

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

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

WEDNESDAY 4 SEPTEMBER 2019

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



Peter Robinson
Executive Manager Development Assessment

Panel Members

Lesley Finn	Chair
Robert Hussey	Town Planner
Annelise Tuor	Town Planner
Lloyd Graham	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 4 September 2019
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1.00pm**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 29 AUGUST 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 29 August 2019 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1 MOD2019/0303 - 3 OGILVY ROAD, CLONTARF -
MODIFICATION OF DEVELOPMENT CONSENT DA0203/2013
GRANTED FOR ALTERATIONS AND ADDITIONS TO A
DWELLING HOUSE INCLUDING A SWIMMING POOL

AUTHORISING MANAGER MATTHEW EDMONDS

TRIM FILE REF 2019/487361

ATTACHMENTS 1 [↓](#) Assessment Report
2 [↓](#) Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2019/0303 for Modification of Development Consent DA0203/2013 granted for alterations and additions to a dwelling house including a swimming pool at Lot 10 Sec J DP 2610, 3 Ogilvy Road, Clontarf subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0303
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 10 DP 2610, 3 Ogilvy Road CLONTARF NSW 2093
Proposed Development:	Modification of Development Consent DA0203/2013 granted for alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	Yes
Owner:	Maxwell Stephen Polley Kim Cherie Polley
Applicant:	Boston Blyth Fleming Pty Ltd
Application lodged:	25/06/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	02/07/2019 to 16/07/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: No Clause 4.6 for modification applications. New works result in total variation of 3.5%
Recommendation:	Approval

EXECUTIVE SUMMARY

The applicant seeks to modify a development consent issued by the Land and Environment Court (Alterations and additions to the existing dwelling house). In particular it is proposed to alter the size of the decks on both the lower and ground floor of the dwelling house. The decks were conditioned under the previous modification application (MOD2018/482- Approved 6 March 2019) Condition No. 31C - Deck Amendments to be reduced in size. Roof alterations are also proposed to the development.

Following notification of the application Council received two (2) submissions from neighbouring properties raising concern with the application. Concerns raised included privacy, view loss, bulk and

scale, overshadowing, DCP non-compliance and impact to the natural environment. Each of these concern have been addressed in detail within this report.

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

The application is referred to the NBLPP as it seeks to modify a condition of consent originally imposed by the panel.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S79C Assessment
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 10 DP 2610 , 3 Ogilvy Road CLONTARF NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Ogilvy Road.</p> <p>The site is regular in shape with a frontage of 10.695m along Ogilvy Road and a depth of 44.195m. The site has a surveyed area of 472.6m².</p>

	<p>The site is located within the E3 Environmental Management zone and accommodates a dwelling house.</p> <p>The site slopes from the northern side down to the southern eastern corner of the site.</p> <p>The site adjoins the E2 Environment Conversation Zone.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by multi storey dwelling houses.</p>
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Map:



SITE HISTORY

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

DA203/2013

Alterations and additions to an existing dwelling including first floor addition, rear extension with deck, garage extension, swimming pool and front fence with gates. (Approved by MIAP 15 May 2014)

Land and Environment Court Appeal- Case Number 14/10236

Appeal upheld pursuant to Section 34(3)(a) of the Land and Environment Court Act 1979 (23 July 2014).

DA203/2013- Part 2 (Section 96AA)

Alterations and additions to an existing dwelling including first floor addition, rear extension with deck, garage extension, swimming pool and front fence with gates. (Approved by DAU).

Proposed modification included:

- Amendment to RFS condition RFS12.
- Internal alterations.
- Additions
- External alteration.
- Deletion of swimming pool.

DA203/2013- Part 3 (Section S96(1))

Deletion of Conditions of consent Nos ANS02, ANS22, 16(2SP01), 17(2SP02), 18(2SP03), 19(2SP04) and 20(2SP05). (Approved NBLPP 25 July 2016).

MOD2018/0482 (Section 4.56)

Modification to the approved ground floor which includes extensions to the rear of the site, new lower ground floor deck, internal alterations, external alterations and removal of Condition ANS01. (Approved 6 March 2019).

Planners Comment: This application was approved by Northern Beaches Local Planning Panel on 6 March 2019. The Panel included a condition No. 31C which reduced the size and overall scale of the both the ground and lower ground floor decks.

PROPOSED DEVELOPMENT IN DETAIL

This modification application lodged pursuant to Section 4.56 of the Environmental Planning and Assessment Act 1979 seeks to modify the built form approved under Development Consent No. DA203/2013, Land and Environment Court S34 agreement and subsequent modification consents.

Modification sought include:

- Deletion of Condition 31C- Deck Amendments to enable the extension and alteration of the approved Lower Ground and Ground floor decks to the rear of the property.
- Roof Alterations.

The requested amendment involves deletion of Condition No. 31C - Deck amendments. The condition as imposed reads as follows:

31C Deck amendments

- (a) The proposed ground floor deck is to be amended to be setback from the eastern side boundary by 2.5m and to extend no further than 3.0m beyond the southern elevation wall towards the rear boundary.
- (b) The proposed roof extension on the ground floor deck shall be deleted.
- (c) The proposed lower ground floor deck is to be amended to align with the same side and rear boundary setback as the proposed ground floor deck as amended by (a).

Reason: To protect the amenity of adjoining neighbours and to provide an increased setback from the watercourse and to increase the landscaped open space.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA203/2013, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA203/2013 and subsequent modifications applications.
(b) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2013 and Manly Development Control Plan.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA203/2013.

Section 4.56- Other Modifications	Comments
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

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

Section 79C 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading</p>

Section 79C 'Matters for Consideration'	Comments
	<p>of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted as part of the previous application MOD 2018/0482 (prepared by Matthew Willis, dated 12 August 2018). The report recommended an alternative solution to comply with Planning for Bush Fire Protection.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions.

The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS were included as part conditions of consent of MOD2018/0482. No change is proposed under this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr David Cathcart Pike	1 Ogilvy Road CLONTARF NSW 2093
Mr Peter Alexander Groch Mrs Darine Groch	5 Ogilvy Road CLONTARF NSW 2093

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

- **Privacy (visual and acoustic).**
- **View Loss.**
- **Visual Bulk.**
- **Overshadowing.**
- **Impact to Natural Environment.**
- **DCP Numeric non-compliance**

The matters raised within the submissions are addressed as follows:

- **Privacy (visual and acoustic)**

Comment:

Concerns were raised about privacy impacts (acoustic and visual) from the lower ground and ground floor outdoor living areas. The proposal has been assessed against the privacy provisions under Clause 3.4.2 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.2 of the Manly DCP subject to maintaining a 2.5m setback (as currently conditioned) which minimises the loss of privacy by mitigating direct sightlines between outdoor living areas of the adjacent dwelling and the subject site without the need for privacy screening along the eastern side of the deck.

- **View Loss**

Comment:

Concern was raised in regards to view loss from private and public spaces to Middle Harbour. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of *'Tenacity Consulting Pty Ltd v Warringah Council (2004) NSWLEC 140'* in this report (refer to Cl. 3.4.3 Maintenance of Views under the MDCP 2013 section of this report). In summary, the proposed development does not

cause unreasonable view loss to and from public and private open spaces, subject to maintaining the 2.5m side setback requirement to decks from the eastern boundary, to address the general outlook and amenity of 1 Ogilvy Road.

- **Visual Bulk**

Comment:

Concern was raised that proposed development will have an adverse visual impact as viewed from the foreshore.

The visual impact of the dwelling house is consistent with that of other dwelling houses in the street and surrounding Sydney Harbour catchment area. The proposed bulk and scale of the house will not be offensive when viewed from the public domain.

- **Overshadowing**

Comment:

Concern is raised that the proposed development will result in unreasonable overshadowing of the adjoining properties and public open space. In summary, the development allows for a reasonable level of sunlight to be maintained to adjoining properties between 9am and 3pm on June 21 and public open space, consistent with the numeric control under the Manly DCP.

- **Impact to Natural Environment**

Comment:

Concern is raised by both objecting parties in regards to the impact upon the natural environment, particularly that of the Biodiversity and the Watercourse running through the rear of the subject site. The application was referred off the both Council's coast and catchment officer and bushland and biodiversity officer, who raised no concern in regards to the proposed modifications. Conditions imposed as part of the most recent modification application (MOD2018/0482) still apply.

- **DCP Non-compliance**

Comment:

General concern was raised in regards to the numeric non-compliance with Manly DCP controls. Each aspect of non-compliance has been addressed throughout the report. In summary, the development as a whole is seen to be consistent with the underlying objective contained within the Manly DCP as well as the Manly LEP and relevant SEPP's.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed modification has been assessed against the objectives of Manly LEP Clause 6.5 (Terrestrial Biodiversity). The modification is unlikely to result in substantial additional impact to native vegetation and is therefore considered to comply with the control.
NECC (Coast and Catchments)	There are no additional comments or changes from the previous comments provided under MOD2018/0482.

Internal Referral Body	Comments
NECC (Riparian Lands and Creeks)	Please refer to the Coast and Catchments referral for comment on Riparian conditions.
NECC (Stormwater and Floodplain Engineering – Flood risk)	As all changes are above the 1% AEP Flood Level, it is satisfactory for flood safety, provided it complies with the existing conditions.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.

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 19 - Bushland in Urban Areas

The provisions of the SEPP require that a person shall not disturb bushland zoned or reserved for public open space purposes without the consent authority considering the aims and objectives of the SEPP.

In this regard, consideration is given as follows:

(1) The general aim of this Policy is to protect and preserve bushland within the urban areas referred to in Schedule 1 because of:

- (a) its value to the community as part of the natural heritage,
- (b) its aesthetic value, and
- (c) its value as a recreational, educational and scientific resource.

Comment:

The subject property adjoins bushland zones land therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2 (aims of the SREP), Clause 6 (relating to consent to disturb bushland zones or reserved for public open space), Clause 8 (Plans of management), Clause 9 (Land adjoining land zoned or reserved for public open space) (see below). The proposal is consistent with the above provisions of the SEPP, subject to conditions.

An assessment against Clause 9 (Land adjoining land zoned or reserved for public open space) is provided of this policy is provided below:

(1) This clause applies to land which adjoins bushland zoned or reserved for public open space purposes.

(2) Where a public authority:

(a) proposes to carry out development on land to which this clause applies, or

(b) proposes to grant approval or development consent in relation to development on land to which this clause applies,

Comment:

Works are proposed on land that adjoins the urban bushland zone.

the public authority shall not carry out that development or grant the approval or development consent unless it has taken into account:

(c) the need to retain any bushland on the land,

Comment:

The proposed retains appropriate amounts of vegetation within the subject site and the adjoining bush land to the rear, subject to existing conditions of consent.

(d) the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and

Comment:

The proposed development will not have detrimental impact on the above.

(e) any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.

Comment:

Council's biodiversity and sustainability officers have previously imposed conditions of consent to address the the protection and preservation of bush land.

Based on the above, it is considered that the development is consistent with this policy.

SEPP (Infrastructure) 2007Ausgrid

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

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

Comment:

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

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:

The proposal will not cause an adverse impacts on the relevant matters described above in subclause (1).

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:

The proposal is unlikely to result in any significant impact upon coastal amenity. The resulting impact is

deemed to be negligible. The proposal will not compromise access to any beach, foreshore or rock platform adjacent to the development.

The application was referred off to Council's floodplain and storm water management officer, natural environment officer as well as coast and catchment officer. The referrals raised no issues to the subject development, subject to conditions of consent.

Suitable conditions of consent have been included as part of the consent to ensure there are coastal processes and current and future coastal hazard are retained and mitigated appropriately.

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The proposal is considered to have minimal or no impact in any of these areas listed above..

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

Comment:

The proposal is considered to have minimal or no impact in any of these areas.

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 proposed dwelling house will not adversely impact upon the following:

- Existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- overshadowing, wind funnelling and the loss of views from public places to foreshores, the visual amenity and scenic qualities of the coast, including coastal headlands,
- Aboriginal cultural heritage, practices and places,
- cultural and built environment heritage, and

The bulk and scale of the development will not compromise the coast.

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

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed works are considered to have a negligible impact on the surrounding environment and are unlikely to cause an increased risk of coastal hazards on the subject land or other land.

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.8m	8.8m (roof alterations)	3.5%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

4.6 Exceptions to development standards

In accordance with the Land and Environment Court caselaw of *North Sydney Council v Michael Standley & Associates Pty Ltd* [1009] NSW 163 (Michael Standley & Associates) the Court determined that Section 96 (now Section 4.55) is a "free-standing provision" meaning that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application." This means that Clause 4.6 of the MLEP 2013 does not strictly apply to the assessment of a modification application.

Notwithstanding the findings in *Michael Standley & Associates*, the Court later detailed in *Gann v Sutherland Shire Council* (2008) that consideration should still be given to the relevant standard objectives:

"This does not mean that development standards count for nothing. Section 96(3) still requires the consent authority to take into consideration the matters referred to in s 79C, which in turn include the provision of any environmental planning instrument. That is, any development standard in an environmental planning instrument must be taken into consideration by the consent authority, but the absolute prohibition against the carrying out of development otherwise than in accordance with the instrument in s 76A(1) does not apply."

Accordingly, with consideration to the above caselaw, a merit assessment of the variation sought against the approved development is undertaken below to identify the developments consistency with the zone objectives and prevailing development standard objectives.

Requirement:	8.5m
Proposed:	8.8m
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical

If numerical enter a % variation to requirement	3.5%
---	------

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the MLEP 2013. The assessment is detailed as follows:

(1) The objectives of this Clause 4.3 are as follows:

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

Comment:

The proposed building height of the development is reasonable given the fall of land, the existing building and the height of other dwelling houses within the street. The works will not be readily visible from Ogilvy Road. The impact upon the streetscape will be negligible.

The development satisfies this objective.

b) to control the bulk and scale of buildings,

Comment:

The resulting bulk and scale of the building is not unreasonable. The application proposes a roof alterations over the existing ground floor. The works are solely concentrated to the rear of the property and will maintain the amenity of the existing dwelling house and adjoining properties.

The development satisfies this objective.

c) to minimise disruption to the following:

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

Comment:

The proposed development does not cause unreasonable view loss to and from public and private open spaces.

The development satisfies this objective.

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

Comment:

The solar impacts of this aspect of the development are minimal and acceptable in terms of the

impacts on habitable rooms of the adjoining properties and public open spaces.

The development satisfies this objective.

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

Comment:

The proposed development has regards to the existing vegetation and topography of the site and surrounding development. The works are not going to have any unreasonable impact on urban bushland or surrounding land uses.

The development satisfies this objective.

Conclusion:

The proposed development satisfies the underlying objectives of the Height of Buildings development standard.

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the E3 Environmental Management zone.

The underlying objectives of the E3 Environmental Management zone

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

Comment:

The proposed development is acceptable in terms of its impacts on the ecological and aesthetic values. There are no known special ecological, scientific or aesthetic sites of value recorded on the subject site.

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

Comment:

The proposed works would not have an adverse effect on those values.

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

Comment:

The proposed works would have an unreasonable impact on tree canopies. The subject site is not in close vicinity of any important trees. The size and scale of the proposal means that it would not dominate scenic qualities of the foreshore. The proposed built form, as amended will

fit comfortably within its surrounds.

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

Comment:

The proposed works are located near the foreshore however by design and as conditioned will have no impact on natural features. The generous setback proposed between the subject site and the foreshore will ensure that the development does not cause any unreasonable impact upon the harbour.

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

Comment:

The proposal is not considered to have any negative impacts on the foreshore, subject to conditions.

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

Comment:

The height and bulk of the proposed building has had regard to the adjoining development and the existing landscaping and topography of the adjoining sites.

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

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

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

Comment:

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

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

Comment:

The development seeks a minor increase the 8.5m height control to a provide a more equitable use of the outdoor living areas through roof alterations. The proposal does increase the yield of the development and has a minor impact upon surrounding lands. It is found that the development as proposed achieves a better outcome than that of the approved development.

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

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 472.6m ²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	East: 8m (based on gradient 1:4)	9m	7.1m (measured to top of ground floor balustrade)	Yes
	West: 8m (based on gradient 1:4)	7.5m	6.5m (measured to top of ground floor privacy screen)	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.5m	0.4m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.36m (based on eastern wall height)	2.5m-(As conditioned by previous panel determination)	0.9m	No
	2.16m (based on eastern wall height)	0.9m	0.9m	No
	Secondary street frontage: Prevailing setback	8.4m- 10.4m (As conditioned)	7.995m- 10.8m	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	8m (rear boundary)	6.5- 8.9m (As conditioned)	7.995m- 10.8m	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (283.56m ²) of site area	52.9% (250.1m ²) (As conditioned)	48.66% (230.1m ²)	No
	Open space above ground 25% (57.53m ²) of total open space	(15.6%) 39.2m ² (As conditioned)	25.7% (59.2m ²)	
4.1.5.2 Landscaped Area	Landscaped area 40% (89.6m ²) of open space	43.9% (109.9m ²) (As conditioned)	40% (89.9m ²)	Yes

Note: The built form controls reflect the conditioned amendments made by the Northern Beaches Local Planning Panel under MOD2018/0482.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Merit consideration:

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The proposed modification application increases the overall scale of the decks on both the lower floor and ground floor to the rear and eastern side of the property.

The proposed lower floor deck is setback from the rear boundary 8.3m at the western edge increasing to a 10.796m setback along the eastern edge of the deck. The ground floor deck is setback 7.995m from the rear boundary at the western edge increasing to a 10.865m rear setback at the eastern edge. Both decks are setback at least 0.9m from eastern and western side boundaries. Privacy screens are proposed along the western side of both the lower ground and ground floor deck. The proposed decks have a minimum setback of 0.9m from both the western and eastern boundary.

No. 5 Ogilvy Road, Clontarf

It is noted that the adjoining dwelling house to the west of the subject site (No. 5 Ogilvy Avenue) has

existing decking on both the lower ground floor and ground floor deck of a similar bulk and scale to what is proposed on the subject site.

It is evident that there are some sight lines onto both decks of the adjoining property to the west. However, the sightlines are not the dominant views (which is directly to the rear of the subject site) and inevitable given the residential use of the area. The proposed decking is suitably setback from the rear boundary, to ensure there are no direct sightlines to the adjoining properties. The size and locations of the decks in conjunction with the proposed privacy screening will ensure that the development does not result in unreasonable visual or acoustic privacy impacts on the neighbouring property to the west.

