p>The maximum breach of the standard is directly related to the sloping topography of the site, and breaching the standard allows for a consistent built form on the site.</p> <p>Notwithstanding the above, the site is uniquely positioned and is predominantly screened from view from the public domain due to its minimal frontage to Middleton Road, adjoining industrial development, and the location of most of the building to the north.</p> <p>The proposed development will not result in a building of excessive bulk or scale but is of a height and scale consistent with the existing industrial buildings surrounding the site. The proposed development is consistent with and achieves this objective of the standard.</p>
<b>Objective</b>
(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,
<b>Comment</b>
<p>To address this objective, we have addressed each impact separately as follows:</p> <p><u>Visual Impacts</u></p> <p>The proposed variation will not result in any significant visual impact as the site is largely recessed from any significant street frontage and screened by adjoining development. Approved Warehouse Unit 52 will remain as approved to ensure the visibility of the additional works are minimized. Subsequently, the proposed development would have a similar visual impact from the public domain to that of a compliant building in terms of building height.</p> <p>The proposed upper ground floor warehouse units have also largely been setback appropriately from the edges of the site to assist in reducing its bulk and perceived physical presence as viewed from the public domain at the street level and from the adjacent stairway. The areas that exceed the standard at a</p>



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

maximum are situated centrally on the site and are not easily distinguishable from any view into the site from the public domain.

Accordingly, the proposed breach of the standard will not have any adverse visual impacts.

Disruption of Views

Photomontages prepared by PBD Architects accompanying this application to Council show that views of the site from the public domain are not adversely impacted by the proposal, particularly when comparing it to the built form approved under DA 2018/1300. **Figures 8 and 12** provide a comparison of the views to the site as approved under DA 2018/1300 and as now proposed.



Figure 9: Perspective from Middleton Road looking north-east towards the approved building (left) and the proposed development (right). (Source: PBD Architects)



Figure 10: Perspective from Villiers Place looking north towards the approved building (left) and the proposed development (right). (Source: PBD Architects)



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019



Figure 11: Perspective from Villiers Place looking west towards the approved building (left) and the proposed development (right).  
(Source: PBD Architects)



Figure 12: Perspective from Inman Road looking north towards the approved building (left) and the proposed development (right).  
(Source: PBD Architects)



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019



Figure 13: Perspective from the public stairs looking south towards the approved building (left) and the proposed development (right). (Source: PBD Architects)

When viewed from the public domain on Middleton Road, Inman Road, Villiers Place, and the public stairs the proposed development does not result in any greater impacts on views when compared with the previously approved development and existing built form. The views that are affected are views of the sky and some minor loss of visible tree canopies from the public stairs. Views are in fact improved looking west along Villiers Place (see **Figure 10**) as a result of the proposed reduced signage, which reduces the bulk at the street frontage and increases views of vegetation behind between the approved warehouse units.

Loss of Privacy

The proposed development is situated below any residential properties and is appropriately setback from adjoining industrial development to the south and the east. Therefore, the proposed variation to the height of buildings development standard will not result in any loss of privacy to surrounding residential and industrial/commercial properties.

Loss of Solar Access

The proposed development does not cast any shadows onto any residential properties. The majority of the shadows cast by the proposed development falls on the site itself, with minimal shadows cast onto the roof of 20 Inman Road and 2 Villiers Place. The shadows cast onto the adjoining commercial/industrial developments are considered reasonable given the nature of these developments and their minimal setbacks.

The proposed development does not result in any unacceptable impacts in terms of overshadowing.

**Objective**

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

The site is in the Cromer industrial area approximately 2.6 kilometres from the nearest beach at Collaroy and is not located near any of Warringah's bush environments such as Oxford Falls to the west of the site and Ingleside to the north-west of the site. The proposed variation to the maximum building height



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

standard will therefore have no impact on the scenic quality of these environments because of this distance.

**Objective**

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

As previously stated the site is largely recessed from the street and only shares a frontage to Middleton Road to accommodate a driveway width of approximately 6 metres. The proposed works have minimal to no visibility when viewed from the Inman and Middleton Road to that already approved (see **Figures 8 and 11**). The proposal has been designed to minimise visibility from Villiers Place with all the proposed works being setback from the street frontage boundary by a minimum of 8.5m (see **Figures 9 and 10**).

There is a public footpath that adjoins the site on the western boundary, which provides a connection to the residential properties to the north of the site. The central warehouses proposed on the upper level (warehouses 62 to 67) are visible from the public stairs, however, they do not result in any unacceptable visual impact from the public domain. Particularly given they do not result in any loss of any views, and merely blocks the view of the approved parking spaces in this location. Given these warehouses are setback from this side boundary by 19.2m, and is buffered by approved parking and landscaping, it will not result in unacceptable bulk as viewed from this location.

The proposed development will clearly have no unacceptable impacts in terms of visual impact from the public domain beyond those already considered acceptable from DA 2018/1300.

Test 4: The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

Council have previously granted consent to a building on the site under DA 2018/1300. The approved development has a maximum RL of 41.2, which is the same as the maximum height of the proposed development. However, the proposed variation is greater in terms of building height in metres (as defined by the WLEP) due to the sloping land and the need to provide a minimum 2 degree pitch to the roofs as discussed under [Section 2](#). The approved DA 2018/1300 was also subject to an 11-metre height limit, and it was considered that the variation to the standard was suitable by the issuing of consent.

So, whilst the standard granted generally has not been abandoned per-se, it has been recently varied on this site for a development of which is an integrated part. Compliance with the standard in this case would therefore be unnecessary and unreasonable.



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

#### **4. THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD. [cl. 4.6(3)(b)]**

The SEE prepared for this DA provides a holistic environmental planning assessment of the proposed development and concludes that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development.

There is robust justification through the SEE and accompanying documentation to support the overall development and contend that the outcome is appropriate on environmental planning grounds.

Some additional specific environmental grounds to justify the breach of the standard are summarised as follows:

- The varying topography of the site, including a steep slope from the northern and eastern boundaries of the site to the southern and south-western boundaries ranging between RLs 22.34 up to 43.16 (20.82 metres), results in a breach of the height of buildings development standard as it relates to the site. The varying topography of the site is related to both natural processes as well as an altered ground level due to development of the land over time and is significantly lower than Villiers Place and the public stairs which traverse upwards along the western boundary. The maximum breach of the height standard is located in the centre of the site where the topography follows an existing drainage line. The variation towards the southern portion of the site, near Villiers Place, is a result of the land sloping in this direction, and the level change on the site compared to the immediately adjacent streetscape which is 1m-2m higher than the site.
- The site is subject to a building that has been approved with a maximum R.L of 41.2, noting that this part of the building is within the Villiers Place frontage and visible from adjoining properties and the public domain. The proposed works have an R.L of 41.2, however, are setback from the edges of the street frontages by between 8m and 19m (approximately), to minimise their visibility.
- The variation to the standard allows for a consistent built form on the site as opposed to a fragmented one. In this respect, the upper level contains warehouse units that include mezzanine levels. The proposed variation to the standard allows the remaining warehouses on the upper level to include mezzanine levels. The proposed additional warehouse units are located centrally on the site where their visibility is limited, however, is where the standard is varied the most due to the sloping nature of the site and natural drainage line directly below the proposal.
- The site is subject to natural drainage occurring across the site due to its topography. Subsequently, the portion of the proposed development located on 69 Middleton Road and 6 Villiers Place is required to provide a minimum finished floor level 300mm above the natural over-land flow path during flooding events as previously approved under DA 2018/1300 and detailed in the approved Overland Flow Analysis that was submitted as part of that application. The portion of the proposed development located on 18 Inman Road and 4 and 7 Villiers Place is required to provide a minimum floor level of 300mm above (freeboard), consistent with the remainder of the building on 69 Middleton and 6 Villiers Place. The requirement for these finished floor levels results in a higher building and contributes to the extent of the variation.
- The variation to the standard will provide additional ongoing employment opportunities on the site and contributing to the Cromer Industrial Area, which directly satisfies the objectives of the zone. Further, the variation allows for the additional employment/industrial floorspace to be included on a site that has been considered suitable for this particular use and is compatible with the zone and surrounding properties.



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

- A large portion of the proposed building is recessed from the street and screened. Any potential visual impact is offset by this setback and will not be easily visible. The proposed variation will not give rise to any adverse visual impact, overshadowing, sunlight access or loss of privacy to any residential properties in the north.
- The proposed additional employment floor space will have a marginal increase to traffic to the site, and is considered to have no unacceptable traffic implications in terms of road and network capacity as concluded in the Traffic and Parking Assessment Report prepared by Varga Traffic Planning Pty Ltd which is provided at **Annexure 11** of the Statement of Environmental Effects for this DA.



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

## 5. THE PROPOSAL WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE STANDARD AND THE OBJECTIVES OF THE ZONE. [cl.4.6(4)(a)(ii)]

In section 3 (above), it was demonstrated that the proposal is consistent<sup>3</sup> with the objectives of the development standard. The proposal is also consistent with the objectives of the zone as explained in **Table 2** (below).

Table 2: Consistency with Zone Objectives.

Objective	Discussion
To provide a wide range of industrial and warehouse land uses.	The proposal provides additional industrial warehouse units and additional mezzanine levels to various approved warehouse units previously approved under DA 2018/1300. The proposed variation does not affect consistency with this zone objective. Rather, it allows it to be achieved.
To encourage employment opportunities.	The proposed development will provide employment opportunities during the construction and operational phases of the development beyond what was previously assessed, given the expansion of the built form and uses previously approved under DA 2018/1300 and the fact that the number of warehouse units is proposed to be increased. The proposed variation does not affect consistency with this zone objective. Rather, it allows it to be achieved.
To minimise any adverse effect of industry on other land uses.	The proposed development represents the expansion of the use and built form of the previously approved development under DA 2018/1300. There is nothing in this proposal which would affect adjoining industrial land or uses. Subsequently, the proposed variation does not affect consistency with this zone objective.
To support and protect industrial land for industrial uses.	The proposal provides industrial warehouse units, consistent with the uses previously approved on the site under DA 2018/1300. This will ensure that land zoned for industrial use is developed for industrial-related purposes. Therefore, the proposed variation does not affect consistency with

<sup>3</sup> In *Dem Gillespies v Warringah Council* [2002] LGERA 147 and *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC the term 'consistent' was interpreted to mean 'compatible' or 'capable of existing together in harmony'



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

	this zone objective. Rather, it allows it to be achieved.
To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.	The proposed development does not preclude other development from occurring in the industrial zone that provides facilities and services for the day-to-day needs of workers. The proposed variation does not affect consistency with this zone objective.
To enable a range of compatible community and leisure uses.	The proposed development does not preclude other land within the IN1 General Industrial zone from being used for a range of compatible community and leisure uses. The proposed height variation does not affect consistency with this zone objective.
To maintain the industrial character of the land in landscaped settings.	The proposal does not result in the loss of any vegetation. The proposed variation does not affect consistency with this zone objective.

As can be seen from **Table 1** and **Table 2**, the proposal is consistent with the objectives of the standard and the objectives of the zone and is therefore considered to be in the public interest.



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

**6. CONTRAVENTION OF THE DEVELOPMENT STANDARD DOES NOT RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING. [cl. 4.6(5)(a)]**

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

**7. THERE IS NO PUBLIC BENEFIT OF MAINTAINING THE STANDARD. [cl. 4.6(5)(b)]**

The proposed development allows for additional industrial floor space within the IN1 Zone, which will result in additional employment opportunities within the Cromer Industrial Area as a result of the proposed variation to the standard.

Accordingly, there is no public benefit<sup>4</sup> in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the Height of Buildings standard and hence there are very minor disadvantages.

We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will have an overall public benefit.

---

<sup>4</sup> *Ex Gratia P/L v Dungog Council* (NSWLEC 148) established that the question that needs to be answered to establish whether there is a public benefit is "whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development"



**Clause 4.6 Variation Request**  
69 Middleton Road, 18 Inman Road and 4-7 & 6 Villiers Place,  
Cromer  
19-010  
February 2019

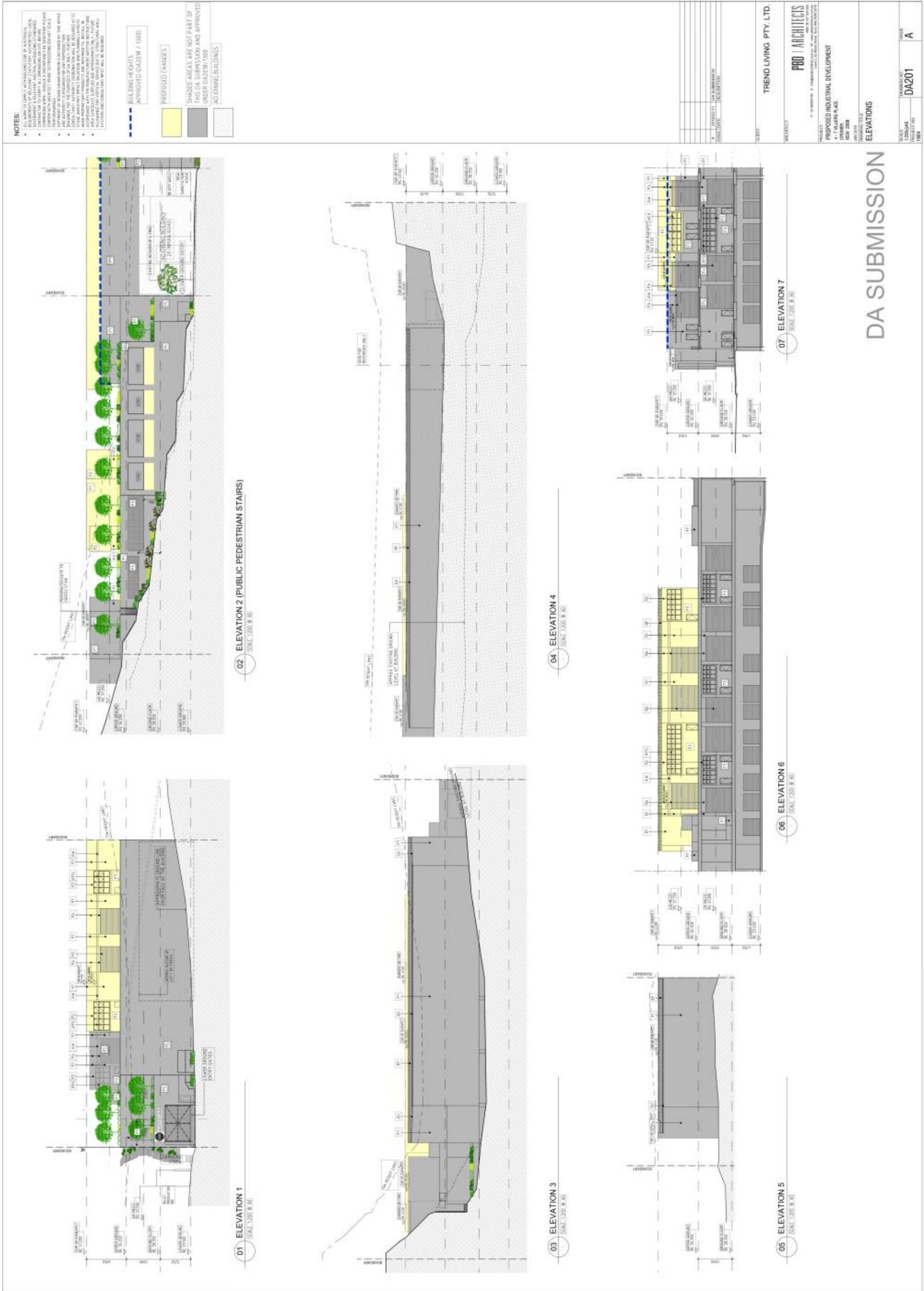
## 8. CONCLUSION

This Clause 4.6 Variation Request demonstrates, as required by Clause 4.6 of the *Warringah Local Environmental Plan 2011*, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the variation with the height standard;
- The development achieves the objectives of the development standard and is consistent with the objectives of the IN1 General Industry Zone;
- The development provides a similar building height to the building that was approved by the Northern Beaches Council under DA2018/1300. To this end, the proposed maximum building R.L is the same height as the maximum approved building R.L under DA2018/1300.
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.







## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/0167
----------------------------	-------------

<b>Responsible Officer:</b>	Julie Edwards
<b>Land to be developed (Address):</b>	Lot 1 S/P 46516, 1 / 13 Gondola Road NORTH NARRABEEN NSW 2101 Lot 2 S/P 46516, 2 / 13 Gondola Road NORTH NARRABEEN NSW 2101
<b>Proposed Development:</b>	Use of premises associated with an indoor recreation facility
<b>Zoning:</b>	B2 Local Centre B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Margaret Anne Smith Barebods Property Pty Ltd
<b>Applicant:</b>	Evolution Planning Pty Ltd

<b>Application lodged:</b>	22/02/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	04/03/2019 to 20/03/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	25
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 0.00
---------------------------------	---------

### Executive Summary

This site currently has an operable development consent for the use of lot 2 as an Recreation Facility (indoor) with operating hours of 6.00am to 7.00pm Monday to Friday and 6.00am to 12.00pm Saturday and fifteen (15) patrons. This application seeks consent for the use of unit 2 of the site as a Recreation Facility (indoor) to facilitate increased hours of operations of 5.00am to 9.00pm Monday to Friday and 6.00am to 7.00pm Saturday and Sunday and thirty (30) patrons, as well as the provisions of internal and external noise mitigation measures (internal and the construction of noise barrier fencing), and the partial use of lot 1 for car parking. As the number of submissions received is greater than 10, the

application is referred to the Northern Beaches Local Planning Panel for determination.

The proposal is non compliant with parts B6.3 Off-Street Vehicle Parking Requirements, C2.10 Pollution Control and D11.12 Fences - General of the Pittwater 21 Development Control Plan (PDCP). These non-compliance are unacceptable and the proposal does not meet the outcomes of the control.

Public exhibition of the proposal resulted in twenty-five (25) submissions. Submissions that objected to the proposal (14) raised the following issues:

- Enforcement of development consent, previous complaints and non-compliance with approved development consent,
- Incorrect information and Noise Assessment Report errors,
- Non-compliance with Building Code of Australia,
- Impact on residential amenity - noise and traffic.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposed 5.00am start time Monday to Friday and 6.00am Saturday and Sunday is not suitable or appropriate the subject site. Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved but with conditions that restrict the hours of operation to 6.00am - 9.00pm Monday to Friday and 7.00am - 7.00pm Saturday and Sunday.

#### **ASSESSMENT INTRODUCTION**

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

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

#### **SUMMARY OF ASSESSMENT ISSUES**

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements  
Pittwater 21 Development Control Plan - C2.10 Pollution Control  
Pittwater 21 Development Control Plan - D11.12 Fences - General

#### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 1 S/P 46516 , 1 / 13 Gondola Road NORTH NARRABEEN NSW 2101
------------------------------	-------------------------------------------------------------------

	<p>Lot 2 S/P 46516 , 2 / 13 Gondola Road NORTH NARRABEEN NSW 2101</p>
<p><b>Detailed Site Description:</b></p>	<p>The subject site is identified as 13 Gondola Road, North Narrabeen. The front of the site is oriented towards the north and has three road frontages, which are as follows:</p> <ul style="list-style-type: none"> <li>• North boundary: Gondola Road;</li> <li>• East (side) boundary: Verona Street;</li> <li>• South boundary: Rickard Road.</li> </ul> <p>The west side boundary adjoins two residential allotments. The total site area is 1155m<sup>2</sup> (based on Council records) and is mostly level.</p> <p>The site is occupied by a number of structures which are as follows:</p> <ul style="list-style-type: none"> <li>• A single-storey detached dwelling is located within the northern part of the site (the front of which is oriented towards Gondola Road);</li> <li>• A single-storey industrial-type building is located within the middle of the site. This structure contains a rooftop carpark. The carpark is accessed via a ramp;</li> <li>• A workyard/storage area, which is located at ground level between the southern side of the warehouse and the Rickard Road road reserve.</li> </ul> <p>The subject site is strata-subdivided into three allotments; the industrial building is over two allotments, while the dwelling house is located on the third allotment.</p> <p>The subject site is located within a B2 Local Centre zone; the north, south and east-side boundaries are also B2 zoned, while the west-side boundary adjoins an R2 Low Density Residential zone.</p> <p>The subject site is surrounded by a range of different development types. Development to the north, west and south of the site consists predominately of low-density residential development (i.e. detached dwelling houses). Directly across from the site to the east is a large mixed-use development that consists of commercial premises on the ground floor with residential apartments above.</p>

Map:



### SITE HISTORY

A search of Council's records has revealed a substantial site history. The most recent and relevant application for the site is discussed below, followed by other applications for the site and then any relevant building and compliance matters.

#### Relevant applications:

##### **N0474/15**

Change of use of Unit 2 to indoor recreational facility  
Approved - 28/07/2016

The application proposed the use of Unit 2 as an indoor recreation facility. The specifics of the approval are as follows:

- Proposed operating hours:
  - o Monday to Friday: 6:00am to 7:00pm
  - o Saturday: 6:00am to 12:00pm
  - o Sundays/public holidays: Closed.
- Maximum number of attendees/customers onsite at any one time: Fifteen (15).
- Maximum number of staff onsite at any one time: Two (2).
- Number of strata allocated parking spaces: Seven (7).
- No fitout works are proposed, as attendees/staff would use existing facilities.
- The rooftop is to be used for parking only from 6.00am.
- No changes are proposed to either the Units 1 and/or 3 (the other commercial unit and dwelling respectively).
- No advertising signage is proposed.

The current application is for the change of use of Unit 2 as an indoor Recreation Facility increasing the hours of operations and number of patrons from the previous approval on the site, noise mitigation measures - internal and the construction of noise barrier fencing and the part use of lot 1 for additional

car parking.

Other related applications:

**Building Application No. 0008272**

Building and shop  
Approved - 14/09/1989

**Development Application No.0155/93**

Car repair station  
Approved - 26/08/1993

**Development Application No. N0524/04**

Construction of shop top housing including 7 dwellings and 3 retail/commercial units and associated car parking  
Refused - 07/07/2005

**Development Application No. N0577/08**

Demolition of existing structures on the site and construction of a new three storey mixed use development comprising a 56 place child care centre and four residential units with associated car parking  
Withdrawn - 01/04/2009

**Development Application No. N0116/10**

Demolition of existing structure and construction of a three storey mixed use development comprising 7 residential units and 2 retail/commercial units with associated car parking  
Withdrawn - 12/08/2009

**Development Application No. N0136/11**

Demolition of the existing dwelling and builders supply yard and construction of a shop top housing development including 6 dwellings, 6 commercial premises and a café, strata subdivision, associated parking and associated landscaping  
Refused - 13/06/2012

This decision was later appealed, with the Land and Environmental Court upholding the appeal and approving the application, subject to conditions.

The land has been used for industrial / commercial purposes for an extended period of time.