No. 1 Ogilvy Road, Clontarf

The proposed deck amendments will decrease the conditioned setback along the eastern side of the deck from a 2.5m side setback to 0.9m east side setback for both the ground and lower floor decks with no screening along the eastern elevation. The reduced setback which is non-compliant with the numeric control, will result in increased sight lines to the rear yard of No. 1 Ogilvy Road. Maintaining a 2.5m setback (as currently conditioned) minimises the loss of privacy by mitigating direct sightlines between outdoor living areas of the adjacent dwelling and the subject site without the need for privacy screening along the eastern side of the deck.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The 2.5m east side setback was specifically conditioned as part of the previous modification application (MOD2018/0482) to allow for a greater outlook from the rear yard of No. 1 Ogilvy Road to bushland and the harbour.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal retains an open frontage to allow for passive surveillance of the street.

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

3.4.3 Maintenance of Views

Merit consideration:

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

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

Comment:

The proposed development will result in a negligible loss of views from the adjoining eastern property

(No. 1 Ogilvy Road, Clontarf) to Middle Harbour. The loss of view is not unreasonable and will maintain adequate view sharing between properties.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

The proposal results in a disruption of views from neighbouring properties. The level of view loss is not unreasonable and has been assessed below with regards to the planning principle established by the NSW Land and Environment Court.

Council received one (1) submission from a neighbouring property in relation to view loss as part of this modification application. The Manly DCP refers to the planning principle within *Tenacity Consulting v Waringah [2004] NSWLEC 140* when considering the impacts on the views of the adjoining properties. This is provided below:

1. Nature of the view affected.

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

Comment:

No. 1 Ogilvy Road, Clontarf

The nature of the views affected from this property would be beach and harbour (water) views to the south-west. The views would be filtered through existing development and vegetation shown below. a large portion of the existing views are side and over the top of existing development and vegetation.



Photo 1- Ground floor terrace (standing)



Photo 2- Ground floor terrace (sitting)



Photo 3- Ground floor living room (standing)



Photo 4- Ground floor living room (sitting)



Photo 5- Lower ground floor terrace (standing)



Photo 6- Landscaped open space (standing)

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:

No. 1 Ogilvy Road, Clontarf

The views affected from this property are obtained over the rear and side boundary. The views are over the top of the existing development and urban bushland. Views are obtained from a standing and sitting positions from living room and private open space, filtered through

vegetation of urban bushland.

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 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Comment:

No. 1 Ogilvy Road, Clontarf

No. 1 Ogilvy Road, currently has significant water views to the south and south-east. Views are enjoyed from the ground floor living room and adjoining terrace, the lower ground floor terrace and private open space to the rear of the site. Water views from the ground floor living room and terrace would be

impacted removal of the eastern privacy screens.

4. Reasonableness of the proposal 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:

The proposal is inconsistent with the building height development standard under the Manly LEP. However, it is considered that a compliant proposal in this regards would not substantially improve access to harbour views.

The proposal responds appropriately to the available views through the provisions of views corridors over the top and to the rear of the subject property through building articulation and setback to ensure highly valued water views are retained to a satisfactory extent from adjoining properties (No. 1 Ogilvy Road, Clontarf) from principle private open space. This proposed reduction of the deck on the eastern side of development and removal of the privacy screens along the eastern side of the deck proposed under the former modification application (MOD2018/0482), will ensure a greater views corridor is opened from the landscaped open space to the rear of the property. The overall impact on No. 1 Ogilvy Road, Clontarf in terms of view loss is negligible to minor.

Given the above, it is considered that the proposal is acceptable and view sharing is achieved.

In regards to public open space, particularly that of the unmade road that is adjacent to subject site, the loss of views is negligible.

Given the above, it is considered that the proposal is acceptable and view sharing is achieved from public open space

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

Comment:

The proposed works will not cause unreasonable loss of views. In regards to 'view creep' the proposal or neighbouring properties does include unreasonable bulk which could result in unreasonable future view loss.

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

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

This clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal

against the objectives of Clause 4.3 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.3.

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

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.36m from the eastern boundary and 2.16m from the western boundary.

Clause 4.1.4.6 of the Manly DCP requires development adjacent from LEP Zoned E2 be setback 8m from the rear boundary.

The development proposes the following:

East side setback- 0.9m (61.9% variation to the numeric control)

West side setback- 0.9m (58% variation to the numeric control)

Rear setback- 7.995m- 10.8m (0.06% variation to the numeric control)

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposed works will not readily visible from Ogilvy Road. Existing landscape features that adjoin the subject site on the Council reserve and urban bush land will be retained throughout the life of the development.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

Amenity considerations including privacy, solar access and maintenance of views are all suitably managed and retained as part of these modifications.

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

Comment:

Flexibility if provided in this circumstance as the proposed decks will not cause any unreasonable amenity impacts.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

Important landscape features on site and immediately adjoining the subject site are to be retained. The provisions of *State Environmental Planning Policy No 19 - Urban Bushland* are satisfied, this is addressed elsewhere within this report.

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

Comment:

Suitable access to the adjoining bush land area is retained from the street.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at least 60% (283.56m²) of the site area be total open space. The proposed total open is 48.66% (230.1m²), non-compliant with the numeric control.

Clause 4.1.5.2 of the Manly DCP requires total open space above ground be no more than 25% of total open space. The proposed total open space above ground is equal to 25.7% (59.2m²), non-compliant with the numeric control.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

Existing vegetation features to the rear of the site will be retained as part of this proposal.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

Substantial landscaping is retained on site at ground level, consistent with the numeric control. No trees on the subject site or surrounding private and public space are proposed to be removed.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

Amenity considerations including privacy and views are retained as part of these works to a reasonable extent. The works will not be readily visible from the street.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

The proposal retains reasonable levels of landscaped open space at ground level to the front and rear of the dwelling to minimise the stormwater runoff.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposed works will not lead to an unreasonable spread of weeds across the site, adjoining properties or public open spaces including the foreshore and urban bush land to the rear of the property.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The application was referred to Council's Natural Environment Unit officers are required to consider the likely potential environmental impacts. The development was recommended for approval, subject to conditions.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0303 for Modification of Development Consent DA0203/2013 granted for alterations and additions to a dwelling house including a swimming pool on land at Lot 10 DP 2610,3 Ogilvy Road, CLONTARF, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Dwg No. 1/ Site and Site Analysis/ Revision K	12 April 2019	Gartner Trovato
Dwg No. 2/ Lower Floor Plan/ Revision K	12 April 2019	Gartner Trovato
Dwg No. 3/ Ground Floor Plan/ Revision K	12 April 2019	Gartner Trovato
Dwg No. 4/ Garage and Upper Floor Plan/ Revision K	12 April 2019	Gartner Trovato
Dwg No. 5/ Elevations S & E/ Revision K	12 April 2019	Gartner Trovato
Dwg No. 6/ Elevations N & W/ Revision K	12 April 2019	Gartner Trovato
Dwg No. 7/ Section/ Revision K	12 April 2019	Gartner Trovato

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

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

B. Delete Condition 31C- Deck amendments - to read as follows:

Condition 31C- Deck amendments
DELETED

C. Add Condition 31D- Deck Setbacks - to read as follows:

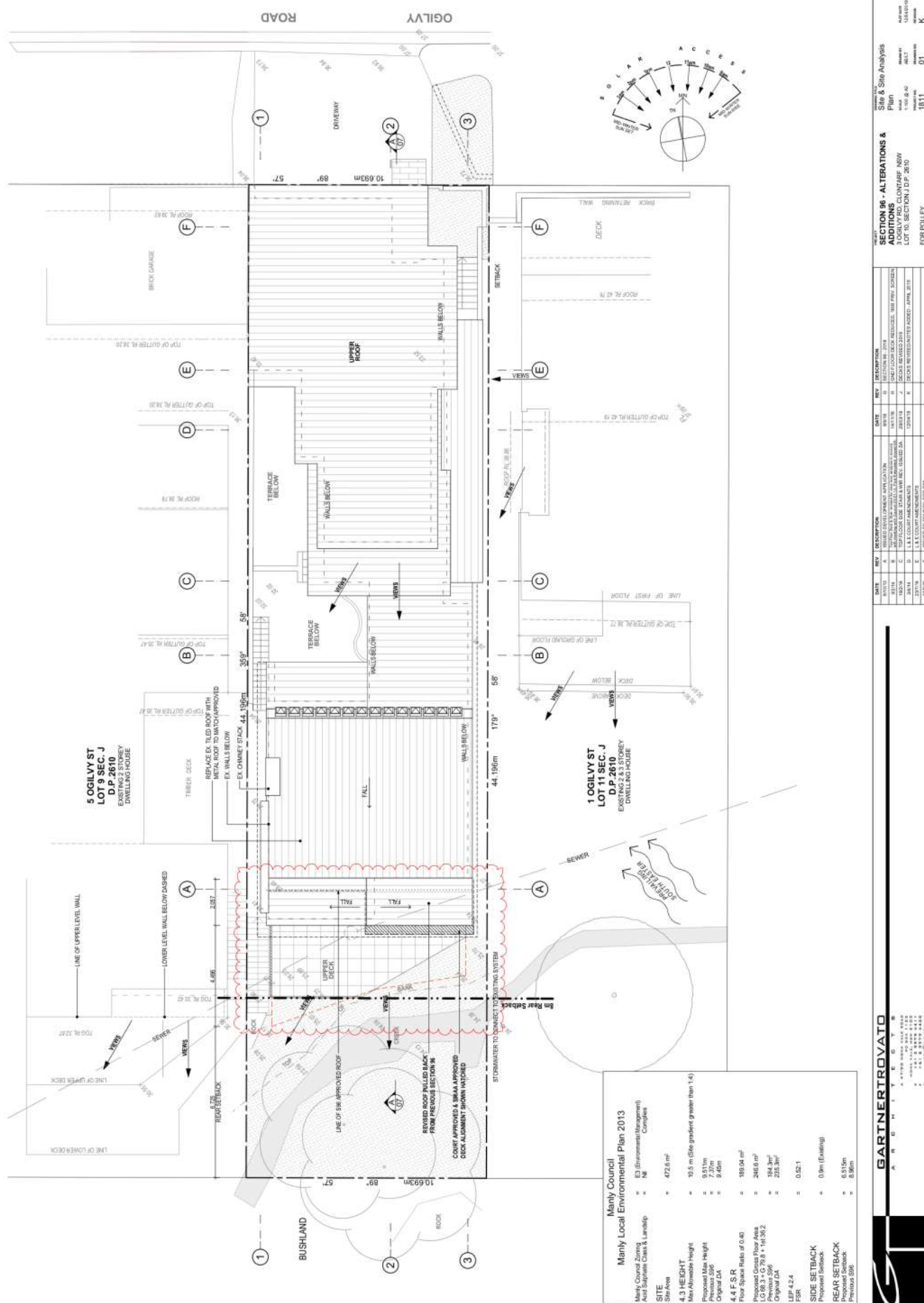
The proposed lower and upper deck are to be amended to be setback from the eastern side boundary 2.5m. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any construction certificate.

Reason: To protect the amenity of neighbouring properties.

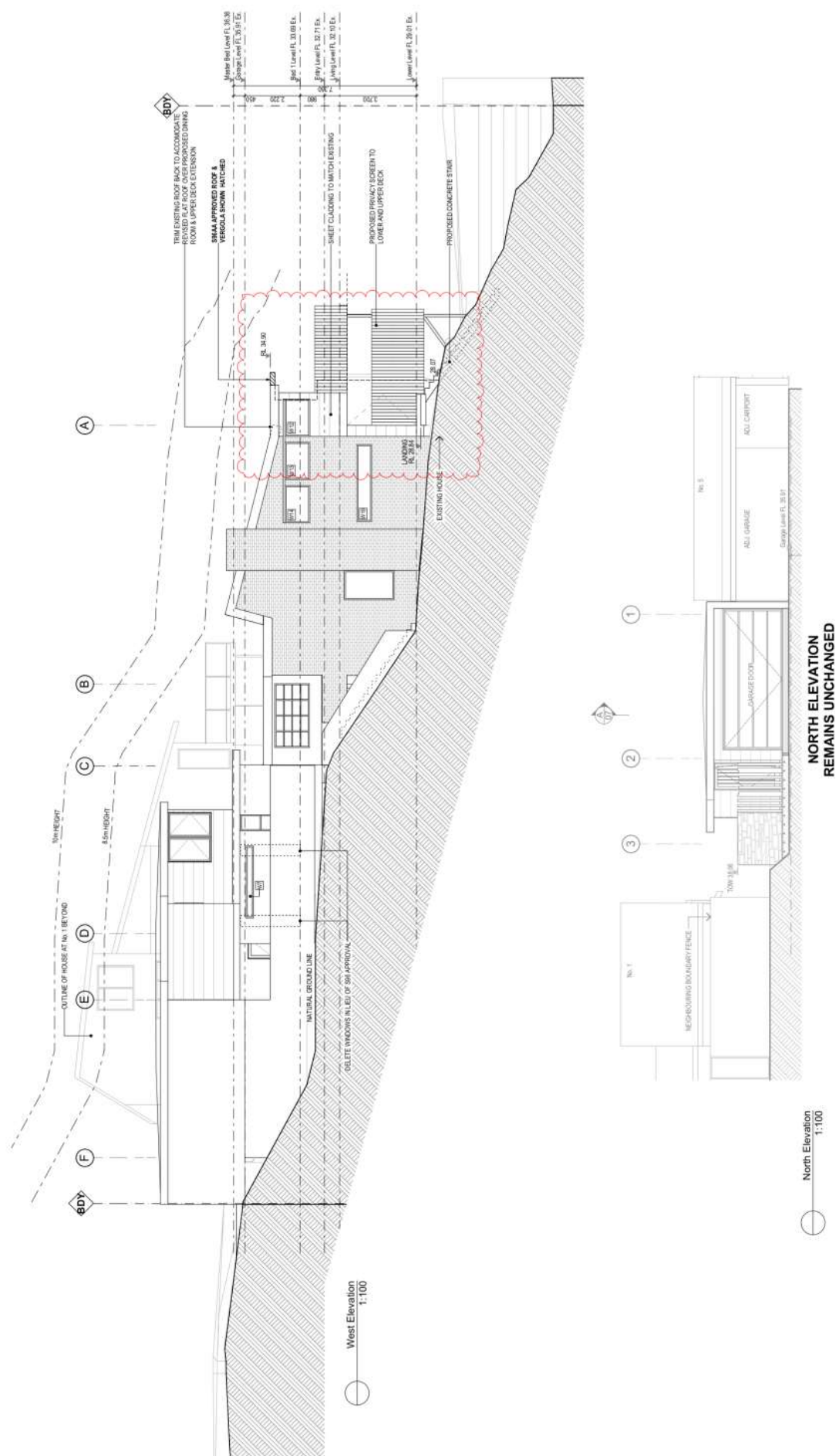
D. Add Condition 31E- Boundary Survey - to read as follows:

A boundary survey, prepared by a Registered Surveyor, shall be provided as evidence that all buildings/works are within the appropriate property, easement boundaries and rights of carriageway. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any construction certificate.

Reason: To ensure the accurate location of buildings in relation to boundaries, easements and rights of way.



[illegible]

[illegible]

ITEM 3.2

**MOD2019/0270 - 20 PERONNE AVENUE, CLONTARF -
MODIFICATION OF DEVELOPMENT CONSENT DA0041/2017
GRANTED FOR CONSTRUCTION OF A SECONDARY
DWELLING**

AUTHORISING MANAGER STEVE FINDLAY

TRIM FILE REF 2019/486374

ATTACHMENTS

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

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. MOD2019/0270 for Modification of Development Consent DA0041/2017 granted for construction of a secondary dwelling at Lot 201 DP 1170957, 20 Peronne Avenue, Clontarf subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0270
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 201 DP 1170957, 20 Peronne Avenue CLONTARF NSW 2093
Proposed Development:	Modification of Development Consent DA0041/2017 granted for construction of a secondary dwelling
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	John Anastasiou Helen Anastasiou
Applicant:	John Anastasiou
Application lodged:	07/06/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	21/06/2019 to 05/07/2019
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This modification application seeks approval to modify DA41/2017, granted for the construction of a secondary dwelling, which was approved by the Northern Beaches Independent Assessment Panel (NBIAP) on 15 June 2017.

The location of the secondary dwelling on the site is a steeply sloping area and the approved design involves excavation into this slope to minimise its height and bulk. A special condition was imposed on the original consent which required a Site Stability Report to be prepared in accordance with the Manly DCP, due to concerns raised by the NBIAP. This condition will remain on the consent and due to the additional works, additional specific conditions have been imposed in regards to geotechnical matters. This includes a condition which requires specific consideration of the swimming pool on the adjoining

property to the rear.

The application has also been assessed against the planning controls of the MDCP 2013, and whilst there are some minor variations to the built form controls, they are found to be consistent with the relevant objectives and requirements. In this regard, the built form will integrate into the landscape, streetscape and will relate positively to adjoining and surrounding dwellings.

The proposal was notified and three (3) submissions were received, raising issues including geotechnical stability, stormwater and the structural integrity of adjoining development. Conditions have also been imposed which relate to the residents concerns.

The assessment concludes that the proposed design is an appropriate modification to the original approval and will ensure the amenity of the subject site is maintained, without having any unreasonable impacts on the streetscape or neighbouring properties.

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

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4.2 Privacy and Security

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

SITE DESCRIPTION

Property Description:	Lot 201 DP 1170957 , 20 Peronne Avenue CLONTARF NSW 2093
Detailed Site Description:	The subject property is commonly known as 20 Peronne Avenue, Clontarf and legally known as Lot 201 in DP 1170957. The site is located on the eastern side of Peronne Avenue. The property is rectangular in shape, has a

frontage of 22.875m to Peronne Avenue, an average depth of 61m and an overall site area of 1426m².

The property currently contains a part 2/part 3 storey dwelling with vehicular access via an existing driveway from Peronne Avenue to an existing garage to the front of the existing dwelling. The property slopes from rear to the front and has a crossfall of approximately 20-22m.

The surrounding area includes Sandy Bay and Clontarf Reserve to the east.

Map:



SITE HISTORY

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

- **DA125/2016** - Alterations and additions to an existing dwelling house including new carport and adjoining storage area approved by DAU on 29 June 2016. A modification which included changes to the approved retaining walls was approved by delegated authority on 26 April 2017. It is noted a condition is on this consent which requires a separate development consent for any inclinator.
- **DA41/2017**- Construction of a Secondary Dwelling was approved by NBIAP on 15 June 2017.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves a modification to the approved secondary dwelling. In detail, the proposal

includes:

- New planter and retaining walls
- Increased floor area
- Increase to terrace area
- New laundry
- A privacy screen (to satisfy a condition in the original consent)
- Clarification of RL's (to satisfy a condition in the original consent)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA0041/2017, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA0041/2017.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA0041/2017 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2011 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental

Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Mrs Caroline Jane McGinley	67 Gordon Street CLONTARF NSW 2093
Mr Peter Michael McGinley	23 Gordon Street CLONTARF NSW 2093
Hamptons Property Services Pty Ltd	PO Box 954 EDGECLIFF NSW 2027

The following issues were raised in the submissions:

- **Issue with overhanging swimming pool at 23 Gordon Street, concerns for structural integrity of the swimming pool given the proposed works (including the enlargement involved in proposed works)**
- **Stormwater and rainfall issues heightening chances of bedrock shifting, Concern with moving and shifting of land**
- **Impact of further development on stormwater drainage**
- **Imperative nature of retaining existing conditions**
- **Request that Geotechnical review of modified plans refers to plans submitted under this modification**

The matters raised within the submissions are addressed as follows:

- **Issue with overhanging swimming pool at 23 Gordon Street, concerns for structural integrity of the swimming pool given the proposed works (including the enlargement involved in proposed works)**

Comment:

The survey submitted shows that the pool at 23 Gordon Street does not overhang the subject site. A letter has been provided from a Geotechnical Engineer which states that the risk assessment, comments and recommendations remain valid as a result of the modified proposal. Conditions imposed on the original consent also remain. Furthermore, an additional condition is provided to require that further Geotechnical assessment is carried out regarding the neighbouring swimming pool. This includes that recommendations are to be made and complied with to ensure that the proposed development will maintain at an 'Acceptable' risk level in terms of the impact on the neighbouring swimming pool.

- **Stormwater and rainfall issues heightening chances of bedrock shifting. Concern with**

moving and shifting of land

Comment:

Conditions that were imposed on the original consent regarding stormwater remain. The Geotechnical letter and Geotechnical Report confirm that the risk is acceptable, and conditions are provided to ensure that the recommendations contained in the Geotechnical reports are undertaken. As such, concerns regarding moving and shifting of land are sufficiently mitigated.

- **Impact of further development on stormwater drainage**

Comment:

Conditions that were imposed on the original consent regarding stormwater are to remain. This includes that a Stormwater Management Plan is to be prepared to fully comply with Council's Stormwater policies.

- **Imperative nature of retaining existing conditions**

Comment:

All conditions imposed on the original consent are recommended to remain.

- **Request that Geotechnical review of modified plans refers to plans submitted under this modification**

Comment:

On 13 August 2019, the applicant provided an updated letter which refers to the plans submitted under this application.

REFERRALS

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

application hereunder.

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1017983S).

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

Commitment	Required Target	Proposed
Water	40	44
Thermal Comfort	Pass	Pass
Energy	50	61

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.7m	7.7m	N/A	Yes
Floor Space Ratio	FSR: 0.4:1 (570.4m ²)	0.305:1 (435.1m ²)	0.317:1 (453.1m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1426m ²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	North: 7.7m	3.2m	3.4m	Yes
	South: 8.0m	7.2m	7.2m	Yes
4.1.2.2 Number of Storeys	2	2	2	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.35m	1.35m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.5m (inclinator)	7.5m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 2.56m (based on wall height)	2.1m	1.1m-1.4m	No (see comments)
	South: 2.66m (based on wall height)	6.69m to secondary dwelling. 3.9m to inclinator.	6.69m to secondary dwelling. 3.9m to inclinator.	Yes
	Windows: 3m	5.0m	4.5m	Yes

4.1.4.4 Rear Setbacks	8.0m	4.7m	4.3m	No (see comments)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area	Open space 60% of site area (855.6m ²)	61% (870m ²)	60% (858m ²)	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (348m ²)	72.4% (630m ²)	70.8% (608m ²)	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	3 spaces (as existing) 4 spaces (as approved by separate DA for a carport)	3 spaces (as existing) 4 spaces (as approved by separate DA for a carport)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Description of issue

The modification to the approved secondary dwelling involves extension of the dwelling to the north toward the boundary of the neighbour at 22 Peronne Avenue.

Merit consideration:

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The proposal involves extensions to the north which includes removal of windows W9 and W10 as well as reconfiguration and extension of the terrace area. The removal of the windows (W9 and W10) provides an appropriate minimisation of privacy loss by reducing the potential for overlooking from the extended bedroom and robe area. In addition, the proposed extensions of the terrace area to the north involve a width that would not allow extensive use of the area and along with the sufficient physical separation from the neighbouring property. This will ensure the loss of privacy from this area is also adequately minimised.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The proposal provides a secondary dwelling with an orientation of the terrace area toward the rear of the property and appropriate physical separation between the proposed living spaces and neighbouring living spaces. As such, the proposal provides a satisfactory outcome for privacy without the need for further screening which may cause impact on access to light and air.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal maintains openings and an entrance that allows for appropriate opportunity for passive surveillance and awareness of neighbourhood security.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

Description of non-compliance

The proposal does not comply with the northern side setback control of 2.56m. The approved setback is 2.1m and the proposed setback would result in a further non-compliance, being 1.1m-1.4m.

The proposal also does not comply with the rear setback control of 8.0m. The approved setback is 4.7m and the proposed setback would result in a further non-compliance, being 4.3m.

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The approved secondary dwelling is located to the rear half of the property, more than 40 metres from the street. Along with the modulation of the built form, this ensures the proposal would have no unreasonable impact on the streetscape.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposal involves extensions of floor space and terrace area to the north and east. As a result of the siting and design of these extensions, the increased impact on privacy will be negligible. In particular, this is due to the removal of windows on the elevation closest to the boundary and the adequate physical separation between the proposed areas and neighbouring living spaces.

The proposal maintains a southern side setback that complies with the control and this ensures that the

proposal meets the requirement for *Sunlight Access and Overshadowing* under the Manly DCP 2013.

The proposal maintains significant view corridors for the surroundings and in particular, the compliant building height ensures view corridors over the top of the development are reasonably retained.

Overall, the siting and design of the proposed modifications will appropriately retain and ensure protection of local amenity.

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

Comment:

The proposed siting of the secondary dwelling remains at the rear of the existing dwelling. This siting is appropriate given the lack of unreasonable amenity impact and the lack of visual impact.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed modification maintains a compliant total open space and a compliant landscaped area. This includes landscaping which surrounds the secondary dwelling. As such, the proposal will sufficiently allow for the enhancement and maintenance of natural features.

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

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

The assessment of the proposed modification to the approved secondary dwelling against the provisions of MLEP 2013 found that the proposal complies with the 'Height of Building' and 'Floor Space Ratio' Development Standards.

The assessment of the proposed development against the provisions of the Manly DCP 2013 found that the proposal does not comply with the side (northern) and rear setback controls. Given the character of the area and amenity outcome, assisted by good design and siting, some flexibility in applying these controls is required.

It is considered that the non-compliance's will not have any unreasonable amenity impacts on adjoining properties and are consistent with the streetscape character of the Locality.

There were three (3) submissions made in response to the public notification.

Submissions raised a number of issues which have been addressed in this report. Following on from issues raised in the original consent, further concerns were raised in regard to geotechnical issues with the development, given the steep slope of the site and excavation. As a result of the enlargement and intensification of built form on the site, further conditions have been imposed to ensure appropriate recommendations are both sought from and followed by a Geotechnical Engineer.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0270 for Modification of Development Consent DA0041/2017 granted for construction of a secondary dwelling on land at Lot 201 DP 1170957, 20 Peronne Avenue, CLONTARF, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A.02- Proposed Site and Roof Plan	June 2019	Stephen Grech and Associates, Architects
A.03- Proposed Basement Floor Plan	June 2019	Stephen Grech and Associates, Architects
A.04- Proposed Studio Floor Plan	June 2019	Stephen Grech and Associates, Architects
A.05-Elevations	June 2019	Stephen Grech and Associates, Architects
A.06- Sections	June 2019	Stephen Grech and Associates, Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Review of Modified Plans	13 August 2019	JK Geotechnics

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

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

B. Delete Condition ANS01 which reads as follows:

On the plan labelled "Sections- 296-A06", Section C has an error in levels with RL57.6 on the retaining wall. This is to be corrected with an RL consistent with the plans and survey of RL47.6. Plans are to be amended prior to the issue of a Construction Certificate.

Reason: The level (RL) has been corrected on the modified plans.

C. Delete Condition ANS02 which reads as follows:

A privacy screen to 1.5m in height from the proposed studio level is to be provided across the entire southern elevation of the proposed deck.

Reason: A privacy screen has been provided on the modified plans that meets the above requirement.

D. Add Condition ANS03B to read as follows:

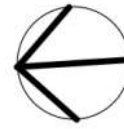
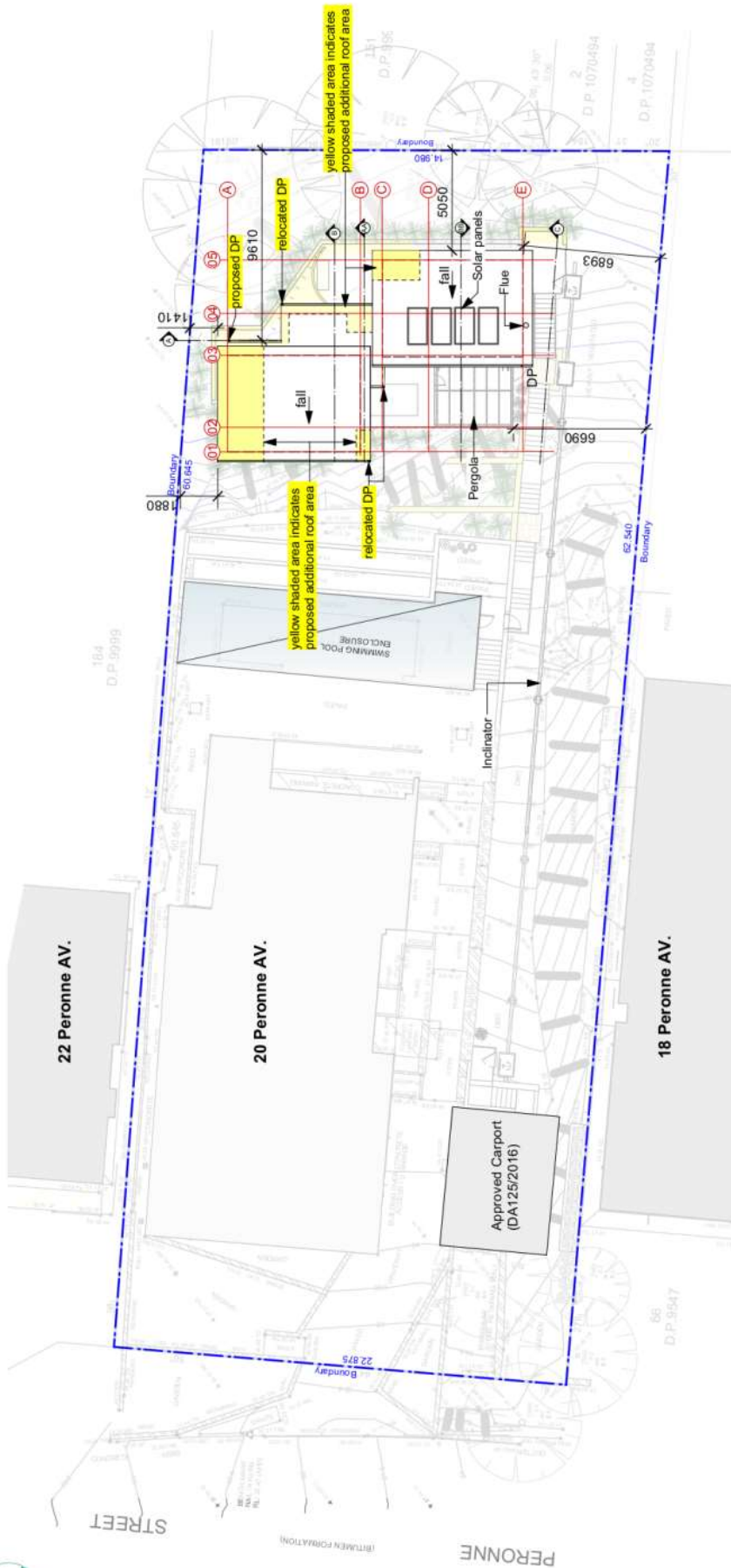
Prior to the issue of a Construction Certificate, a Geotechnical engineer is to assess the risk relating to the structural integrity of the neighbouring swimming pool at 23 Gordon Street, Clontarf. If required, recommendations are to be made to ensure that 'acceptable' risk levels can be achieved for the swimming pool as a result of the proposed development.

Reason: To ensure appropriate Geotechnical recommendations are made in relation to protection of the neighbouring swimming pool as a result of the impact of the proposed development.

D. Add Condition ANS03C to read as follows:

All recommendations provided by the Geotechnical Engineer are to be complied with, prior to the Construction Certificate.

Reason: To ensure Geotechnical recommendations are taken up before, during and after works.

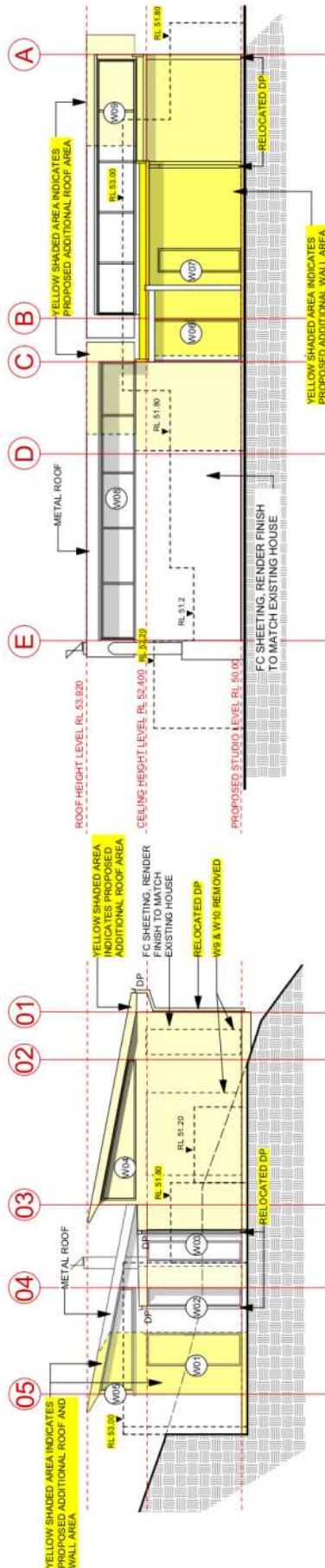


SCALE - 1:200 @ A3
0m 10m 20m

1 Proposed Site and Roof Plan
1:200 @ A3

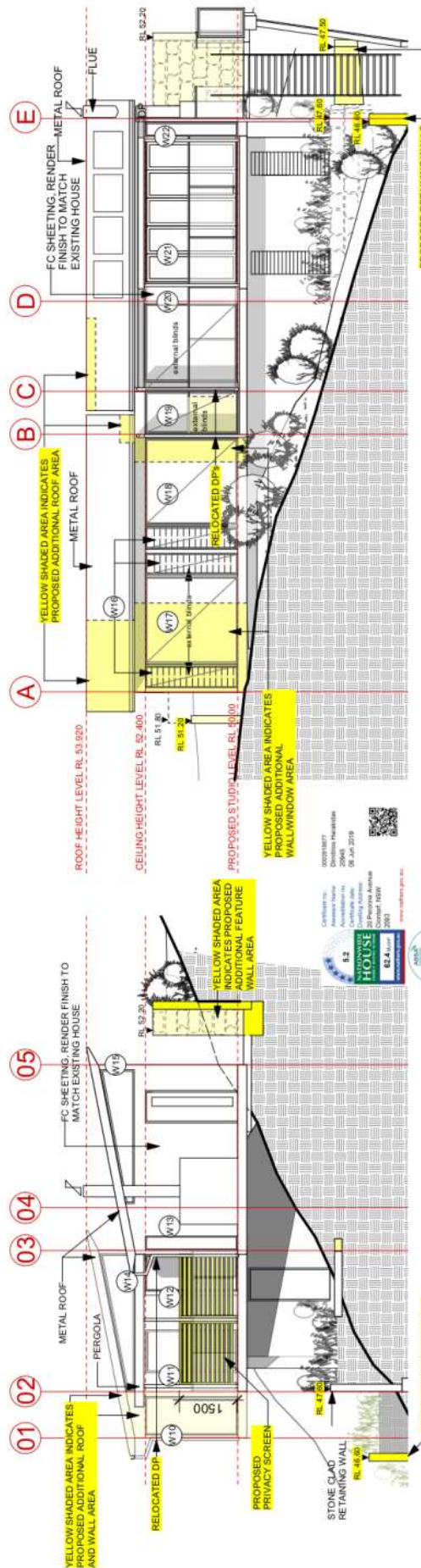
<p>20 PERONNE AVENUE, CLONTARF Proposed Site and Roof Plan</p>	<p>LOT 201, DP 1170957 Builders Contractors shall verify job dimensions before any work commences. All shop drawings shall be submitted to the Architect and manufacturer shall not commence prior to the return of amended shop drawings. Figured dimensions shall take precedence over scaled. This drawing is copyright.</p>	<p>Stephen Grech and Associates, Architects ABN: 96 995 594 593 tel 02 9953 8886 fax 02 9953 8889 email info@grecharchitects.com.au suite 7, 121 military road, neutral bay nsw po box 2123 boronia park NSW 2111</p>
<p>DWG No: 296 /A.02</p>	<p>For: Mr. and Mrs. J Anastasiou JUNE 2019 Scale @ A3: 1:200</p>	<p>Issue: A - JUNE 2019</p>