Relevant building and compliance matters:

**BLD2018/02006**

Investigate Illegal Land Use

Summary of issues raised in complaint to Council dated 18 September 2018:

- A second recreation facility (indoor) is operating on the site within unit 1, in addition to the approved indoor recreation facility(Development consent - N0474/15),
- Noise issues - the use of heavy weights and exercise equipment contrary to acoustic report provided with Development consent - N0474/15. Excessive noise as a result of the roller doors being open during training sessions - music, weights being dropped, participants voices etc.
- Outdoor training sessions are inconsistent with the approved Development consent - N0474/15,
- Operating outside of approved hours,

- Number of user exceeds approved capacity,
- Does not comply with BCA requirements.

The operator of the site acknowledged in a formal letter to Council dated 18 October 2018 that they had breached the consent on several occasions and that the second recreation facility (indoor) "Training Yard" located in unit 1 had ceased operation, the use of heavy weights, outdoor training and roller door being opened during training sessions had ended. The letter also stated that a Development Application would be lodged to increase the hours of operation and capacity.

Since the complaint was raised with Council and after the acknowledgment sent by the operator, numerous emails have been sent to Council with evidence of continued breaches of the consent.

The matter is on-going and under investigation by Councils compliance team.

#### PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks approval for the continued occupation of Unit 2 as a recreation facility (indoor) and the partial use of Lot 1 at the southern portion of the site for the purposes of car parking for 8 cars. The specifics of the proposal are as follows:

- Proposed hours of operation:
  - Monday to Friday: 5:00am to 9:00pm
  - Saturday to Sunday: 6:00am to 7:00pm,
- Maximum number of attendees/customers onsite at any one time: 30 patrons,
- 15 allocated car parking spaces,
- Physical works are proposed for the noise mitigation mechanisms recommended by the project acoustic engineer including the erection of acoustic fencing (or extensions to existing fencing) at the southern and western boundaries of the proposed at-grade parking area at part of Lot 1 and internal noise insulation works,
- No advertising signage proposed.

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been

Section 4.15 Matters for Consideration'	Comments
	<p>addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, No additional information was requested.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
<p>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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 &amp; 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.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental

Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 25 submission/s from:

Name:	Address:
Mr Phillip Marcellino	15 Gondola Road NORTH NARRABEEN NSW 2101
Dr James Edward Harold Bright	4 / 9 - 11 Gondola Road NORTH NARRABEEN NSW 2101
Mrs Helen Agnes Rex	1 / 9 - 11 Gondola Road NORTH NARRABEEN NSW 2101
Mr Brian David Beck	2 / 9 - 11 Gondola Road NORTH NARRABEEN NSW 2101
Ms Eunice Natalie Ablett	9 / 9 - 11 Gondola Road NORTH NARRABEEN NSW 2101
Ms Louise Carol Augusto	4 Lido Avenue NORTH NARRABEEN NSW 2101
Mr Federico Zanella	7 / 9 - 11 Gondola Road NORTH NARRABEEN NSW 2101
Peter Johnson	1 Lido Avenue NORTH NARRABEEN NSW 2101
Ms Silvia Adriana Labart	8 / 9 - 11 Gondola Road NORTH NARRABEEN NSW 2101
Mr Peter Gerard Watkins	3 / 9 - 11 Gondola Road NORTH NARRABEEN NSW 2101
Ms Jacqueline Charrie Grimes	17 Rickard Road NORTH NARRABEEN NSW 2101
Mr Paul Miles Earland	13 Rickard Road NORTH NARRABEEN NSW 2101
Mrs Siobhan Maureen Cox	5 / 9 - 11 Gondola Road NORTH NARRABEEN NSW 2101
Mr Brian Robert Hewetson	15 Rickard Road NORTH NARRABEEN NSW 2101
Mr Leigh Owen Chaplin	6 / 9 - 11 Gondola Road NORTH NARRABEEN NSW 2101
Ms Kristy Allen	1469 Pittwater Road NORTH NARRABEEN NSW 2101
Nikki Smith	116 Powderworks Road ELANORA HEIGHTS NSW 2101
Karen Mooney	30 / 24 Goodwin Street NARRABEEN NSW 2101
Ms Claudia Jane Minogue	3 / 22 Goodwin Street NARRABEEN NSW 2101
Julia Carter	
Ms Lisa Dawn Evans	52 Nareen Parade NORTH NARRABEEN NSW 2101
Natalia Theodossiou	
Mr Joshua Couriel	22 Ryan Place BEACON HILL NSW 2100
Kate Stapleton	11 Elanora Road ELANORA HEIGHTS NSW 2101
Angela Southam	

The proposal has received a total of twenty-five (25) submissions. Fourteen (14) of the submissions object to the proposal, ten (10) of these were a proforma letter and eleven (11) submissions were in support.

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

- Enforcement of development consent, previous complaints and non-compliance with approved development consent
- Incorrect information and Noise Assessment Report errors
- Non-compliance with Building Code of Australia
- Impact on residential amenity - noise and traffic

The matters raised within the submissions are addressed as follows:

- **Enforcement of development consent, previous complaint and non-compliance with approved development consent**

The submissions raised the following 'The major concern is how the operators/owners/applicants will be held to any consent orders, and who is going to ensure compliance?'. The submission also raised the fact that a compliant had been lodged regrading the illegal use of the site for another training facility, no-going noise issues and the current approved indoor recreation facilities non-compliance with the approved conditions of consent.

Comment:

Council can not preempt that a proposal will not be run in accordance with the Development Consent. The owners/operators/applicants of the site are required to comply with all conditions of consent. If the proposal is not run in accordance with the conditions of consent, the non-compliance can be reported to Council to investigate and appropriate action will be taken.

A complaint was lodged with Council regarding a second recreation facility (indoor) operating on the site within unit 1 as well as other issues mentioned within the Site History section of the report. This current application was lodged to deal with several of the issues raised in the compliant, namely hours of operation and increased capacity. The other issues raised such as noise and non-compliance are still being investigated by Councils Building Control team.

- **Incorrect information and Noise Assessment Report Errors**

The submission raised concern with inaccuracies with the submitted supporting information as follows:

- The various maps shown in plans incorrectly identifies the commercial and residential properties at 9-11 Gondola Road.
- Noise Assessment Report errors

Comment:

The supporting documentation submitted with the DA describes the proposed development and provides information for Council to determine whether the proposal complies with all relevant controls. Council undertakes its own assessment of the proposal and considers the expert reports provided by the applicant. In this regard, the information provided by the applicant is not always agreed with or relied upon. Where Council cannot complete the assessment due to insufficient or inadequate information, the applicant may be requested to provide additional details or that issue will be included as a reason for refusal.

In this case, the assessment has identified a number discrepancies and lack of information with the application in relation to the noise barrier fencing. As a result of these issues, Council recommends that the operating hours do not commence till 6.00am Monday to Friday and 7.00am Saturday and Sunday.

- **Building Code**

The submission raised the following concern 'Council should look again at the relevant Building Codes, because it is inequitable that this business should be treated under a different code to local competing gyms who being classified under a different usage (class 6 versus 9) have to go to considerable expense in providing complying amenities for clients. It is also inconsistent for instance that council demand accessible parking spaces, but not accessible bathrooms - as pointed out in the application'.

Comment:

The application was referred to Councils Building Assessment team to review. Building Assessment have no objection to the proposal subject to conditions. If the proposal was to be approved then it would be subject to conditions requiring compliance with the Building Code of Australia and Australian Standards. The works would then need to be certified as compliant by the principal certifying authority.

- **Impact on the residential amenity - noise, traffic etc**

The submissions raised concern that the increased number of patrons and operating hours would result in an 'unacceptable negative impact on the amenity of all surrounding residents'.

Comment:

The application and supporting documents have been assessed by the relevant Council departments in regards to noise and traffic. Further details are provided under the Referral section of this report.

Councils Traffic Engineers are satisfied that the proposal provides appropriate onsite car parking in accordance with the part B6.3 Off-street Vehicle Parking Requirements and the Roads and Maritime Services Guide to Traffic Generating Development.

Councils Environmental Investigation team have reviewed the provided Noise Assessment Report and follow up comments provided by the applicant. Councils Environmental Investigation team agree with the recommendations of the report, however, they have raised concern with the noise generated by customers arriving/leaving classes from between 5.00am and 6.00am and before 7.00am on weekends. The site is surrounded by residential receivers who would reasonably expect, in a residential area that any business activity was conducted during "normal business hours". Parking in the lot 1 ground floor car park from 5.00 am is expected to create offensive noise and as such the Noise Assessment Report recommends modifications to fencing (eg. to a height of 2.5m) to try and deal with this. Forecast estimates of the noise to be generated are based on some actual readings/background and forward calculations, however, the real impact can only be assessed in real time future operation. Forecasts cannot accurately deal with slamming of car doors and boots, motorbike exhaust, cars with noise exhaust systems, and talking at 5.00am. Although classed as a "shoulder period" for noise assessment, it is actually Night (22.00-7.00) as determined by the NSW Noise Policy for Industry. There is no guarantee that customers will park on site and parking in front of residential premises from 5.00am can produce a nuisance to sleeping residents. The acoustic assessment is silent on this issue. Environmental Investigations recommend that operation does not begin until 6.00am but accept the later extended proposed hours.- evenings and weekend.

Council cannot support the recommended noise barrier fencing along the southern and western side boundaries as no plans or survey have been provided and the proposed fence does not meet the requirements of Part D11.12 Fences - General. Discussions with Councils Environmental Investigations team regarding the removal of the noise mitigation fence and car parking within lot 1 have concluded that without the noise mitigation fencing cars can not park in lot one between 5.00am and 6.00am Monday to Friday or before 7.00am on Saturdays and Sundays – in accordance with the Noise Policy for Industry.

As per the RMS requirements the site requires 11 car parking spaces. Lot 2 has seven car parking spaces allocated to it on the roof top and lot 1 can provide eight spaces. Without the eight car parking spaces within lot 1, the proposal does not provide sufficient on site car parking to comply with car parking requirements. Due to the potential noise impact to adjoining residents, the roof top parking area is not to be used prior to 6.00am. As both the roof top parking area and lot 1 are not recommended to be used prior to 6.00am Monday to Friday, and lot 1

before 7.00am on Saturdays and Sundays, the proposal does not provide sufficient car parking.

As a result of insufficient car parking and noise impacts to the adjoining residential neighbours Council recommends that the operating hours do not commence till 6.00am Monday to Friday and 7.00am Saturday and Sunday.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p><b>Supported subject to conditions</b></p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Industrial)	<p><b>Not Supported</b></p> <p>The change of operating conditions relate to extending the operating hours and accommodating an increase in the number of patrons participating in exercise classes from 15 to 30.</p> <p>Current operating hours are 6.00am to 7.00pm Monday to Friday and 6.00am to 12.00pm Saturdays. Closed on Sundays. The application is for an extension of 5.00am to 9.00pm Monday to Friday and 6.00am to 7.00pm Saturday and Sunday.</p> <p>Car parking spaces are provided on the roof and the car park located at grade to the south of the building. The southern at grade car park (lot 1) is intended for use during the morning period of 5.00am to 6.00am with roof parking closed during this period.</p> <p>Environmental Health believe that the internal operation and proposed patron and hours increases can be compliant in regard to noise generated although the the Acoustic requirements recommended by the Noise Assessment dated Dec 2018 Report No nss22921-F45-Final are very prescriptive and require ongoing management by staff and future staff rather than say "fixed hardware" which does not rely on daily duties. This having been said internal noise can be managed to comply with noise attenuation which can avoid nuisance to neighbors and extended evening and weekend hours as proposed are acceptable.</p> <p>HOWEVER, of particular concern is the noise generated by customers arriving/leaving classes from 5.00am. The site is effectively</p>

Internal Referral Body	Comments
	<p>surrounded by residential receivers who would reasonably expect in a residential area that any business activity was conducted during "normal business hours". It is noted that vehicles will not be parked on the elevated roof deck before 6.00am. Parking in the lot 1 ground floor car park from 5.00am is expected to create offensive noise and as such the Acoustic report requires modifications to fencing(eg. to 2.5m) to try and deal with this. Forecast estimates of the noise to be generated are based on some actual readings/background and forward calculations however the real impact can only be assessed in actual real time future operation. Forecasts cannot accurately deal with slamming of car doors and boots, motorbike exhaust , cars with noise exhaust systems, talking at , 5.00am in the morning from up to 15 vehicles(estimate only). Although classed as a "shoulder period" for noise assessment it is actually Night (22.00-7.00) as determined by the NSW Noise Policy for Industry. There is no guarantee that customers will park on site and parking in front of residential premises from 5.00am can produce a nuisance to sleeping residents.</p> <p><u>Environmental Health recommend that the current approved commencement time of 6.00am be maintained but we accept the later extended proposed hours.- evenings and weekend .</u></p> <p>Should Planning/ Council still decide to approve the earlier commencement time (of 5.00am) then approval should only be for a trial period where ongoing noise monitoring and complaints(if any) are documented and taken into consideration for any reviewed extension <u>and the matter be referred back to Environmental Health for appropriate conditions to be added</u></p> <p>If the applicant accepts the recommended 6.00am commencement time (and the applied for, extended evening /weekend hours) we will provide suitable conditions at that time.</p> <p><b>Recommendation</b> REFUSAL at this time</p> <p><b>REVIEW 4 July 2019</b> The applicant has made an additional submission 2 May 2019 referred to Environmental Health 3 July 2019 to review. Essentially Environmental Health and the applicant accept our findings and comments that noise from within the building can be controlled to acceptable levels. Likewise the on site ground level car parking is likely to be compliant based on forecast calculations, modifications and management.</p> <p>The issue remaining is still the noise as a result of the proposed change of hours to 5.00am commencement and the associated uncontrolled street noise from vehicles and people noise as a result in what is still a "night time" noise environment. With arrival and departure of 30 patrons and a capacity of the ground level car park of 13 (lot 1 provides 8 spaces) it is clear that the potential for on street parking is approximately 17 vehicles (22 vehicles) parking on the</p>

Internal Referral Body	Comments
	<p>street area beside residential premises at any one time (potentially 30 due to changeover of classes depending on start and finish) from 5.00am when residential receivers are mostly to be still sleeping. Patrons may simply decide not to enter the car park and park kerbside. Noise from closing car doors and boots (if retrieving mats/clothing etc ) and any conversation is likely to disturb adjacent residents above the car parking spaces. Any sudden intermittent impact noise at this early hour is likely to be classified as "offensive noise". The acoustic assessment is silent on this issue.</p> <p>It can be argued that there is nothing to stop any vehicle parking in this location at any time e.g people walking to catch the bus or cleaners for local businesses etc and this street area is the enforcement domain of the Police. However, this street noise is usually intermittent, not concentrated and spread across a wider area, and not specifically "approved" as such by Council in conjunction with specific consent.</p> <p>It is noted that this immediate area toward Pittwater Road does have a noisier background noise level and the DA site is on the residential interface with no effective buffer zone. It is believed that most adjoining businesses do not commence operations before 7.00am and Council would not recommended any commencement times before 6.00am for businesses particularly in residential areas due to the likely hood of noise related complaints.</p> <p><b>RECOMMENDATION 4 July 2019</b> Our opinion remains the same as previously stated which is refusal of the 5.00am start.</p> <p>NB. Whilst not encouraging a trial period ( this is because of intense management by the operator may not represent ongoing conditions), as previously mentioned; if Council was considering approval using a trial any noise assessment should be:</p> <ol style="list-style-type: none"> <li>1. Carried out at the applicants expense.</li> <li>2. Be independent, in so much as unannounced and random day monitoring.</li> <li>3. Be for a 3 month minimum period</li> <li>4. Specifically mention and adjust calculations (upward) for any impact sound encountered in accordance with noise level assessment practice .</li> <li>5 The carrying out of the extensive acoustic recommendations contained within the report by Noise and Sound Services Dec 2018 Ref :nss22921-F45-Final.</li> </ol> <p><b>Comment:</b> Council cannot support the recommended noise barrier fencing along the southern and western side boundary as no plans or survey have been provided and the proposed fence does not meet the requirements of Part D11.12 Fences - General.</p> <p>Discussions with Councils Environmental Investigations team have concluded that without the noise mitigation fencing the Environmental</p>