1 North Elevation
1:100 @ A3

2 East Elevation
1:100 @ A3



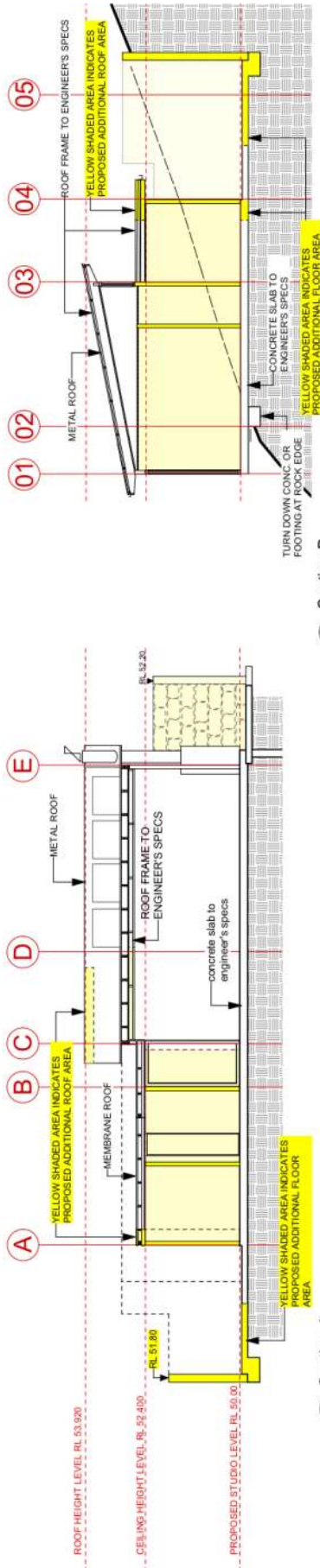
3 South Elevation
1:100 @ A3

4 West Elevation
1:100 @ A3

SCALE - 1:100 @ A3

0m 5m 10m

<p>Stephen Grech and Associates, Architects ABN: 96 995 594 593 tel 02 9953 8886 fax 02 9953 8889 email info@grecharchitects.com.au suite 7, 121 military road, neutral bay nsw po box 2123 boronia park NSW 2111</p>	<p>LOT 201, DP 1170957 Builders Contractors shall verify job dimensions before any work commences. All shop drawings shall be submitted to the Architect and manufacturer shall not commence prior to the return of amended shop drawings. Figured dimensions shall take precedence over scaled. This drawing is copyright.</p>	<p>For: Mr. and Mrs. J. Anastasiou JUNE 2019 Scale @ A3: 1:100 Issue: A - JUNE 2019</p>
<p>20 PERONNE AVENUE, CLONTARF Elevations</p>	<p>DWG No: 296 / A.05</p>	<p>Issue: A - JUNE 2019</p>

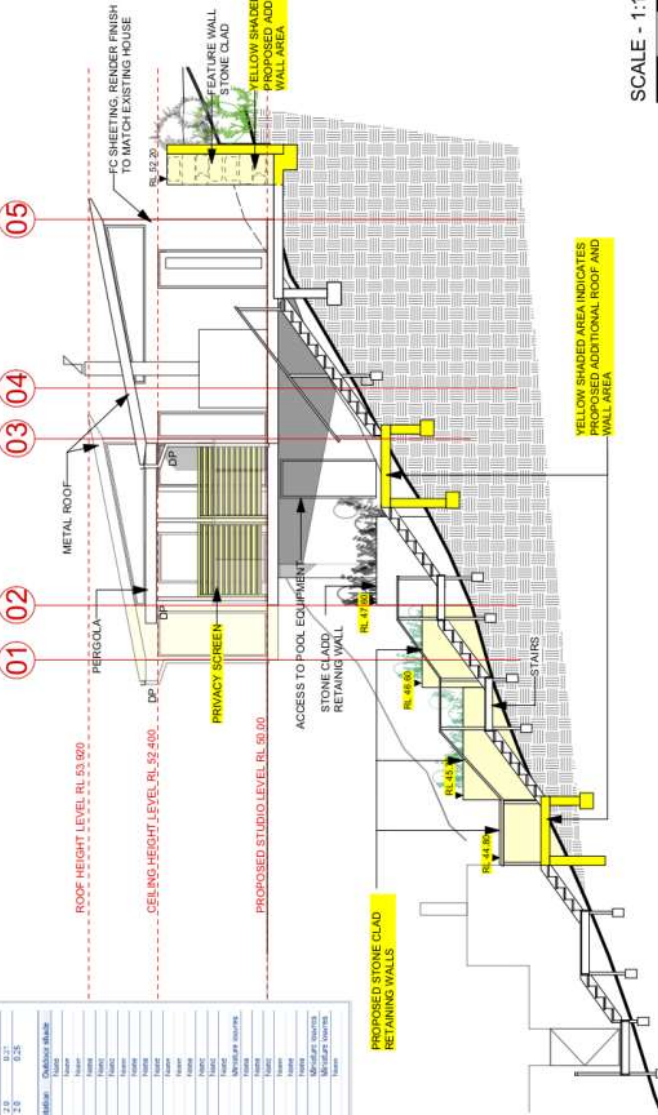


Section B
1:100 @ A3

Window type and performance table

Window ID	Window type	Area (m²)	U-value	SHGC
ALM 002-01-A	Double Glazed	0.50	0.75	0.75
ALM 002-01-B	Double Glazed	0.50	0.75	0.75
ALM 002-01-C	Double Glazed	0.50	0.75	0.75
ALM 002-01-D	Double Glazed	0.50	0.75	0.75
ALM 002-01-E	Double Glazed	0.50	0.75	0.75
ALM 002-01-F	Double Glazed	0.50	0.75	0.75
ALM 002-01-G	Double Glazed	0.50	0.75	0.75
ALM 002-01-H	Double Glazed	0.50	0.75	0.75
ALM 002-01-I	Double Glazed	0.50	0.75	0.75
ALM 002-01-J	Double Glazed	0.50	0.75	0.75
ALM 002-01-K	Double Glazed	0.50	0.75	0.75
ALM 002-01-L	Double Glazed	0.50	0.75	0.75
ALM 002-01-M	Double Glazed	0.50	0.75	0.75
ALM 002-01-N	Double Glazed	0.50	0.75	0.75
ALM 002-01-O	Double Glazed	0.50	0.75	0.75
ALM 002-01-P	Double Glazed	0.50	0.75	0.75
ALM 002-01-Q	Double Glazed	0.50	0.75	0.75
ALM 002-01-R	Double Glazed	0.50	0.75	0.75
ALM 002-01-S	Double Glazed	0.50	0.75	0.75
ALM 002-01-T	Double Glazed	0.50	0.75	0.75
ALM 002-01-U	Double Glazed	0.50	0.75	0.75
ALM 002-01-V	Double Glazed	0.50	0.75	0.75
ALM 002-01-W	Double Glazed	0.50	0.75	0.75
ALM 002-01-X	Double Glazed	0.50	0.75	0.75
ALM 002-01-Y	Double Glazed	0.50	0.75	0.75
ALM 002-01-Z	Double Glazed	0.50	0.75	0.75

Section C
1:100 @ A3



Section D
1:100 @ A3



Section E
1:100 @ A3



SCALE - 1:100 @ A3

DWG No:
296/A.06

20 PERONNE AVENUE, CLONTARF
Sections

LOT 201, DP 1170957
Builders Contractors shall verify job dimensions before any work commences. All shop drawings shall be submitted to the Architect and manufacturer shall not commence prior to the return of amended shop drawings. Figured dimensions shall take precedence over scaled. This drawing is copyright.

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po box 2123 boronia park NSW 2111

For: Mr. and Mrs. J. Anastasiou

JUNE 2019 Scale @ A3: 1:100 Issue: A - JUNE 2019

ITEM 3.3	DA2019/0215 - 31 THE CRESCENT, MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
AUTHORISING MANAGER	RODNEY PIGGOTT
TRIM FILE REF	2019/486326
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0215 for alterations and additions to a dwelling house at Lot 1 DP 1085978, 31 The Crescent, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0215
Responsible Officer:	Benjamin Price
Land to be developed (Address):	Lot 1 DP 1085978, 31 The Crescent MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Stanislawa Ewa Linforth Steven Craig Linforth
Applicant:	Boston Blyth Fleming Pty Ltd
Application lodged:	05/03/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	12/03/2019 to 28/03/2019
Advertised:	Not Advertised
Submissions Received:	12
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 973,500.00

The development is for alterations and additions to the existing dwelling house and includes:

- Internal modifications and front/rear additions to the ground floor and first floor
- Second floor addition
- Additional garage

(See Proposed Development in Detail within the report)

The development is referred to the Northern Beaches Local Planning Panel for determination as the development received 12 submissions. The submissions predominantly related to the loss of views, loss of solar access, loss of privacy and construction impacts on traffic conditions. A detailed assessment has been conducted and found the application to be satisfactory for approval.

Whilst not applicable to this application, consent has been granted in the past by the Land & Environment Court, and the current proposed development has a similar building footprint, height and envelope to that previously approved by the Court. See *Linforth v Manly Council* [2012] NSWLEC 1352.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 1 DP 1085978 , 31 The Crescent MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of The Crescent Manly.</p> <p>The site is irregular in shape with a frontage of 9.15m along The Crescent and 15.855m along Commonwealth Parade. The property has an average depth of 44.6m and a surveyed area of 533.8m².</p> <p>The site is located within the R1 General Residential zone</p>

and accommodates a part one and part two storey dwelling house.

The site slopes from north to south and includes a crossfall of 4.84m. The southern boundary of the site is bound by a sandstone retaining wall of a variable height.

The site does not include any significant vegetation or landscape features.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential flat buildings ranging in height from three to eight storeys.

Map:



SITE HISTORY

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

PLM2018/0173 - This pre-lodgement meeting was held over a development similar to the one currently proposed. The original proposal included the provision of three parking spaces. It was advised that the parking design would dominate the street frontage and could not be supported. The plans were later amended to include two parking spaces. It was advised that the parking design was satisfactory. It was advised that the eastern side of the development consider the approved development under DA294/2011 with regards to the loss of views.

DA294/2011 - Demolition of existing structures and construction of a three (3) storey Residential Flat Building consisting of three (3) dwellings with basement car park, rooftop terrace, balconies, driveway and landscaping - This application was refused by the Manly Independent Assessment Panel and

following amendments approved by the Land and Environment Court. See *Linforth v Manly Council* [2012] NSWLEC 1352.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes demolition works and alterations and additions to the existing dwelling house for the following:

Ground Floor

Rumpus room and bedroom with attached patio, services/storage lift

First Floor

Alterations to provide for open plan living, dining and kitchen, attached pantry, bedroom, bathrooms, laundry, lift, guest room and bedroom with ensuite and walk in robe

Second Floor

Addition for parents retreat with bar, library, study, bathroom, lift, outdoor entertainment area and bedroom with walk in robe and ensuite.

Site

- Landscaping
- Privacy screening
- Garage with 1.8m high automatic door

The development has been assessed in accordance with the Demolition Planning Principle established by the NSW Land and Environment Court in *Coorey v Municipality of Hunters Hill* [2013] NSWLEC 1187. In this regard, it is considered that the development is most accurately described as alterations and additions.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires</p>

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mrs Helen Gay Murrell	GPO Box 1216 CANBERRA NSW 2061
Mr Marshall Frank Smither	4 / 12 The Crescent MANLY NSW 2095
Ms Janice Lynette Ferrier	3 / 33 The Crescent MANLY NSW 2095
Mr Nicholas Andrew Denson Ms Lucy Rebecca Feast	6 / 33 The Crescent MANLY NSW 2095
Mrs Gail Naida Thompson	5 / 12 The Crescent MANLY NSW 2095
Mr Daniel Adam Bavell	4/33 Commonwealth Parade MANLY NSW 2095
Mr Robert Darcy Joy	2 / 12 The Crescent MANLY NSW 2095
Mrs Jocelyn Audrey Smither	4 / 12 The Crescent MANLY NSW 2095
Ms Julianne Lonie	1 / 12 The Crescent MANLY NSW 2095
Mr Sheriff Cassab	5 Abelia Close CHERRYBROOK NSW 2126
Mr Sherif Maher Rizkallah	4 Budin Road KENTHURST NSW 2156
Mrs Marie Louise Duffy	63 Wood Street MANLY NSW 2095

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

- **Loss of Views**
- **Loss of Sunlight**
- **Traffic and Parking**
- **Solar panel reflection view obstruction**
- **Removal of Toxic Substances (asbestos lead based paint)**
- **Alterations to existing garage**
- **Dust and noise during demolition**

- **Heritage**
- **Non-compliance with side setback controls and privacy impact from second floor outdoor entertaining area.**
- **Damage to infrastructure during works**

The matters raised within the submissions are addressed as follows:

- **Loss of Views**

View loss objections were received from a number of the surrounding and nearby properties

Comment:

Height poles have been erected and view loss inspections conducted of the properties of concern. A detailed assessment has been carried out below with regard to Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the Views planning principle established by the NSW Land and Environment Court. In summary the development was found to maintain reasonable view sharing within the locality.

- **Loss of Sunlight and air flow**

Concern was raised over the loss of sunlight and airflow from 33 The Crescent and 29 The Crescent. The loss of airflow on the western side due to the outdoor entertaining area was also raised as a concern.

Comment:

A detailed assessment under clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013 has been carried out below. In summary the southern facing units on the lower floors of these properties were found to be highly susceptible to overshadowing. The development will not result in any unreasonable overshadowing of the neighbouring properties and will maintain an equitable access to light and sunshine within the locality.

With regards to air flow, the outdoor entertaining area is an open structure and compliance with the side setback control would have negligible benefit. The development will not result in any unreasonable disruption of airflow.

- **Traffic and Parking**

Concern was raised that construction would impact vehicle access along The Crescent. A submission also raised concern that the increased size of the house would impact on-street parking and street traffic.

Comment:

Conditions of consent have been recommended to ensure the roadway and footpath are maintained in a safe condition at all times and access to all properties is maintained. This is adequate to ensure appropriate traffic management during construction.

The Manly DCP 2013 requires two parking spaces per dwelling house. The development will maintain the use of the site as a dwelling house and includes an additional parking space. The development will reduce the demand for on-street parking and will not result in any significant impact on the sites traffic generation.

- **Solar Panel reflection and view obstruction**

Concern was raised from 12 The Crescent of view obstruction and light reflection due to the solar panels

Comment:

Solar Panels are designed to absorb light, as such the panels are not likely to result in unreasonable

reflectivity.

A view loss assessment has been conducted below. In summary it was found that the solar panels were likely to disrupt views. The panels have been conditioned to be a maximum height of RL 26.925 in accordance with the maximum roof height or be deleted.

- **Removal of Toxic Substances (asbestos lead based paint)**

Concern was raised that due to the age of the building demolition may require the removal of toxic substances.

Comment:

Conditions have been recommended to ensure asbestos is disposed of correctly. With regard to toxic substances, these are governed by codes of practice that the developer will need to ensure are complied with.

- **Alterations to existing garage**

A submission questioned whether the existing garage was being retained.

Comment:

The submitted plans show the garage will be retained in its existing form. It is noted that this garage will be refurbished. The plans also include a proposed garage adjacent(east) of the existing garage.

- **Dust and noise during demolition**

A number of submissions raised concerns about dust and noise impacts during demolition and construction. In particular compensation was requested for cleaning costs due to dust.

Comment:

Councils standard conditions of consent limit construction hours to minimise noise impacts on neighbouring properties. These have been included in this recommendation.

Due to the extent of the development, the proposal is not likely to result in any significant dust impact. Furthermore compliance with industry standards will ensure appropriate measures are taken to limit dust generation. With regard to compensation, Council does not offer compensation on behalf of the developer. Independent legal advice should be sought should you wish to pursue this.

- **Heritage**

A number of submissions raised concern regarding the heritage status of this building.

Comment:

The application has been assessed by Councils Heritage Officer and found to be satisfactory.

- **Non-compliance with side setback controls and privacy impact from second floor outdoor entertaining area.**

A submission raised concerns over the non-compliance with the side setback control on the western side and the resultant privacy impacts of the outdoor entertaining area.

Comment:

The proposed second floor outdoor entertaining area includes privacy screens on both sides. The use of the development as a dwelling house is not likely to generate unreasonable levels of noise within a residential area. Compliance with the side setback control will provide negligible benefit to noise transmission.

- **Damage to infrastructure during works**

A concern was raised on a site inspection regarding damage to road infrastructure during construction.

Comment:

A bond will be required to be submitted to ensure any damage to infrastructure caused by the

developer is repaired at the cost of the developer.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>Development Engineering has no objection to the application subject to the following condition of consent.</p> <p><u>Planning Comments</u></p> <p>The condition Traffic Control During Works was also added to ensure access is maintained to properties at all times.</p>
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of the available documents and site visit, The site of proposed development is not a listed heritage item in its own right, however, it is located in the vicinity of heritage items, including stone kerbs in The Crescent and vegetation in Commonwealth Parade.</p> <p>Given the nature of the proposal and the item, the impact on heritage values is assessed as acceptable.</p> <p>Based on the above, I have no objections to this proposal from heritage perspective.</p> <p>Proposal is acceptable without conditions.</p> <p>Kind Regards Zoran Popovic Heritage Adviser</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A332925, dated 5 December 2018).

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Manly Local Environmental Plan 2013

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

aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	11m	7.5m - 10.7m	N/A	Yes
Floor Space Ratio	FSR: 0.75:1 (400.08sqm)	FSR: 0.748:1 (399.8sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 533.4sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 per 150sqm	1 per 533.4sqm	N/A	Yes
4.1.2.1 Wall Height	East: 9.7m (based on gradient 1:8.3)	9.4m	N/A	Yes
	West: 9.7m (based on gradient 1:7.6)	10m	3%	No
4.1.2.2 Number of Storeys	3	3	N/A	Yes
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.6m	N/A	Yes
4.1.4.1 Street Front Setbacks	6m - The Crescent	Dwelling 14m Garages - Nil	0%-100%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	East 3.1m - 2.3m	2.9m - 1.2m	6.5% - 47.8%	No
	West 2.3m - 3.3	1.28m	61.2%	No
	Windows 3m	1.28m	57.3%	No
4.1.4.4 Rear Setbacks	8m - Commonwealth Pde	Building 3.79m - 6.6m	52.5% - 69.8%	No

		Balcony 2.42m - 3.8m		
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 50% of site area (266.7sqm)	46% (246.7sqm)	7.5%	No
Residential Open Space Area: OS2	Open space above ground 25% of total open space (61.7sqm)	43.7% (108sqm)	75%	No
4.1.5.2 Landscaped Area	Landscaped area 30% of open space (74sqm)	36.8% (90.9sqm)	N/A	Yes
	3 native trees	nil	100%	No
4.1.5.3 Private Open Space	18sqm per dwelling	22.3sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m (4.6m)	7.3m	59%	No
4.1.10 Fencing	1.5 where 30% transparent above 1m	The Crescent - 1.6m - 1.8 Commonwealth Parade - 2.8m - 2.9m	100%	No, see assessment under clause 3.1 Streetscapes and Townscapes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

The Manly DCP 2013 permits a maximum fence height of 1.5m where the fence is 30% transparent above 1m. The proposal includes a 1.6m-1.8m fence on The Crescent frontage and a 2.8m-2.9m fence on the Commonwealth Parade frontage. The fence on the commonwealth Parade frontage is a glass balustrade on the existing sandstone retaining wall.

Merit consideration:

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

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:The Crescent

The existing development fronting The Crescent is a single garage with a 1.8m fence. The proposal includes a 1.8m fence, single garage with a 1.8m high garage door and will retain the existing garage. The incorporation of 1.8m high solid elements will retain the existing character of the site and will not result in any unreasonable impact on the street frontage.