Internal Referral Body	Comments
	<p>Investigations team were unable to support any use of lot 1 car parking prior to 6.00am Monday to Friday and 7.00am Saturdays and Sundays, due to unreasonable noise impacts on the adjoining properties. As a result of this issue, Council recommends that the operating hours do not commence till 6.00am Monday to Friday and 7.00am Saturday and Sunday.</p>
<p>NECC (Stormwater and Floodplain Engineering – Flood risk)</p>	<p><b>Supported subject to conditions</b></p> <p>The proposed development generally complies with Councils PDCP and PLEP. The proposal is recommended to approval subject to conditions.</p>
<p>Traffic Engineer</p>	<p><b>Supported subject to conditions</b></p> <p>The proposed modification is for an increase to the patron capacity of the approved Recreational Facility (indoor) 15 to 30 persons with extended operating hours, and to use part of Lot 1 (at the southern portion of the site) for the purposes of car parking providing additional 8 parking spaces.</p> <p>The traffic generating from the proposal will not have significant adverse impact on the road network.</p> <p>The proposal includes the provision of 8 parking spaces which considered satisfactory. All vehicles are to enter and exit the driveway in forward direction.</p> <p>In view of foregoing, no objection is raised on the proposal on traffic grounds.</p> <p><b>Comment:</b> Council cannot support the recommended noise barrier fencing along the southern and western side boundary of lot 1 as no plans or survey have been provided and the proposed fence does not meet the requirements of Part D11.12 Fences - General.</p> <p>Discussions with Councils Environmental Investigations team have concluded that without the noise mitigation fencing the Environmental Investigations team were unable to support any use of lot 1 car parking prior to 6.00am Monday to Friday and 7.00am Saturdays and Sundays.</p> <p>As per the RMS requirements the site requires 11 car parking spaces. Lot 2 has seven car parking spaces allocated to it on the roof top and lot 1 can provide eight spaces. Without the eight car parking spaces within lot 1, the proposal does not provide sufficient on site car parking to comply with car parking requirements. Due to the potential noise impact to adjoining residents, the roof top parking area is not to be used prior to 6.00am. As both the roof top parking area and lot 1 are not recommended to be used prior to 6.00am Monday to Friday, and lot 1 before 7.00am on Saturdays and Sundays, the proposal does not provide sufficient car parking prior to these times.</p>

Internal Referral Body	Comments
	As a result of insufficient car parking and noise impacts the to adjoining residential neighbours, Council recommends that the operating hours do not commence till 6.00am Monday to Friday and 7.00am Saturday and Sunday.

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

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

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

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

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

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

##### SEPP 55 - Remediation of Land

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

##### SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

##### 10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
  - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*

- (c) *the carrying out of any of the following:*
  - (i) *earthworks (including the depositing of material on land),*
  - (ii) *constructing a levee,*
  - (iii) *draining the land,*
  - (iv) *environmental protection works,*
- (d) *any other development.*

Comment:

Not applicable to the site.

### 11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
  - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
  - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

Not applicable to the site.

### 12 Development on land within the coastal vulnerability area

*Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:*

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
  - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
  - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
  - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated*

*coastal  
processes  
and  
current  
and  
future  
coastal  
hazards.*

Comment:

At the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified. Not applicable.

### 13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*
  - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - (f) *Aboriginal cultural heritage, practices and places,*
  - (g) *the use of the surf zone.*

Comment:

The proposed works are unlikely to cause an adverse impact upon the matters identified in this clause. The proposal is located wholly within the subject site and does not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

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

Comment:

The proposal has been designed in such a way that it satisfies the relevant matters identified in this clause.

### 14 Development on land within the coastal use area

- (1)

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

Comment:

The proposal is inland and will not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not effected and the surrounding area consists of examples of similar developments.

The nearest foreshore area is heavily modified and no aboriginal heritage sites have been identified within the vicinity of the proposed development. The proposed works are not likely to cause an adverse impact upon the matters identified in this clause.

As such, it is considered that the application does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Due to the location of the property, the proposal is unlikely to cause increased risk of coastal hazards on that land or other land.

**Pittwater Local Environmental Plan 2014**

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

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	No change to overall building height	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.3 Flood planning	Yes

**Pittwater 21 Development Control Plan**

Built Form Controls

The proposal includes the installation of noise mitigation mechanisms recommended by the project acoustic engineer including the erection of acoustic fencing (or extensions to existing fencing) at the southern and western boundaries of the proposed at-grade parking area at part of Lot 1 and internal noise insulation works.

The noise barrier fencing is located along the boundaries of the site and there will be no change to the PDCP Built Form Controls.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.11 North Narrabeen Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.13 Flood Hazard - Flood Emergency Response planning	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	No
B6.7 Transport and Traffic Management	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	No	No
C2.12 Protection of Residential Amenity	Yes	Yes
D11.1 Character as viewed from a public place	Yes	Yes
D11.12 Fences - General	No	No

Detailed Assessment

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

#### Description of parking

The proposal will provide eight (8) car parking spaces within Lot 1 and seven (7) spaces on the adjoining rooftop. As per the recommendations of the Noise Assessment Report a noise barrier fence needs to be constructed along the southern and western boundary of the site to mitigate the noise impacts on the adjoining residential properties. Due to a lack of information and the non-compliance with the PDCP requirements the noise barrier fencing cannot be supported and as such parking on lot 1 would need to be restricted to periods of the day that will not unreasonably impact on the amenities of the neighboring properties.

#### Consideration

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

- *An adequate number of parking and service spaces that meets the demands generated by the development.*

#### Comment:

The development provides the following on-site car parking:

Use	Roads and Maritime Services Guide to Traffic Generating Development	Required	Provided	Difference
Recreation facility (indoor)	If a gymnasium is located in a sub-regional area the recommended levels of off-street parking are: minimum provision: 4.5 spaces per 100m <sup>2</sup> GFA.	GFA 240m <sup>2</sup> = 11 car spaces	7 spaces on roof top and 8 spaces lot 1	
<b>Total</b>		11 spaces	15 spaces	4

The proposed car parking exceeds the requirement, however, as car parking with lot 1 would need to be restricted to 6.00am - 9.00pm Monday to Friday, 7.00am - 7.00pm Saturdays and Sundays, the proposal will not be able to provide sufficient parking outside of these hours. Council recommends that the operating hours do not commence till 6.00am Monday to Friday and 7.00am Saturday and Sunday to meet car parking requirements.

- *Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.  
Safe and convenient parking.*

Comment:

The proposed noise barrier fencing along the southern and western boundary to allow car parking within lot 1 cannot be supported as it will have adverse visual impact and does not meet the requirements of part D11.12 Fences - General and has been discussed in more detail later in the report.

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

### **C2.10 Pollution Control**

Council's Environmental Investigations team has reviewed the proposal and do not support operation of the site prior to 6.00am weekdays and prior to 7.00am on weekends. Being located in primarily a residential area, the proposal and supporting Noise Assessment Report has failed to appropriately consider the impact on residential amenity of adjoining and nearby properties in the area through inadequate information. It is considered that the 5.00am operating commencement time will have an adverse impact upon adjoining and nearby residential accommodation from the generation of an unreasonable level of noise generated by patrons arriving/ leaving the premises and surrounding area.

Furthermore, Council is unable to support the proposed acoustic barrier fencing along the western and southern boundary due to insufficient information and inconsistency with the requirements and outcomes of the part D11.12 Fences - General of the PDCP. Further details are provided under part D11.12 Fences - General of the report. Without the acoustic barrier fencing along the western and southern boundary, as per the details contained within the Noise Assessment Report, car parking within lot 1 would need to be restricted to times of the day and week that would not unreasonably impact on the adjoining residential properties. The restricted times for the use of lot 1 and the roof top car parking results in the proposal not being able to provide sufficient car parking on site for the entirety of the proposed operating hours.

It is recommended that a condition be imposed on the consent that restricts the hours of operation to 6.00am - 9.00pm Monday to Friday and 7.00am to 7.00pm Saturday and Sunday, to comply with car parking requirements and reduce unreasonable noise impacts to the adjoining properties.

### **D11.12 Fences - General**

Description of non-compliance

The proposed change of use application includes external noise mitigation measures in the form of two Noise Barrier fences along the western boundary and the southern boundary. The fences are required to allow parking within lot 1 from 5.00am. No plans or survey were submitted with the proposal and the applicant is relying on the Noise Assessment Report for the design of the fence. The visual streetscape impact of the fence cannot be assessed as no plans have been submitted.

As per the Noise Assessment Report submitted with the application the western boundary noise barrier fence shared with no. 16 Rickard Road requires the height of the existing 1m section of the wall to be increased to 1.8m by the addition of masonry bricks and an acrylic screen constructed along the length of the 1.8m high wall (including the existing 1.8m high section of the wall). The acrylic screen should not be less than 20mm thick with no gaps and extend up to 2.5m above ground level. The existing 2.3m high section of the wall should also be extended to a height of 2.5m with either masonry or acrylic sheets.

A 1.5m high noise barrier fence is also recommended along the southern boundary to Rickard Road. The Noise Assessment Report recommends the noise barrier fences be constructed of either 'Colorbond', timber, aerated concrete, glass and polycarbonate sheets and cannot contain any acoustically untreated holes or gaps.

The subject site has three street frontages, with Gondola Road to the north, Verona Street to the east and Rickard Road to the south. The control requires front and side fences (within the front building setback of 3.5m) not to exceed a maximum height of 1m above existing ground level, be compatible with the streetscape character, and not obstruct views available from the road. Fences are also to be constructed of open, see-through, dark-coloured materials and landscaping is to be provided to screen the fence on the roadside.

The location of the fence with a nil setback to the southern boundary does not allow for landscaping to screen the fence on the roadside and does not meet the requirement of the control in that it will be over 1m in height, and will be of solid construction. The proposed western fence is proposed with a total height of 2.5m (1.8m solid masonry construction) within the front setback area and for the extent of the western boundary to the building.

#### Merit consideration

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

While the subject site does have more than one street frontage, the proposed development does not meet the requirements for a variation to the control as the proposed fence does not contain the following design elements:

- be setback a minimum of 1m for any fence higher than 1m (in the case of corner lots or lots with more than one frontage this setback may be varied based on merits); and
- be articulated to provide visual interest and further opportunities for landscaping, and
- be screened by landscaping within the setback area; and
- 50% or more of the fence is transparent.

The proposed fence provides none of these design elements and it is considered the variation clause is not applicable.

#### Outcomes

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

#### Comment:

The desired future character statement does not provide a lot of detail regarding commercial premises within the B2 Local Centre zone which is not located along Pittwater Road. However, the statement does talk about how development should minimise bulk and scale, be in harmony with the natural environment with the use of colours and materials and be generally landscaped. The proposed fence to the southern and western boundary does not achieve the desired future character. Specifically, the 1.8m high masonry wall with acrylic screening to 2.5m on the residential boundary does not attempt to minimise bulk and scale and without any plans to refer to, no attempt has been made to provide a design that is in harmony with the natural environment. It is noted that conditions could be included in the consent requiring the fence to be constructed wholly within the subject site and the colours and materials used to harmonise with the environment, however, the overall, design of the noise barrier fence is not considered to

achieve the desired future character of the locality and cannot be supported.

- *To ensure fences compliment and conserve the visual character of the street and neighbourhood.*

Comment:

The proposed noise barrier fence is out of character with the street and neighbourhood. While there are other fences along Rickard Road that exceed 1m in height, within the immediate vicinity of the subject site the surrounding fencing consists of no fence, hedge fencing, 1.2m high timber or wire fence or low solid walls. The proposed 1.8m high masonry wall and acrylic screen to 2.5m and the solid 1.5m high fence will be visible from the street and surrounding residents and does not compliment or conserve the visual character of the street and neighbourhood.

- *To define the boundaries and edges between public and private land between areas of different function.*

Comment:

The proposed fence is capable of defining the boundaries and edges between public and private land between areas of different function.

- *To contribute positively to the public domain.*

Comment:

While the proposed fencing along the south and west boundary will screen car parking from the street, the proposed height and potential design of the fence to comply with the recommendations of the Noise Assessment Report does not contribute positively to the public domain.

- *An open streetscape that allows casual surveillance of the street.*

Comment:

The proposed 1.8m high fence along the western boundary and the solid 1.5m high fence to the southern boundary will reduce the openness of the streetscape and potential for casual surveillance from the western end of Rickard Road. However, the eastern boundary fence is to remain as it is, which is an open style of fencing and should allow for casual surveillance of the street.

- *Fences, where provided, are suitably screened from view from a public place.*

Comment:

The proposed fence is located along the front boundary with no opportunity for planting to screen the fence from public view.

- *Safe sight distances and clear view of the street (including to and from driveways), for motorists and pedestrians.*

Comment:

The proposed fence is located away from any driveway accesses and will maintain safe sight distances and clear view of the street (including to and from driveways), for motorists and pedestrians.

- *To ensure heritage significance is protected and enhanced.*

Comment:

The proposed fence is not in the vicinity of any heritage significant items or locations.

- *To ensure an open view to and from the waterway is maintained.*

Comment:

The subject site is not located near any waterways and will not impede views to and from waterways.

### **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**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

### **CONCLUSION**

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

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

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

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

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

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

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

- Noise impacts, Council's Environmental Health section cannot not support the operation of the site prior to 6.00am due to unreasonable noise impacts on the adjoining residential dwellings.
- Part B6.3 Off-Street Vehicle Parking Requirements of the PDCP, as a result of Council not supporting the noise barrier fencing the site does not provide sufficient on-site car parking during the entirety of the proposed operating hours.
- Part C2.10 Pollution Control of the PDCP, the proposal does not meet the requirements of the control and will produce noise that will unreasonably impact on the adjoining residential dwellings.
- Part D11.12 Fences - General of the PDCP, no plans or survey have been provided for the assessment of the noise barrier fencing proposed along the southern and western boundary of the site. The application relies on the recommendations of the noise assessment report for the design of the fence which does not meet the requirements of the control.

It is considered that the risk to the neighboring properties in regards to noise impacts is to uncertain with the information provided to support the current proposal.