Commonwealth Parade

The proposed non-compliance on the Commonwealth Parade frontage is due to the addition of a 1m high glass balustrade on the existing sandstone retaining wall. The glass balustrade is transparent and will not create a negative visual impact on the streetscape of the locality. Furthermore the addition of planting behind the balustrade will enhance the presentation of the development to the street.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment:The Crescent

The streetscape of the Crescent is made up of a wide variety of development types from open landscape frontages to high solid walls and garages on the boundary. There is no definable streetscape character for this street. As discussed above the proposal will maintain the existing presentation to the street. This presentation will result in a satisfactory streetscape outcome.

The proposed additions to the dwelling are setback and located below the street level. This design will ensure the development does not result in any unreasonable impacts on the streetscape.

Commonwealth Parade

As discussed above the proposed glass balustrade is transparent and the addition of landscaping on the street frontage will enhance the presentation of the site to the street. The neighboring developments include a three storey and seven storey residential flat buildings.

The proposed additions to the dwelling are of a height, bulk, setback and scale that is consistent with the neighboring development. Furthermore, the proposal includes open balconies on this frontage which will soften the built form of the development as viewed from the street. The Commonwealth Parade streetscape does not consist of a definable building character. As such the design of the development will not result any departure from the streetscape character of the locality. The proposal will not result in any unreasonable impacts on the streetscape character of Commonwealth Parade.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment:

The proposed front fences are of a satisfactory design to ensure no unreasonable impacts within the locality. These designs incorporate planting to soften the presentation to the street.

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

3.4.1 Sunlight Access and Overshadowing

Description of non-compliance

The development will result in a reduction of solar access to the southern facing units of 29 and 33 The Crescent Manly. These units presently enjoy less than 4 hours required by the Manly DCP 2013.

Merit consideration:

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

Objective 1) To provide equitable access to light and sunshine.

Comment:

33 The Crescent

The development will result in the loss of solar access to the eastern windows of the lower floors of 33 The Crescent in the morning of the winter solstice. These windows are self shadowed by the existing building for the remainder of the day. The area of the development that results in the loss of sunlight is considerably below the permitted height limit and is non-compliant with the side setback control of the Manly DCP 2013. However, due to the low angle of the sun, compliance with the side setback control would not generate any significant increase in solar access for these windows. The development is of a reasonable built form within the locality and the impacted property is designed in a way that would precludes itself from retaining solar access. As such the overshadowing is considered to be acceptable and the access to light and sunshine equitable.

29 The Crescent

The development will result in the loss of solar access to the western windows of the lower floors of 29 The Crescent in the afternoon of the winter solstice. These windows are self shadowed by the existing building during the morning of the winter solstice and receive sunlight during midday of the winter solstice. The area of the development that results in the loss of sunlight is considerably below the permitted height limit and is marginally non-compliant with the side setback control of the Manly DCP 2013. Compliance with this control would provide negligible benefit in solar access to the neighbouring property. The development is of a reasonable built form within the locality. The proposal will maintain an equitable access to light and sunshine to this property..

Objective 2) To allow adequate sunlight to penetrate:

- *private open spaces within the development site; and*
- *private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.*

Comment:

The proposal is orientated to capture the northerly sun and will receive adequate solar access to private open spaces due to this orientation.

As discussed above the development will be of a reasonable built form within the locality and the orientation and level of the neighbouring properties make them susceptible to the loss of solar access. The protection of this sunlight is not considered to be reasonable in this circumstance. The development will maintain reasonable access to sunlight to the neighbouring properties.

Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:

- *encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and*
- *maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.*

Comment:

The development is appropriately designed to ensure a reasonable access to sunlight to the neighbouring properties and to the subject site.

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

3.4.3 Maintenance of Views

Description of non-compliance

View loss objections were received from 14-20 The Crescent, 12 The Crescent, 29 The Crescent and 33 The Crescent.

Merit consideration:

With regard to view loss, the development is considered against the underlying Objectives of the Control as follows:

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

Comment:

The development has been assessed below with regards to the views planning principle. The assessment has found that the development would provide for reasonable view sharing for the nearby properties.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised

landmarks or buildings from both private property and public places (including roads and footpaths).

An assessment of view loss has also been undertaken with reference to the Views Principle established by the NSW Land and Environment Court as follows:

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

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:

Height poles were erected to demonstrate the extent of view loss from the proposed development. The views from surrounding and nearby properties were photographed.

12 The Crescent, Manly

The following photographs were taken from units 1-5/12 The Crescent, Manly. This property is to the north and opposite The Crescent from the subject site. The subject site is the smaller building with the slate tile roof.



View Loss Photographs 1/12 The Crescent (left) 2/12 The Crescent (right)

The photograph from 1/12 The Crescent is taken from the balcony attached to the living area. This property will lose water views from the balcony.

The photograph from 2/12 the crescent is taken from the living area. This property will lose water views from the living area, dining area kitchen, bedroom and balcony.



View Loss Photographs 3/12 The Crescent (left) 4/12 The Crescent (right)

The photograph from 3/12 The Crescent is taken from the living area. This property will lose water views from the living area, dining area kitchen, bedroom and balcony.

The photograph from 4/12 The Crescent is taken from the balcony. This property will lose water views from the living area, dining area kitchen, bedroom and balcony.



View Loss Photographs 5/12 The Crescent

The photograph from 5/12 The Crescent is taken from the balcony. This property will lose water views from the balcony and living area.

29 The Crescent, Manly

The following photographs were taken from units 21/29 and 31/29 The Crescent, Manly. This property is the eastern neighbour to the subject site. The views lost are obtained from a sitting and standing position over the side boundary.



View Loss Photographs 21/29 The Crescent (left) & 31/29 The Crescent (right)

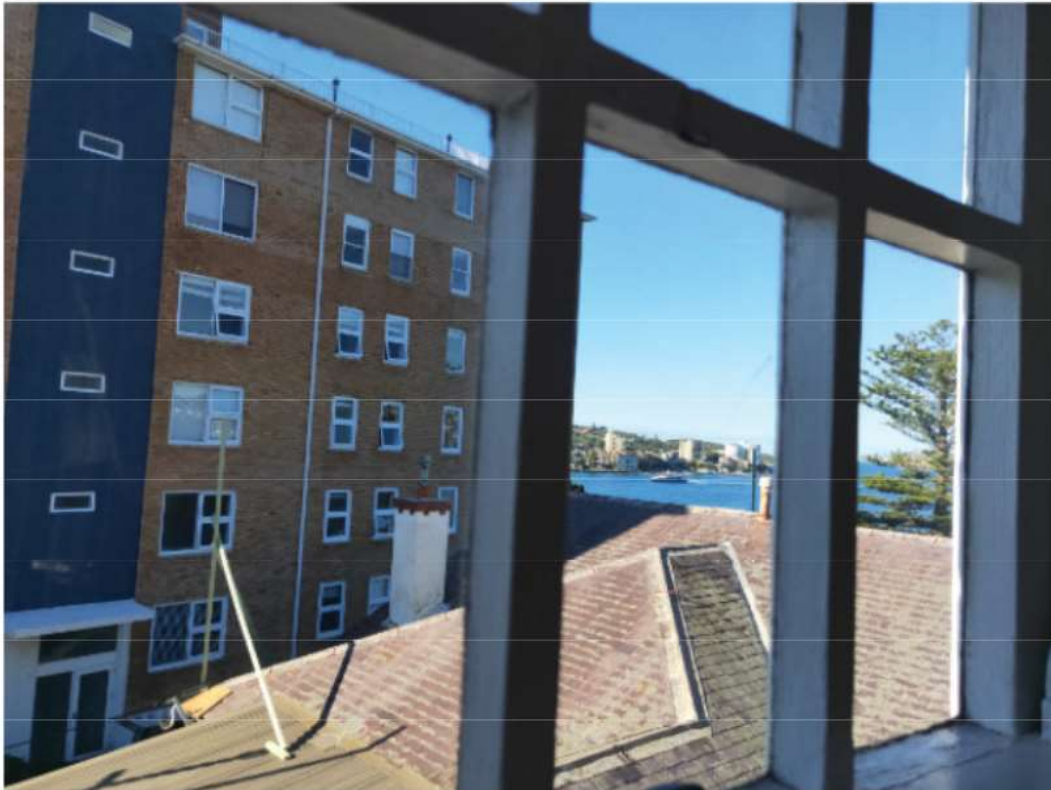
The photograph from 21/29 The Crescent is taken from the living area. This property will lose views of the water and the land/water interface from the western facing bedroom and living/kitchen windows.

The photograph from 31/29 The Crescent is taken from the bedroom. This property will lose views of the water and the land/water interface from the western facing bedroom and living/kitchen windows.

An inspection of 51/29 The Crescent was also undertaken, no significant view loss was observed from this property.

6/33 The Crescent, Manly

The following photograph was taken from 6/33 The Crescent, Manly. This property is the western neighbour to the subject site. The views lost are obtained from a standing position over the side boundary.



View Loss Photograph 6/33 The Crescent Manly

The view loss from this property is water views and views of north head from the western facing bedroom windows.

11/14-20 The Crescent, Manly

The following photograph was taken from 11/14-20 The Crescent, Manly. This property is opposite The Crescent and to the west from the subject site. The subject site is the smaller property towards the left of the picture.



View Loss Photograph 11/14-20 The Crescent, Manly

The view loss from this property is water views from the balcony, living and dining area. The views lost are obtained from a sitting and standing position overlooking the front and side boundaries.

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

Comment:

1/12 The Crescent

This property will retain view corridors of water and land/water interface either side of 35 The Crescent from the balcony and living area. The view loss is best described as severe.

2/12 The Crescent

This property will retain view corridors of water and land/water interface including south head either side of 29 The Crescent. The view impact is best described as minor.

3/12 The Crescent

This property will retain water views and views of the land/water interface, including south head over the proposed development and to the west of 33 The Crescent. The view impact is best described as minor.

4/12 The Crescent

This property will retain view corridors of water and land/water interface including south head either side of 29 The Crescent and over the proposed development. The view impact is best described as minor.

5/12 The Crescent

This property will retain water views and views of the land/water interface, including south head over the proposed development and to the west of 33 The Crescent. The view impact is best described as negligible.

21/ 29 The Crescent

This property has its living room, dining room and kitchen orientated to the south where it obtains panoramic views of the harbour including north and south head. The view impact is best described as minor.

31/29 The Crescent

This property has its living room, dining room and kitchen orientated to the south where it obtains panoramic views of the harbour including north and south head. The view impact is best described as minor.

51/29 The Crescent

This property will retain all views currently available. The proposal has no view impact on this property.

6/33 The Crescent

This property will not retain any water views. The view impact on this property is best described as devastating.

11/14-20 The Crescent Manly

This property will retain views of water and land/water interface including north head over the proposed development and over/to the west of 33 The Crescent. The view impact is best described as minor.

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

Comment:

The proposed development is located within an 11m building height zone and 6m front setback area. The proposed alterations to the dwelling house are setback 14m from The Crescent and are a maximum height of 7.4m as viewed from this frontage. The development complies with the building height and floor space ratio development standard and does not comply with the side setback controls.

1/12 and 2/12 The Crescent

The views lost are obtained looking diagonally across the centre of the subject site at a first floor level. These views are highly vulnerable to obstruction. As these views are diagonal compliance with the side setback control would provide negligible benefit to these properties. Furthermore these properties retain water views directly to the front of the property. Given the reasonableness of the proposal and the views retained the view impact is considered to be acceptable in this circumstance.

3/12 and 4/12 The Crescent

These properties will retain extensive views including south head over the subject site. The proposals design to be 3.6m under the height limit on The Crescent frontage greatly assists in the retention of views from these properties. Compliance with the side setback control of the Manly DCP 2013 will provide negligible benefit. The design of the proposal is considered to be reasonable and the view impact acceptable. Concern was raised of the view impact due to the proposed solar panels. Due to the low angle of the view these are likely to cause the disruption of views. A condition is recommended to require the solar panels to be a maximum height of RL26.925, consistent with the maximum roof height, or be deleted from the plans.

5/12 The Crescent

It is noted that this property did not raise a view loss objection. The impact on this property was assessed as negligible. Given the compliance with the building height of the proposed development the view impact is considered acceptable from this property.

6/33 The Crescent Manly

The views lost from this property are obtained from the bedrooms looking diagonally across the side boundary towards the centre of the subject site at a first floor level. This property will not retain any view. The height and angle of the view means that it is highly vulnerable to disruption. While the view impact is devastating, the vulnerability of the view is such that the development on the site would be limited to significantly below what the applicable controls allow. Any redesign to achieve views from this property would significantly limit the development potential of the site in relation to the applicable controls. As such the view loss is considered to be acceptable in this circumstance.

11/14-20 The Crescent Manly

This property will retain extensive views. Furthermore the view loss is not as a result of non-compliance and the development has adopted a more skillful design that retains extensive views over the top of the subject site. The view loss from this property is considered to be acceptable.

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

Comment:

As discussed above, the development is considered to be of a reasonable design that will minimise the loss of views including accumulated view loss 'view creep'. The proposal is consistent with this objective.

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

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)**Description of Non-compliance**

The Manly DCP 2013 permits a maximum wall height calculated from the slope of the land. In accordance with this provision the western elevation is permitted to have a maximum wall height of 9.7m. The proposed western elevation includes a maximum wall height of 10m representing a variation of 3% to the control.

Merit Consideration

The Manly DCP 2013 does not contain objectives specific to this control but refers to the objectives of Clause 4.3 Height of Buildings of the Manly LEP 2013 as having particular relevance. With regard to the consideration of the variation, the development is considered under the relevant objectives below:

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

Comment:

The development sits comfortably within the maximum permitted building height for the area and is considerably below the height of the neighbouring properties to the east and west. There are no roof forms that are characteristic to the area nor is the proposed roof form restricted by the Manly DCP 2013. The proposal is consistent with the streetscape of the locality and consistent with this objective.

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

Comment:

The proposal is non-compliant with this control by 0.3m. Within the context of the surrounding properties the non-compliance will not be visually prominent. The proposal will not result in any unreasonable bulk and scale within the locality.

(c) to minimise disruption to the following:

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

Comment:

An assessment of the view loss has been conducted above with regard to Clause 3.4.3 Maintenance of Views of the Manly DCP 2013 and the View Planning Principle established by the NSW Land and Environment Court. The assessment has found the development to minimise the disruption of views. The non-compliance with the wall height does not result in any unreasonable view impacts within the locality.

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

Comment:

The development has been assessed above with regards to clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. This assessment found that the development would maintain an equitable access to light and sunshine within the locality. The non-compliance with the wall height control will not result in any unreasonable impacts on the solar access of the neighbouring properties.

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

Comment:

Not applicable.

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

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

Description of non-compliance

The Manly DCP 2013 requires a 6m front setback in streets where there is no prevailing building line. For this assessment the front boundary was considered to be the northern boundary as this is the primary access and the boundary the property is addressed as. The proposal will retain the existing single garage on the front boundary and includes a single garage with a nil setback to the front boundary. The additions to the dwelling house are setback 14m from this frontage.

The Manly DCP 2013 requires an 8m setback to the rear boundary. The Manly DCP 2013 also specifies that "*Rear setbacks must relate to the prevailing pattern of setbacks in the immediate vicinity to minimise overshadowing, visual privacy and view loss*". The boundary to the south along Commonwealth Parade is considered to be the rear boundary. The Manly DCP 2013 does not include provisions for secondary street frontages in circumstances such as this. The development is setback 2.42m - 3.8m to the balcony from this boundary and 3.79m - 6.6m to the building proper.

The Manly DCP 2013 requires buildings to be setback a distance equal to 1/3 of the wall height. This clause also requires new windows to be setback 3m from the side boundary. The eastern and western elevations do not comply with this control.

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The development has been assessed in detail under clause 3.1 Streetscape and Townscapes of the Manly DCP 2013. The proposal incorporates front and rear setbacks that are consistent with the nearby development. Furthermore, the design of the development will maintain the streetscape character and enhance the landscape character of the locality. The proposal is consistent with this objective.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposal is considered to ensure and enhance local amenity for the following reasons:

- The proposal incorporates screening and opaque windows where appropriate to limit overlooking of the side boundary and restrict direct viewing between windows. The proposal incorporates an appropriate design to provide privacy to the neighbouring properties.
- The development has been assessed in accordance with clause 3.4.1 Sunlight Access and Overshadowing. This assessment has found that the development would maintain an equitable access to light sunshine and air movement within the locality.
- The development has been assessed in accordance with clause 3.4.3 Maintenance of Views of the Manly DCP 2013. This assessment found that the development would facilitate view sharing within the locality. The non-compliance with the side setback control was found to have negligible impact on the view loss of the nearby properties.
- The proposed development is consistent with the front, side and rear setbacks exhibited by the nearby development. The proposal will maintain the streetscape character of the locality and the pattern of spaces within the streetscape.
- The proposed setbacks will not result in any unreasonable impacts on traffic conditions within the locality.

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

Comment:

The proposed development will maintain a reasonable level of amenity and the streetscape character of the locality. The proposal is consistent with the objectives of the control. As such the flexibility is considered to be appropriate in this circumstance.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal provides a compliant level of landscaped area and includes a landscape plan that will enhance the presentation of the site to the street. The requirement of the Manly DCP 2013 for three trees of species that reach a mature height of 8m-25m will likely result in the disruption of views. As such this has not been required. See more detailed assessment under 4.1.5 Open Space and Landscaping below. The proposal is consistent with this objective.

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

Comment:

Not applicable.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

The Manly DCP 2013 requires 50% of the site area to be provided as total open space and permits a maximum of 25% of the total open space to be above ground open space. The proposal incorporates 46% of the site area as total open space which is made up of 43.7% of above ground open space.

The Manly DCP 2013 also requires 3 native trees, of the species specified, to be provided on site. The proposal does not include any trees of the species specified.

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal does not include the removal of any important landscape features. The proposed landscape plan will augment the landscaping on the site and enhance the presentation of the site to the street.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposal incorporates compliant levels of landscaped area and does not include the removal of any significant landscape features. The proposal provides large open space areas to the front and rear of the dwelling while maintaining consistent setbacks with the nearby development. The development maximises the open space at ground level. With regard to tree planting, a large number of submissions raised the loss of views as a primary issue from this development. The incorporation of three 8-25m high trees is likely to result in the further disruption of views. As such enforcing this requirement is not considered appropriate in this circumstance.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

The development has been assessed above with regards to the amenity of the site, streetscape and surrounding area. In particular the requirement for tree planting on this site is likely to result in the disruption of views and is not considered appropriate in this circumstance. The development will maintain and enhance the amenity of the site and the surrounding area.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

The development incorporates suitable landscaped areas to maximise water infiltration on-site. Conditions of consent have been recommended to ensure suitable management of stormwater.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposed landscaping will minimise the spread of weeds and the degradation of private and public open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The proposal incorporates adequate landscaped areas to maximise wildlife habitat on the site.

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

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Description of non-compliance

The Manly DCP 2013 requires garages/parking structures be a maximum width of 50% of the site frontage up to 6.2m.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The Manly DCP 2013 requires two parking space be provided per dwelling house. The proposal includes the provision of an additional parking space on the site and will bring the development into compliance with the Manly DCP 2013. The proposed parking is adequate to service the development. The location of the parking is accessible from the street and from the dwelling. The proposal is consistent with this objective.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The additional parking provided by this development will reduce the demand for on-street parking.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed parking design is efficient, safe and convenient. The design of the parking is sympathetic to the streetscape and will not have any unreasonable visual impact on the streetscape character of the locality. A detailed assessment under clause 3.1 Streetscapes and Townscapes of the Manly DCP 2013 has been carried out above. The development was found to be consistent with the objectives of this clause.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposed parking does not require significant excavation.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

The development will require the extension of the existing driveway crossover. This has been assessed by Councils development engineers and is satisfactory, subject to conditions. The development will not result in any unreasonable number or width of footpath crossings.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The proposed design of the parking will limit the amount of impervious areas and will provide screening of internal accesses. The development also incorporates adequate landscaping to enhance the sites presentation to the street.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

Not applicable.

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

4.4.5 Earthworks (Excavation and Filling)

Description of Non-compliance

The Manly DCP 2013 limits excavation to generally 1m. The proposed ground floor requires excavation of up to 3m.

Merit Consideration

With regard to the consideration of the variation, the development is considered under the objective of the control below:

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, "cut and fill" and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment

The non-compliant excavation is limited to within the building footprint and will not impact on the landscape character or topography. A geotechnical report was submitted with the application to ensure no unreasonable impacts due to the excavation. The proposal is consistent with this objective.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

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 \$9,735 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$973,500.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation

submitted by the applicant and the provisions of:

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

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

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

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

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

- View Loss - Height poles were erected that demonstrated the development would not result in any unreasonable disruption of views.
- Sunlight Access - A detailed assessment has been carried out that determined the development would retain an equitable access to light and sunshine within the locality.
- The non-compliances with wall height, setbacks, total open space, parking design and earthworks have been assessed above and found to be consistent with the objectives of the control.

Whilst not applicable to this application the previously approved development, which was approved by the Land & Environment Court, and this proposed development have a similar building footprint, height and envelope.

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 DA2019/0215 for Alterations and additions to a dwelling house on land at Lot 1 DP 1085978, 31 The Crescent, MANLY, 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
DA02 Site / Roof / Sediment Erosion / Waste Management Plan Revision C	6/12/2018	Action Plans
DA03 Existing Ground Floor Plan Revision C	6/12/2018	Action Plans
DA04 Existing First Floor Plan Revision C	6/12/2018	Action Plans
DA05 Proposed Ground Floor Plan Revision C	6/12/2018	Action Plans
DA06 Proposed First Floor Plan Revision C	6/12/2018	Action Plans
DA07 Proposed Second Floor Revision C	6/12/2018	Action Plans
DA08 Proposed Garage Floor Plan Revision C	6/12/2018	Action Plans
DA09 North Elevation Revision C	6/12/2018	Action Plans
DA10 East / North (Street) Elevation Revision C	6/12/2018	Action Plans
DA11 South Elevation Revision C	6/12/2018	Action Plans
DA12 West Elevation Revision C	6/12/2018	Action Plans
DA13 Section Sheet 1 Revision C	6/12/2018	Action Plans
DA14 Section Sheet 2 Revision C	6/12/2018	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation for Proposed Alterations and Additions at 31 The Crescent Manly NSW	28 November 2018	JK Geotechnics

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L/01 Proposed Landscape Plan	19/12/2018	A Total Concept

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 Dwelling House

A Dwelling House is defined as:

"dwelling house means a building containing only one dwelling."

(development is defined by the Manly Local Environment Plan 2013 (as amended) Dictionary)

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 demolished

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$9,735.00 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 \$973,500.00.

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

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 \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may

occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. **Stormwater Disposal**

Stormwater shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003.

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

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

8. **Amendments to the approved plans**

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

- o The solar panels are to be amended to have a maximum height of RL 26.925 or deleted from the plans

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 loss of views upon surrounding land.

9. **Vehicle Crossings Application**

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid.

Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

10. **Compliance with Standards**

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

Standards.

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

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

11. **External Finishes to Roof**

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

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

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

12. **Survey**

All works are to be contained wholly within the subject site.

A final identification survey prepared by a Registered Surveyor identifying and marking the boundaries of the subject site and all existing and proposed structures/buildings on site is to be completed. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure compliance with the terms of this consent.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

13. **Road Reserve**

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

Reason: Public Safety.

14. **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.

15. **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.

16. **Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

17. **Vehicle Crossings**

The provision of one vehicle crossing 6 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

18. **Survey**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

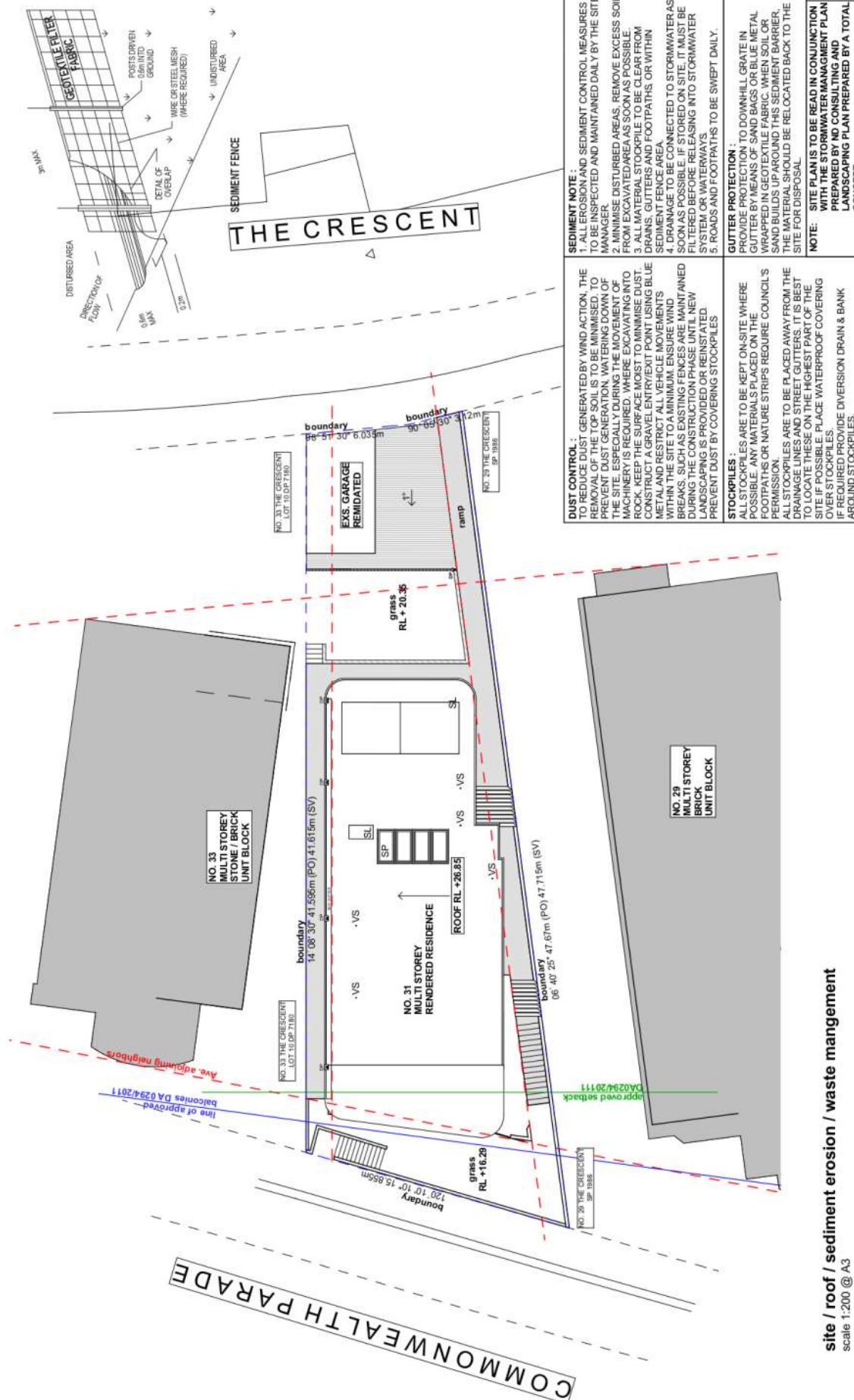
Reason: To determine the height of buildings under construction comply with levels shown on approved plans. (DACPLE01)

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

19. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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



site / roof / sediment erosion / waste mangement
scale 1:200 @ A3



DRAWING NAME
SITE / ROOF / SEDIMENT
EROSION / WASTE
MANAGEMENT PLAN

SCALE
1:200 @A3

DRAWING NO.
DA02

DATE
06 February 2019

CLIENT
Mr. S. Linforth & Mrs. S.
Linforth

PROJECT ADDRESS
31 THE CRESCENT,
MANLY, NSW 2095

LEGEND
SP: SOLAR PANEL
SK: SKY LIGHT
VS: VENT STACK

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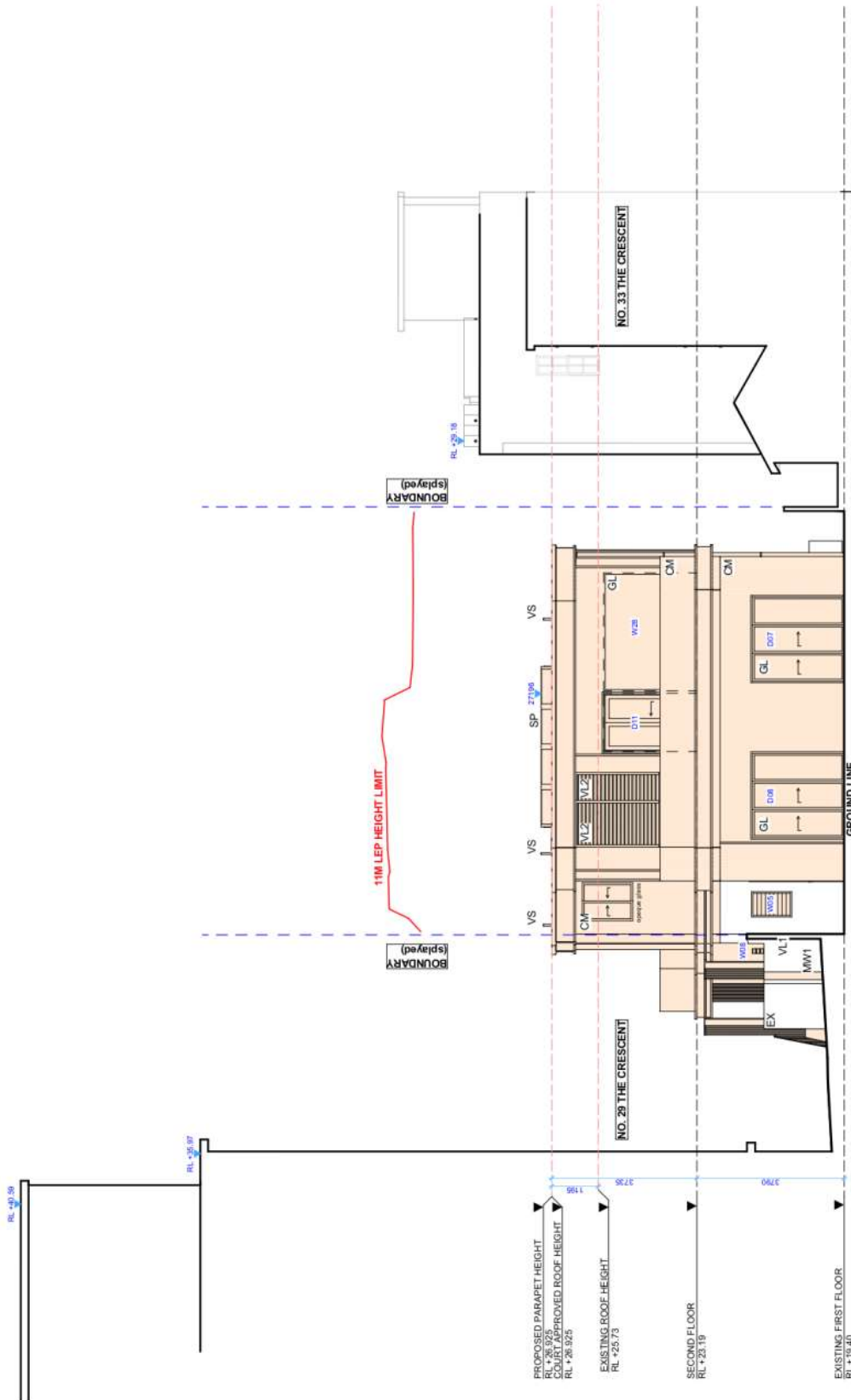
Do not scale on drawings. Use legend dimensions.

REV.	DATE	COMMENTS	DRWN
A	08/05/19	PRE DA: PLAND	RVA
B	08/11/18	PRE DA: PLAND REV A	RVA
C	08/12/18	DA: SUBMISSION	RVA

ACTION PLANS

m: 0403957518
e: design@actionplans.com.au
w: www.actionplans.com.au





north elevation
scale 1:100 @ A3

ACTION PLANS

m: 0403957518
e: design@actionplans.com.au
w: www.actionplans.com.au



REV.	DATE	COMMENTS	DRWN
A	08/05/18	PRE DA - PLAND	RVA
B	08/11/18	PRE DA - PLAND REV A	RVA
C	08/12/18	DA - SUBMISSION	RVA

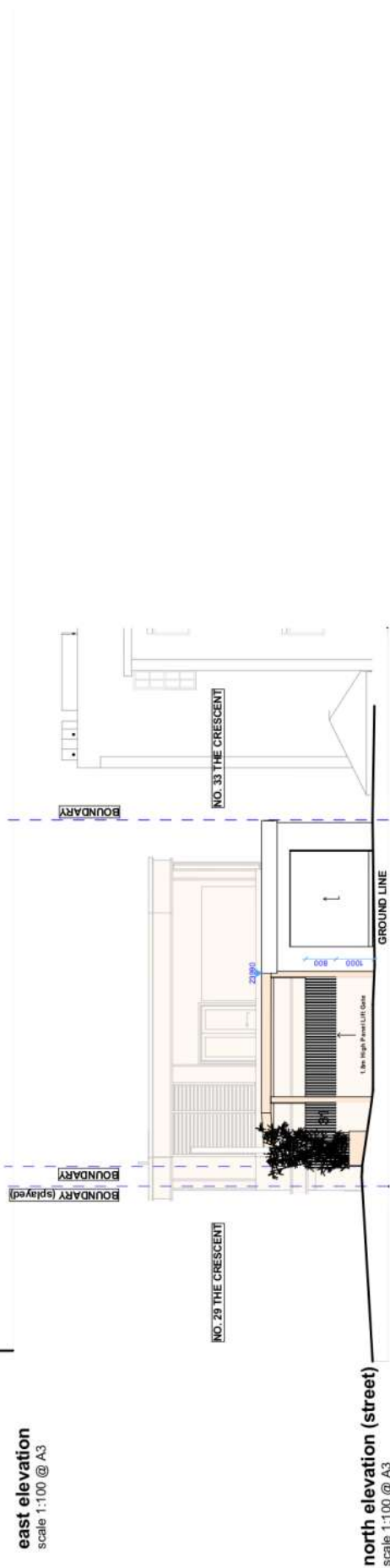
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Work, making of shop drawings or fabrication of components.
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LEGEND	PROPOSED WORKS
CM CEMENT RENDER - PAINTED	VS VENT STACK
EX EXIS	SP SOLAR PANEL
GL GLASS HANDRAIL	
GH RENDERED BLOCK WALL	
MW1 SANDSTONE WALL	
MW2 VERTICLE LOUVER	
VL1 VERTICLE LOUVER	
VL2 VERTICLE LOUVER	

CLIENT
Mr. S. Linforth & Mrs S. Linforth
PROJECT ADDRESS
31 THE CRESCENT,
MANLY, NSW 2095