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

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/0167 for Use of premises associated with an indoor recreation facility on land at Lot 1 S/P 46516, 1 / 13 Gondola Road, NORTH NARRABEEN, Lot 2 S/P 46516, 2 / 13 Gondola Road, NORTH NARRABEEN, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan	No date	No details

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Health & Fitness Studio - Noise Assessment for Change of Operating Conditions For the: - Health & Fitness Studio at 13 Gondola Road, North Narrabeen, NSW 2101 Report No. nss 22921-F45 – Final	December 2018	Noise and Sound Services
2/13 Gondola Road, Narrabeen - Car Park Design Advice Our Ref: 17222	14 February 2019	Ttp Transport Planning

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

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

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

2. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a Recreation Facility (Indoor).

A recreation facility is defined as:

"recreation facility (indoor) means a building or place used predominantly for indoor recreation, whether or not

operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.”

(development is defined by the Pittwater Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

### 3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

- (i) protect and support the adjoining premises from possible damage from the excavation, and
- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement

#### 4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative

- change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
  - (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
  - (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
  - (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
  - (j) Prior to the commencement of any development onsite for:
    - i) Building/s that are to be erected
    - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
    - iii) Building/s that are to be demolished
    - iv) For any work/s that is to be carried out
    - v) For any work/s that is to be demolishedThe person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
  - (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
    - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;  
  
Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
      - (i) Swimming Pools Act 1992
      - (ii) Swimming Pools Amendment Act 2009
      - (iii) Swimming Pools Regulation 2008
      - (iv) Australian Standard AS1926 Swimming Pool Safety
      - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
      - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
    - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
    - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

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

### 5. **Flooding**

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

#### Flood Emergency Response – E1

- The minimum floor space of the shelter-in-place refuge shall be as outlined in Section B3.13 of the Pittwater 21 Development Control Plan.
- The shelter-in-place refuge shall remain accessible at all times.
- The minimum floor level of the shelter-in-place refuge shall be set at or above the Probable Maximum Flood Level of 4.89 mAHD.

#### Car parking – G4

Vehicle barriers or restraints are to be installed to a minimum height of the Flood Planning Level of 3.53 mAHD.

Perimeter walls/louvres installed as vehicle barriers or restraints are to be designed to allow flood waters to pass through and are to have a minimum of 50% open area below the 1% flood level.

#### Recommendations

The development must comply with all recommendations outlined in:

- The Flood Emergency Response Plan prepared by Martens Consulting Engineers dated October 2015.

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

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

### 6. **Compliance with Standards**

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

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

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

7. **No approval for recommended Noise Barrier Fence**

The Noise Barrier Fence along the southern boundary with no. 16 Rickard Road and western boundary to Rickard Road as recommended in the Health & Fitness Studio – Noise Assessment for Change of Operating Conditions report is not to be constructed and does not form part of this application.

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

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

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

8. **Noise Management**

Prior to commencement compliance with Building, Car park and Management practices as contained within the report by Noise and Sound Services Dec 2018 Ref :nss22921-F45-Final. Certification by a qualified person shall be supplied to Council and any Certifier.

Reason: To ensure noise generated is managed and does not cause a nuisance.

### CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

9. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act
- o Work Health and Safety Regulation
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)] and
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)]
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005.
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

10. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

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

#### 11. Noise Management ongoing

The ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the *Protection of the Environment Operations Act 1997*.

Reason: To ensure compliance with legislation and to protect public health and amenity.

#### 12. Hours of Operation

The hours of operation are to be restricted to:

- Monday to Friday – 6.00am - 9.00pm
- Saturday, Sunday and Public Holidays – 7.00am - 7.00pm

The premises and driveway gates are not to be opened to customers prior to 6.00am.

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

#### 13. Commercial Waste Collection (DACPLG18)

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

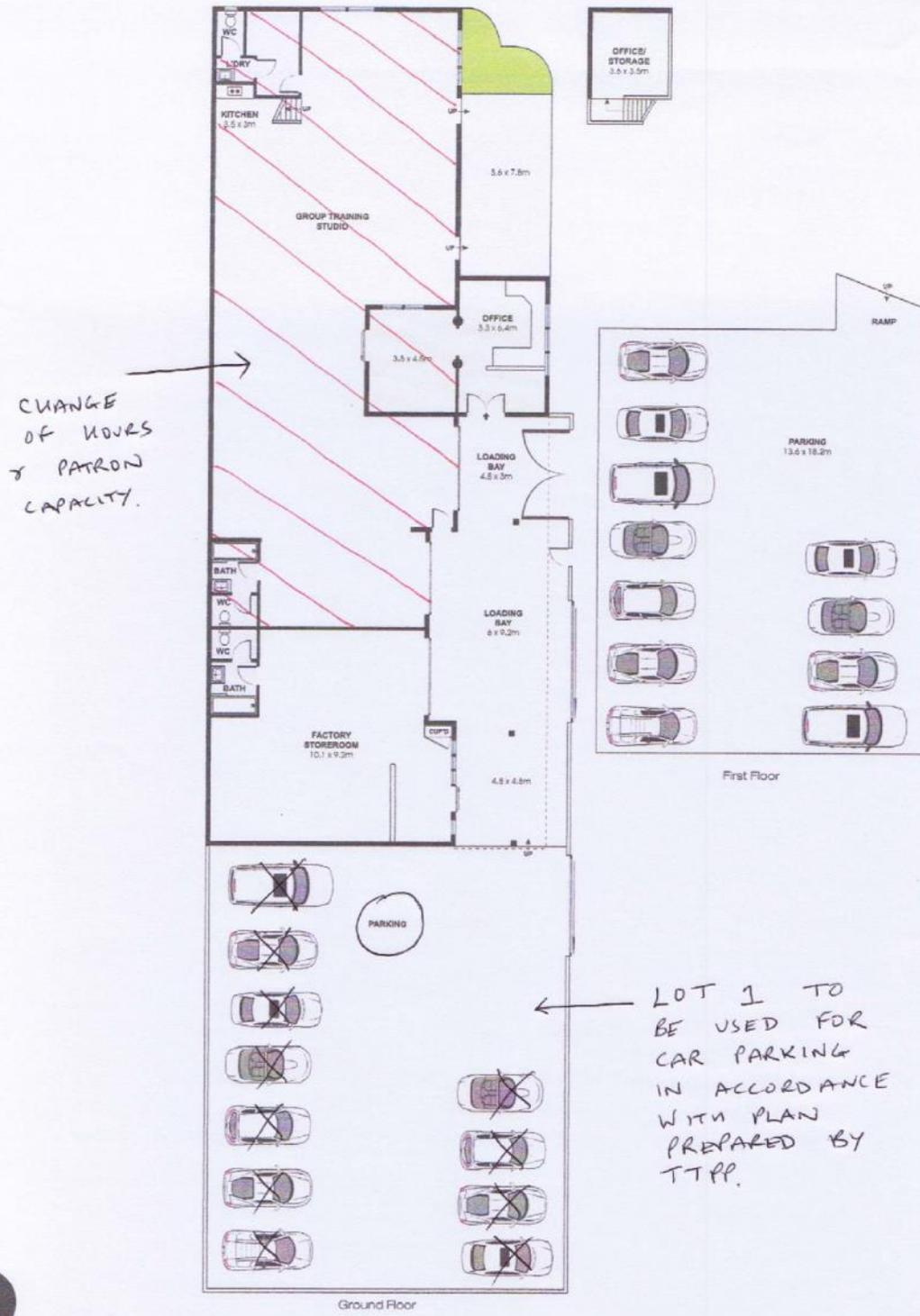
Reason: To protect the acoustic amenity of surrounding properties.(DACPLG18)

#### 14. Maximum Occupancy

The maximum occupancy for the entire premises (all floors) shall be in accordance with the following:

- A maximum of 30 customers and staff on site at any one time.

These details must be displayed prominently at the main pedestrian entrance to the fitness studio.



14 Rickard Road, Narrabeen

Scale in metres. Indicative only. Dimensions are approximate. All information contained here in is gathered from sources we believe to be reliable. However we cannot guarantee its accuracy and interested persons should rely on their own enquiries.