DRAWING NO.
DA09
DATE
06 February 2019
SCALE
1:100 @A3

DRAWING NAME
NORTH ELEVATION

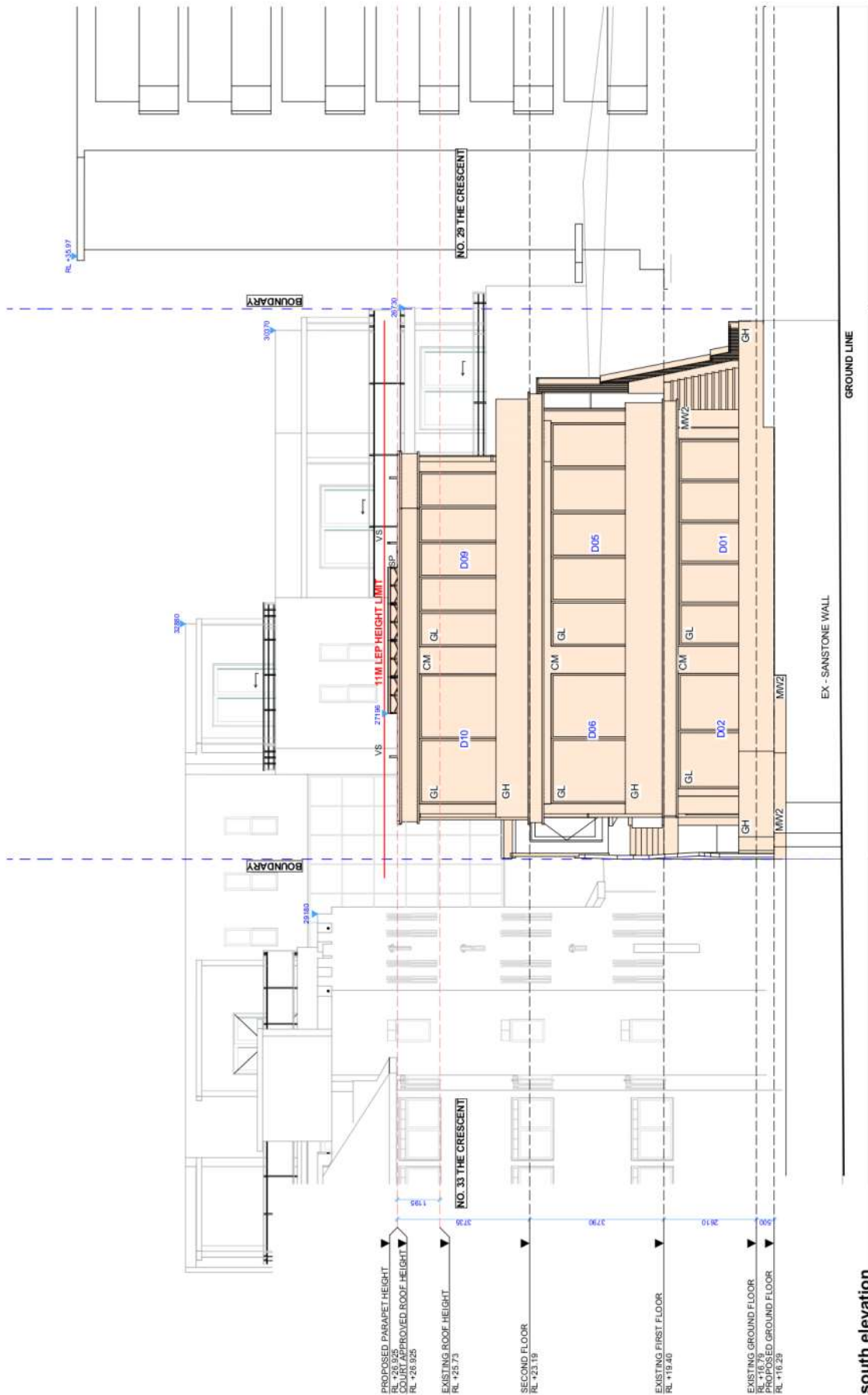




ACTION PLANS

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w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN	NOTES	LEGEND	CLIENT	DRAWING NO.
A	02/01/16	PREL DA - PLAND	RNA	This drawing is the copyright of Action Plans and may not be reproduced in any form or by any means in print or in whole with the permission of Action Plans.	CM EXISTING EX EXISTING VS VENT STACK GL GLASS HANDRAIL SP SOLAR PANEL	Mr. S. Linfooth & Mrs S. Linfooth	DA10
B	02/01/16	PREL DA - PLAND B/C/A	RNA	At levels and dimensions are to be checked and verified on site prior to commencement of any work. If any drawings or fabrication are incompatible, the client must be notified immediately. Do not scale on drawings. Use figured dimensions.	RENDERED BLOCK WALL SANDSTONE WALL VERTICLE LOUVER VLT1	PROJECT ADDRESS 31 THE CRESCENT, MANLY, NSW 2095	DATE 06 February 2019
C	06/02/18	DA - Submittal FOR	RNA				SCALE 100 @A3



south elevation
scale 1:100 @ A3

ACTION PLANS



m: 0403957518
e: design@actionplans.com.au
w: www.actionplans.com.au

REV.	DATE	COMMENTS	DRWN
A	08/05/18	PRE DA - PLAND	RVA
B	08/11/18	PRE DA - PLAND REV A	RVA
C	09/12/18	DA - SUBMISSION	RVA

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Work, making of shop drawings or fabrication of components.
Do not scale on drawings. Use figured dimensions.

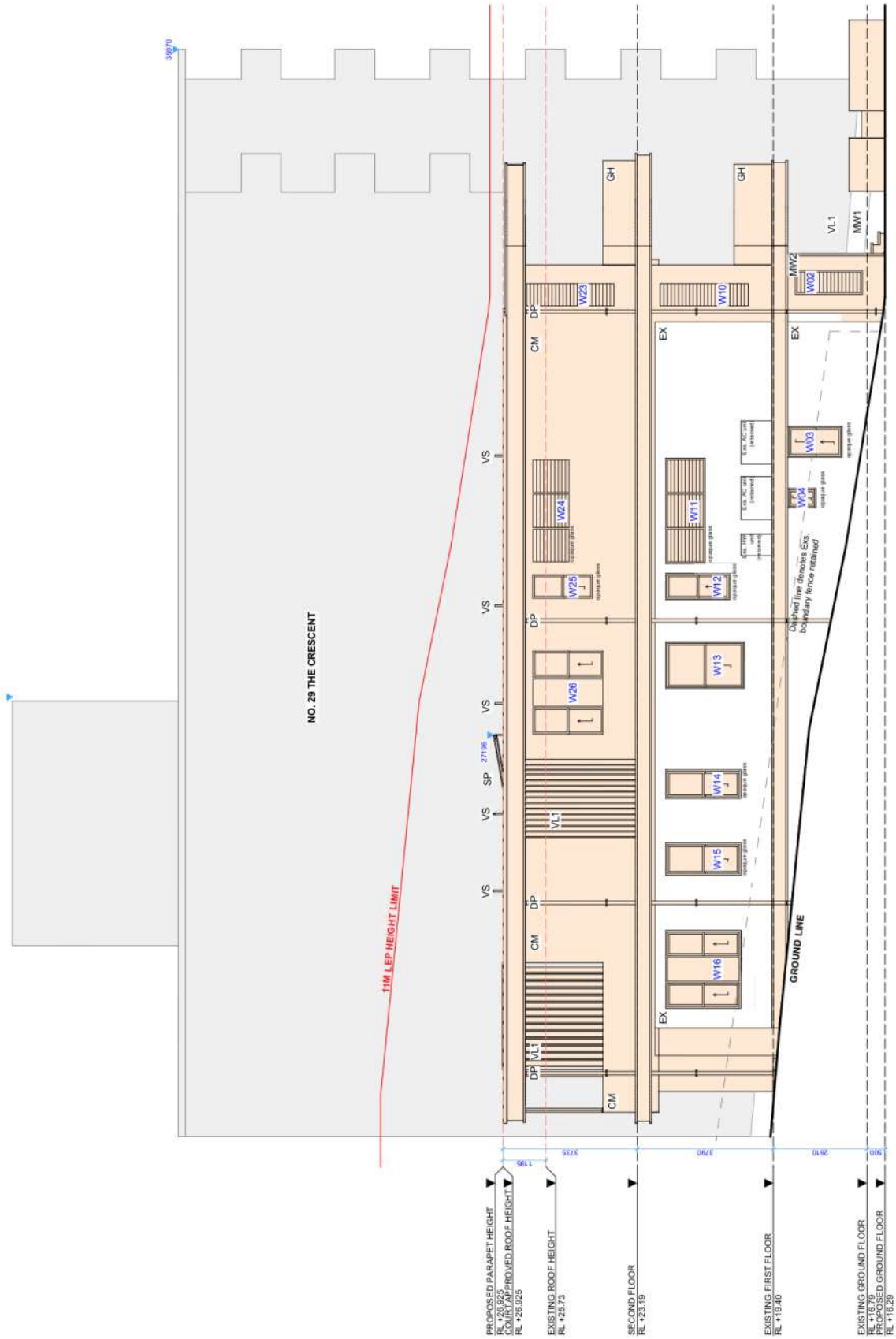
LEGEND
CM CEMENT RENDER - PAINTED
EX EXISTING
GL GLASS HANDRAIL
GH GLASS HANDRAIL
MW1 MASONRY WALL
MW2 MASONRY WALL
VLI VERTICAL LOUVER
VLI VERTICAL LOUVER

PROPOSED WORKS
VS VENT STACK
SP SOLAR PANEL
GLASS HANDRAIL
RENDERED BLOCK WALL
SANSTONE WALL
VERTICLE LOUVER

CLIENT
Mr. S. Linforth & Mrs S. Linforth
PROJECT ADDRESS
31 THE CRESCENT,
MANLY, NSW 2095

DRAWING NO.
DA11
DATE
06 February 2019

DRAWING NAME
SOUTH ELEVATION
SCALE
1:100 @A3



DRAWING NAME
WEST ELEVATION

SCALE
1:100 @A3

DRAWING NO.
DA12

DATE
06 February 2019

CLIENT
Mr. S. Linforth & Mrs. S. Linforth

PROJECT ADDRESS
31 THE CRESCENT,
MANLY, NSW 2095

PROPOSED WORKS
VS VENT STACK
SP SOLAR PANEL

LEGEND
CM CEMENT RENDER - PAINTED
EX EXISTING
GL GLASS HANDRAIL
GH RENDERED BLOCK WALL
MW1 SANDSTONE WALL
MW2 VERTICLE LOUVER
VL1 VERTICLE LOUVER
VL2

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REV.	DATE	COMMENTS	DRWN
A	08/05/18	PRE DA - PLAND	RVA
B	08/11/18	PRE DA - PLAND REV A	RVA
C	08/12/18	DA - SUBMISSION	RVA

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ITEM 3.4

**DA2018/1828 - 3 BERITH STREET, WHEELER HEIGHTS -
CONSTRUCTION OF A SENIORS HOUSING DEVELOPMENT
COMPRISING 6 X INFILL SELF CARE HOUSING UNITS AND
BASEMENT PARKING**

AUTHORISING MANAGER ANNA WILLIAMS

TRIM FILE REF 2019/487336

ATTACHMENTS
1 [↓ Assessment Report](#)
2 [↓ Site Plan and Elevations](#)

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2018/1828 for Construction of a Seniors Housing development comprising 6 x infill self-care housing units and basement parking at Lot A DP 411784, 3 Berith Street, Wheeler Heights subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1828
Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot A DP 411784, 3 Berith Street WHEELER HEIGHTS NSW 2097
Proposed Development:	Construction of a Seniors Housing development comprising 6 x infill self care housing units and basement parking
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Ming Hong Zhou
Applicant:	Boston Blyth Fleming Pty Ltd
Application lodged:	15/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	05/12/2018 to 13/01/2019
Advertised:	08/12/2018
Submissions Received:	17
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,829,900.00

Executive Summary

This development application (DA) seeks approval for a "seniors living" development, pursuant to State Environmental Planning Policy (SEPP) Housing for Seniors or People with a Disability (HSPD). The SEPP prevails over the Warringah Local Environmental Plan (WLEP) 2011 that prohibits HSPD within the R2 Low Density Residential zone. The application is referred to the NBLPP as more than ten (10) submissions have been received.

In summary, the proposal is configured as 4 dwelling Units at the front with 2 Units at the rear and a basement carpark. The topography of the site is considered suitable to meet geotechnical and engineering requirements. However some assessment concerns are raised with respect to landscaping works, excavation and maintaining 'local character' and continuity of the surrounding environment.

Principal assessment issues with the development proposal relate to floorspace (FSR) variation, streetscape impact, traffic access, adequacy of parking, landscaped setbacks, privacy, compliance with SEPP HSPD, building bulk, access to transport and the intensity of the development within the character of a low density residential area. In the context of the full assessment these specific issues have been considered within the report and detailed comments provided with respect to engineering, traffic, landscaping, building accessibility, urban design and waste management. Conditions are recommended to address issues where appropriate, including any minor changes for construction work or changes to Council assets in the road reserve.

Seventeen (17) public submissions were received following notification and issues raised include concerns relating to neighbours amenity, streetscape character, construction impact, visual bulk, privacy, spatial separation, public consultation, traffic, pedestrian safety, dilapidation risk, visitor parking and tree protection have been considered and addressed in the report. Conditions are recommended to appropriately address those concerns raised in the public interest. On balance, the proposal is recommended for approval having considered relevant issues and the assessment of the design plans submitted.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot A DP 411784 , 3 Berith Street WHEELER HEIGHTS NSW 2097
Detailed Site Description:	<p>The subject site is on the eastern side of Berith Street, near the intersection with Rose Avenue. The site is a rectangular shape with a width of 20.13 metres (m), depth of 63.0m, and total area of 1,269 square metres (sqm). The land slopes gently toward the north-east corner having a (diagonal) cross fall of 4m and average gradient of 5% from front to rear.</p> <p>Vehicle and pedestrian access is available from Berith Street. A low gradient footpath exists along Rose Avenue (55m north of the site) and bus stops are located within 400m of the site, near the corner of Wheeler Parade and Rose Avenue.</p> <p>The site currently contains a single detached dwelling house, pool, garage and minor structures. Some medium to large trees are located on the property and some will be required to be removed to facilitate the proposal. No threatened species habitat has been identified on the site.</p> <p>Adjacent development consists of low density detached dwellings in landscaped settings. Other land uses in the vicinity of the site include Wheeler Heights Primary School (adjoining the rear boundary), Wheeler Heights shops (250m due east) and St Rose Catholic School at No.32 Rose Avenue.</p> <p>The site is not subject to natural hazards of landslip, flooding, bushfire or acid sulfate soils and does not contain any significant natural rock outcrops.</p>

Map:



SITE HISTORY

There are no heritage items on the land and the site will be completely cleared of all structures for the proposal, therefore the history of previous development on the land is not relevant, except for the ensuring the appropriate demolition and safe handling of waste materials to be removed.

Pre-lodgement Meeting PLM2018/0095 for "Demolition works and the construction of a Seniors Living Development *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*" was held with Council on 29 May 2018. The DA proposal is consistent with the pre-lodgement written advice.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves the construction of six (6) dwellings (in-fill self-care housing) for aged and disabled persons housing including the following manner:

- Demolition of all on-site structures (house, swimming pool, ancillary works), including tree removal;
- Excavation and site works, including driveway areas, on-site detention and drainage works;
- **RL72.0 Basement:** Carparking for eight (8) cars with disabled persons accessibility, stair and lift, plant/services, bike parking space and storage.
RL76.0 to 77.0 Ground Floor: Entry area, stairs & lift, four (4) Units of 2 x 3 bedroom and Two (2) x 2 bedroom, bathrooms, kitchen / dining / living areas, storage, deck / terrace areas, ramped paths, outdoor space;
RL79.0 First Floor: Entry area, stairs & lift, Two (2) x 3 bedroom Units, bathrooms, kitchen / dining / living areas, storage, deck / terrace areas;
- Landscaping works including fencing, bins storage, ancillary structures and access paths.
- (Strata subdivision by separate application)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning	None applicable.

Section 79C 'Matters for Consideration'	Comments
agreement	
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this Clause within the Regulations. Some supplementary additional information was submitted to provide clarity on some assessment issues. This detailed information was regarding tree assessment impacts and stormwater. This information does not require re-notification (at Council's discretion) in accordance with the WDCP.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent, as applicable.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) 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) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) 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 79C (1) (c) – the suitability of the site for the development	<p>The subject land is considered suitable for the proposed development in that the land is gently sloping, with access to public transport, local services and shops. The proposal is designed in 1 x 2 storey building (central opening appearing as 2 'modules') at the front with a single storey building at the rear within a landscaped setting. Basement parking is situated below the buildings.</p>

Section 79C 'Matters for Consideration'	Comments
	<p>Stormwater disposal will be addressed by on-site detention (front setback area) and drainage of water to Council's street drainage infrastructure.</p> <p>The site is located within suitable distance and gradient to public bus stops, near Wheeler Heights shops.</p>
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest, subject to conditions. Issues raised in public submissions have been considered and addressed in summary within the detail of this report.

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 17 submission/s from:

Name:	Address:
Henry Van Long Chin	9 Berith Street WHEELER HEIGHTS NSW 2097
Diane Moira McNatty	11 Berith Street WHEELER HEIGHTS NSW 2097
Mr David John Collett Mrs Wendy Collett	7 Berith Street WHEELER HEIGHTS NSW 2097
Amanda Louise Spencer	1 Berith Street WHEELER HEIGHTS NSW 2097
Ms Rebecca Catherine Plester	8 Berith Street WHEELER HEIGHTS NSW 2097
Mr Adam Paul Gibbs	16 Berith Street WHEELER HEIGHTS NSW 2097
Mr Robert Guy Barnes Mrs Christine Helen Barnes	10 Berith Street WHEELER HEIGHTS NSW 2097
Ms Joan Elizabeth Catherine Croydon	5 Berith Street WHEELER HEIGHTS NSW 2097

Name:	Address:
Ms Jan Margaret Hawthorn	20 Berith Street WHEELER HEIGHTS NSW 2097
Mrs Helen Elizabeth Millichamp	29 Rose Avenue WHEELER HEIGHTS NSW 2097
Mr Neil Angus Macinnes	12 Berith Street WHEELER HEIGHTS NSW 2097
Mrs Jill Carolyn Clouston	14 Kirkstone Road WHEELER HEIGHTS NSW 2097
Mrs Dorothy Susan Waterhouse	56 Rose Avenue WHEELER HEIGHTS NSW 2097
Ms Dorothy Elizabeth Cordery	25 Rose Avenue WHEELER HEIGHTS NSW 2097
Peter Leslie Knoechel	38 Rose Avenue WHEELER HEIGHTS NSW 2097
Mr Andrew John Musgrove Mrs Rachel Frances Musgrove	2 Berith Street WHEELER HEIGHTS NSW 2097
Mr Eric Duncan Ward Rogers Mrs Noreen Rogers	31 Rose Avenue WHEELER HEIGHTS NSW 2097

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

- Neighbourhood amenity and streetscape character
- Visual and acoustic privacy
- Traffic and safety
- Visitor and service parking
- Overdevelopment
- Construction / excavation impacts
- Geotechnical risks
- Public consultation
- Amenity impacts (light, bulk, outlook)

The matters raised within the submissions are addressed as follows:

- ***Concern that the proposal is out of character with surrounding development and will reduce neighbourhood amenity, including streetscape presentation and neighbourood character of apartment style development, including building bulk and visual impact.***

Comment:

In assessing the proposal Council has been mindful of the following matters in terms of local streetscape or neighbourhood character (including the relevant requirements of SEPP HSPD and assessment principles by the NSW LEC in *GPC No.5 (Wombarra) Pty Ltd v Woollongong City Council [2003] NSWLEC 268*):

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

Surrounding development is dominated by low density residential development of either one or two storeys, mostly with hipped / gable roofs in a landscape setting. Building styles of the homes are mostly post war period within the relevant area that includes the visible surroundings from the site and extended to the immediate local surrounds within 400m (being the connection route to local transport that the proposal depends on). The schools and shops within this area have a mixture of buildings but are non-residential uses in terms of character and therefore less implied as defining residential form. There are a number of HSPD and dual occupancy developments in the vicinity (within a direct 400m of the site), indicating the current or past development approval of these medium density style of housing.

Despite the higher density of the proposal, the architectural style including external materials and colours are broadly consistent with the residential character of the area, which includes the common use of external colours such as white, brown, grey, and earthy colours. The use of external materials of brick or rendered walls, glass sliding doors and timber / weatherboard cladding and the like appears in the streetscape. The architectural style of the proposed building is however more contemporary in appearance than the existing surrounding housing stock, due to the proposed flat roof style, window fenestration, balcony style and wall treatment used. The use of a flat roof is supported in this case as it has less impact than a hipped roof would toward No.5 Berith Street in terms of visual impact, overshadowing and building bulk. The building maintains a consistent landscape setback to the street and a residential character by the use landscaped surrounds, pedestrian entry treatment and dividing the mass of the building into 'modules'.

The proposal is able to maintain some selected trees as practicable in the front setback, and conditions are recommended to reduce radical change to site levels abutting the boundaries. It is also recommended to provide a minor change for more light weight residential (open-style) appearance of the front balcony. These changes are considered to be appropriate to assist in a "good fit" for the development to adjacent land, and design considerations of SEPP HSPD. Further detailed assessment of streetscape is made under the DCP and SEPP HSPD assessment within this report and in conclusion the proposal is considered to be satisfactory, subject to conditions addressing the relevant issues.

In summary, this issue has been addressed by the design and does not warrant refusal of the application.

- ***Concern that the proposal will cause a loss of visual privacy and create overlooking impacts to adjoining neighbours from the development toward adjoining residential land.***

Comment:

Visual and acoustic privacy is managed by ensuring private open spaces (balconies or terraces) are adjacent other private open space areas or oriented toward the street / rear boundary (school). In addition, ground level areas along the side and rear boundaries are protected by 1.8m high fencing and may also be partly lower than adjacent land due to site excavation work. The side, rear and front setbacks contain landscape screen planting with appropriate planting to assist privacy. For the upper storey the proposal has adopted the use of fixed privacy screens to minimise any overlooking opportunities and ensure no unreasonable impact. The access is centralised for pedestrian movements at the front of the property and to / from the basement that ensures no unreasonable loss of privacy from the carparking area or the public entry to the building.

In summary, this issue has been addressed by conditions and does not warrant refusal of the application.

- ***Concern that the proposal will generate increased traffic and create safety issues in the adjacent street, compounded by other recent Senior's development nearby and school traffic within Rose Avenue and Berith Street.***

Comment:

The proposal has been submitted with a detailed "Traffic Impact Assessment" prepared by *Apex Engineers*. This report addresses local road capacity for traffic volumes, access to public transport, vehicle access, parking layout, road conditions, parking and general traffic safety considerations. Council's Traffic Engineer has assessed the proposal and raises no objection to approval of the development, subject to conditions. The proposal is required to comply with current Australian Standards to ensure safe sight distances for vehicle access / egress, parking and manoeuvring space. The available parking is considered to warrant some minor changes to address planning concerns and neighbours concerns for off-street parking and visitors. This has been addressed by conditions to increase the standard visitor spaces and provide 1 disabled access carspace for each Senior's Living unit. The traffic volumes for the proposal will cause an unreasonable impact on parking. Traffic issues during demolition and construction and short term impacts and therefore do not warrant refusal of the application. In addition, Rose Avenue and Berith Street are local roads with normal low standard residential speed limits (including school zones) and the road alignment, width and road conditions are of a good standard, being not dilapidated or steep and difficult to navigate.

In summary, this issue has been addressed by conditions and does not warrant refusal of the application.

- ***Concern that the proposal does not have adequate parking for visitors and the higher volume of deliveries/carer/service traffic generated by HSPD development.***

Comment:

The SEPP HSPD prevails over the Warringah DCP for carparking requirements and SEPP HSPD contains overriding standards that "cannot be used to refuse development consent for self contained dwellings". In this case the proposal satisfies the requirements of the SEPP HSPD disabled persons car parking access and for "0.5 car parking spaces per bedroom per dwelling". For 'self-contained dwellings' the SEPP HSPD does not require or specify that visitor spaces or "pickup/set-down" spaces are required to service the six (6) HSPD dwellings collectively. However, with a development containing 10 bedrooms and 6 dwelling, only one visitor space is likely to be insufficient due to the additional health service or carer visitation for seniors living which is addressed by conditions. Notwithstanding this, the design shows that cars can enter and leave the site in a forward direction and the driveway will comply Council's driveway access requirements and Australian Standards for sight distances for safe driveway access. In addition, the site is within a low density area and while kerbside parking may be taken up during various peak daytime periods, such as due to the adjacent school traffic. Normally the adjacent streets have kerbside parking available for short term visitors to the site that are adjacent too, or a convenient distance from the site, and a footpath exists along Rose Avenue for safe pedestrian access. Conditions are included for the construction of a footpath connection to ensure pedestrian connection to a local bus stop and thereby provide an option to travel by car use.

In summary, pursuant to SEPP HSPD, the density of the proposal is recommended to dedicate 3 parking for visitors (including 1 disabled persons space) and 6 resident car spaces. Therefore subject to conditions this issue does not warrant refusal of the application.

- ***Concern that the density of the development is an overdevelopment of the site, will***

create a precedent for this type of development and is not consistent with the Warringah LEP.

Comment:

The proposal is submitted pursuant to State Environmental Planning Policy (Housing for Seniors or Persons with a Disability) 2004, (SEPP HSPD) "the SEPP". The SEPP *prevails* above the Warringah LEP 2011 by making HSPD permissible in the R2 Low Density Residential Zone despite being prohibited under the WLEP. In addition, the SEPP has its own development standards that prevail over the WLEP and allows a higher density of development than the LEP permits the R2 Low Density Residential Zone. A detailed assessment of the proposal under the SEPP is provided within this report and demonstrates that the proposal complies with built form controls of the SEPP and is compatible and consistent with the character and streetscape by its visual appearance, landscaping and design layout, subject to conditions.

Therefore, this issue is not considered to have determining weight to warrant refusal.

- ***Concern that construction impacts will create dust, dilapidation and excavation work will remove trees that may include street trees or trees on adjacent land.***

Comment:

Conditions are recommended to address site construction and potential dilapidation risk issues, including the appropriate safe handling of asbestos, control of dust and noise. In addition this, conditions are required to ensure the development adequately contains erosion and sediment and does not create unreasonable impacts on the amenity of adjacent land during construction.

Detailed information regarding the proposed removal of trees is provided within the Arborist Report submitted with the application. Details are also provide to address pathway construction to minimise impacts on street trees. No trees on adjacent private property are proposed to be removed and conditions are included to minimise excavation within 1.0m of the side boundary. Council's Landscape Officer has reviewed the Arborist Report, Landscape plan and development application details and has no objection to the proposed tree removal and replacement planting, subject to conditions.

Therefore, this issue is addressed by conditions and is not considered to have determining weight to warrant refusal.

- ***Concern that there was insufficient public consultation or notification time for the development application.***

Comment:

The development application as notified and advertised in accordance with the WDCP 2011 and the EP&A Act 1979. All submission have been considered in detail including any submissions received after the notification / advertising period during the assessment period (prior to completion of this assessment report). Issues of public interest are also considered as part of any telephone inquiries made in response to Council's DA notification information / details.

Therefore this issue is considered to have been adequate for the proposal and does not warrant refusal.

- ***Concern that the proposal will have amenity impacts on adjacent land in terms of overlooking, building bulk, loss of natural light and outlook.***

Comment:

This issue is considered in the context of the dwelling configuration for No.5 Berith Street and No.1 Berith Street in particular. Consideration is also given to the rear yard areas for No.25 and No.27 Rose Avenue.

The dwelling house for No.5 Berith Street contains a large living room window facing the north (side setback) that affords northern outlook and direct sunlight to the principal living area within that dwelling. The house has a narrow side setback and therefore the proximity of any two-storey building beside the large side window will impact on the amenity of the living room / kitchen area within No.5 Berith Street because the large side window overlooks the existing roof for No.3 Berith street (the site). The proposed development is compliant with the side boundary envelope and permits sunlight to the window area on the 21 June (mid winter), as shown on Elevations / Section A-A drawing A09 drawn by *Barry Rush & Associates Pty Ltd*. The top storey of the building however also restricts the north facing outlook from No.5 Berith Street.

It is recognized that views from side facing windows are difficult to protect (being over a side boundary) the proposal will have a considerable impact on the general amenity of this existing outlook due to the building bulk and close spatial proximity of the side wall. In order to address this issue it is recommended that part of the side wall (mid-section) for Unit 3 setback 500mm further to improve the existing articulation, reduce building bulk and assist with morning solar access to adjacent land. This is addressed by conditions.

The dwelling house for No.1 Berith Street is on a lot that is not as long as the subject site and therefore the proposed development extends along the side boundary for the full depth of the rear yard. In order to reduce the impacts of building bulk and scale it is considered that, similar to the recommended change to Unit 3, a change to the side wall setback will reduce the amenity impacts on No.1 Berith Street. Therefore, it is recommended that the side wall (mid section) for Bedroom 2 & 3 within Unit 4 be setback an additional 500 millimetres (along the existing articulation) to give a better spatial relief and amenity to 3 Berith Street. This is addressed by conditions.

Figure 1: Side window 3 Berith Street



Figure 2: Outlook north across the site from 3 Berith St.



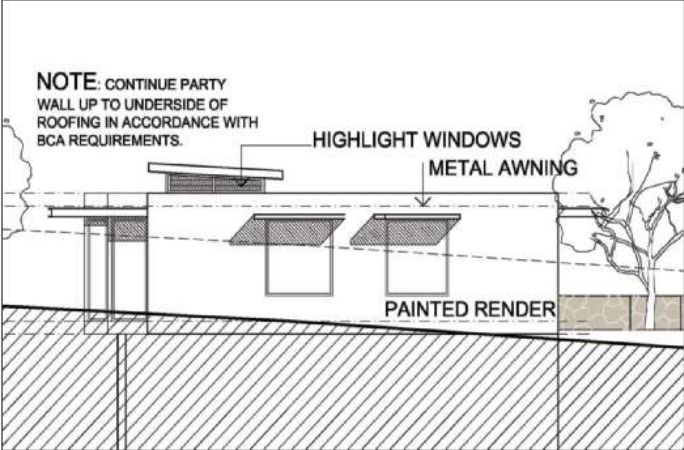
The rear yard for No.25 and No.27 Rose Avenue face south toward the side boundary of the subject proposal. At the rear, the proposal is single storey and therefore no unreasonable privacy issue is created. The upper floor side windows for bedrooms for Unit 3 and Unit 4 have timber privacy screens ("TPS") to restrict overlooking. Concern has been raised that excavation for pathways and courtyard terraces within the side setback areas and rear setback may affect adjacent trees, drainage or fence stability. In order to minimise impacts from these concerns it is recommended that excavation along the side boundaries for the proposed be graduated and stepped down in tiers with no excavation or backfill for retaining wall within 1.0m of the side boundary or rear boundary to maintain continuity of cross boundary site levels pursuant to Part C7 of the Warringah DCP. This issue is addressed by conditions to ensure no unreasonable amenity impact on adjacent property.

In summary, the above matters have been fully considered as part of the public submission issues and the objectives and requirements of the SEPP HSPD, WDCP 2011 and WLEP 2011.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application proposes demolition of existing structures and the construction and strata subdivision of a seniors housing development incorporating 2 x 2 bedroom and 4 x 3 bedroom self-care housing units and basement car parking area pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.</p> <p>The application has been reviewed and no objections raised to approval of the development subject to conditions.</p> <p><u>Planning Comment:</u> Recommended conditions to address Building Assessment (Fire & Disability) matters are concurred.</p>
Landscape Officer	<p>Insufficient information has been provided to assess the application with regard to impacts on trees indicated to be retained on site and along the proposed footpath alignment fronting Berith Street to Rose Avenue.</p> <p>Assessment indicates that trees indicated for retention are not considered to be viable based on the works proposed.</p> <p>As a result, proposal at this stage is considered to be incompatible with the existing streetscape and front landscape treatments in the street.</p> <p>The proposal is not able to be supported with regard to landscape issues at this stage.</p> <p><u>Planning Comment:</u> The preservation of Trees "T1", "T4", "T2", "T9", "T10" and "T11" are considered important to the screening and landscaped setting of the building and specific conditions are warranted to ensure they are adequately protected during works to prevent removal or post work decline. The conservation of tree "T3" (young Norfolk Island Pine) is achievable by relocation of the drainage pit (P3) to a more suitable position and providing adequate tree protection measures within the CRZ during construction.</p>
NECC (Development Engineering)	<p><u>Council Stormwater Assets:</u></p> <p>The Stormwater Concept Plan proposes the construction of a Kerb Inlet Pit (KIP) over Council's road drainage network. The applicant shall demonstrate compliance with Council's Building Over or Adjacent to Constructed Drainage Systems and Easements Technical Specification for the minor works in the road reserve (may be</p>

Internal Referral Body	Comments
	<p>addressed with condition for an application for works within the Council's road reserve to be submitted). This consists of accurately locating, confirming dimensions and plotting Council's stormwater pipelines and associated infrastructure in accordance with <i>Section 8.1 of the Technical Specification</i>. Council has public stormwater drainage maps online as a reference for detailed investigation, available under "Stormwater" overlay map: https://services.northernbeaches.nsw.gov.au/icongis/index.html</p> <p>Reference is made to the DRAINS computer model and plans that will required minor adjustment to pit locations to be clear of the driveway area and with respect to the Council's stormwater drainage infrastructure and re-location of the proposed kerb inlet pit. In this regard, a revised stormwater drainage plan is to be submitted to Council's Development Engineers for consideration.</p> <p>The proposed KIP within Berith Street shall not be located within the proposed driveway. A minimum clearance of 1 metre from driveways is typically required. The location of the proposed pit may impact on the internal OSD design and location, as tailwater conditions from the receiving drainage system shall be considered. In addition, it shall be demonstrated that there will be no adverse impact on Council's road drainage system by design with an application for works in the road reserve (addressed by recommended conditions of consent).</p> <p><u>Further assessment dated 13/8/2019</u> A <i>Disability Discrimination Act</i> (DDA) compliant footpath is to be constructed between the development site and footpath in Rose Avenue. An appropriate condition related to construction of the above footpath will be issued once Council's Development Engineers are satisfied with the stormwater drainage proposal.</p> <p><u>Further assessment dated 22/8/2019</u> Development Engineers have completed assessment considerations for the proposal, including final review of the plans and documents and raise no objections to the proposal subject to conditions as recommended.</p> <p><u>Planning Comment:</u> Council's Development Engineers have reviewed the development application and engineering stormwater concept plans, DRAINS, including supplementary information and are generally satisfied with the proposal subject to some minor design changes for final approval. The revisions relate to connection with Council assets in the Road reserve and minor civil design adjustments. Therefore, this information is appropriate to be addressed as conditions.</p>
Strategic and Place Planning (Urban Design)	The proposal in its current form can be generally supported. Please find following comments for consideration.

Internal Referral Body	Comments
	<p>Rear Setback It is noted that the built form encroaches the rear setback by approximately 950mm. Considering the rear building is a single story semi-detached dwelling containing 2 x 2 bed units and the peripheral planting zone allows for deep soil planting for large trees enabling visual and acoustic privacy to both the adjoining property and the proposed development, the proposal is supportable. The applicant is to ensure there is no further encroachment within the rear setback zone.</p> <p>Built Form and Articulation The general form, articulation and material palette is generally supported. However we note the rear single storey dwelling has not been paid too much attention. The applicant is encouraged to explore further articulation in design and material selection at a fine grain level, similar to the design attention paid to the two storey building to the front of the site.</p>  <p><u>Planning Comment:</u> Urban design comments are concurred with and additional appropriate conditions recommended to address minor changes to materials and finishes treatment for the rear single storey building. It is noted there is also inconsistency with the external colours PR1, PR2 and colorbond colours between the selection palette and drawings.</p>
Traffic Engineer	<p>The proposal is for a 6 unit (2 x 2 bedroom units + 4 x 3 bedroom units) seniors' living development at 3 Berith Street in Wheeler Heights.</p> <p>Traffic: Negligible.</p> <p>Parking: Numbers are in accordance with the SEPP and Affordable Housing</p>

Internal Referral Body	Comments
	<p>Controls. Adequate.</p> <p>Car park Layout: In accordance with AS2890.1:2004. Satisfactory.</p> <p>Servicing: Quiet street with large street frontage. All servicing can be accommodated on-street. No concerns raised.</p> <p>Pedestrian Access: The footpath joining the site to Rose Avenue is deemed adequate provided it complies with the Council development engineering standard details. Input from Council's Development Engineers should be sought.</p> <p>The only concern for those with accessible needs is that they will generally tend to the closest walking option. As such, it is envisaged that the majority will utilise the bus stop on Rose Avenue, west of Berith Street. Therefore, the applicant will be required to provide a safe crossing opportunity for those users.</p> <p><u>Planning Comment:</u> Traffic Engineering Referral comments have been considered in context with public submissions received and Part C2 and Part C3 of the WDCP including the objectives of the WLEP 2011 and SEPP HSPD. The recommendations and conditions of Council's Traffic Engineer are concurred with for the development assessment.</p>
Waste Officer	<p>No comments subject to conditions as recommended.</p> <p><u>Planning Comment:</u> Waste Services conditions are concurred with for garbage and recycling service requirements.</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 residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential (Housing for Seniors or People with a Disability) land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.952573M).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	50

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

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

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

in-fill self-care housing is seniors housing on land zoned primarily for urban purposes that consists of 2 or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, nursing care.

Policy Note: The concept of seniors housing is intended to be a shorthand phrase encompassing both housing for seniors and for people with a disability.

Chapter 1 – Preliminary

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

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

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a

disability, and

- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment:

a) The proposal includes six dwelling Units for self-contained living of seniors housing or people with a disability. Each Unit has access to a compliant disabled persons parking space in the basement garage. The development will increase the supply of seniors housing in Warringah and has been designed to meet the demand for independent living for seniors as "in-fill self-care housing".

b) The proposal is within an established low density residential area with access to public transport (buses) and a main road to enable travel to the central business areas of Dee Why, Narrabeen / Mona Vale, Brookvale and the city. The site drains to the street and sewer, reticulated water, electricity and telecommunication's services are available to the site.

c) The development is of a contemporary design with for (4) dwellings grouped at the front for one two storey building and two (2) dwelling at the rear as single storey. A landscaped setting is retained toward the street frontage and for the rear setback. An internal lift and stairs provides access to the basement carpark from the front building.

The proposal complies with the built form controls of the SEPP and, subject to conditions, is considered to be consistent with general detached style character of the area, albeit with a higher dwelling density (permitted by the SEPP). Subject to conditions, the use of landscaped setbacks and building design has been made to ensure no unreasonable amenity impacts from overshadowing, privacy, stormwater, building bulk and visual appearance on the surrounding land or streetscape.

Chapter 2 – Key Concepts

Comment:

Key concepts of SEPP HSPD include:

- The definition of "Seniors" as persons aged 55 or more years, including a facility of residential care or those eligible for aged housing provided by a social housing provider.
- The provision of purpose built housing for "people with a disability" that includes persons with long term or permanent impairment, limitation or activity restrictions that affect their capacity to participate in everyday life.
- The provision of purpose built "Seniors housing" with the intent that such housing includes a residential care facility, a hostel, a group of self contained dwellings or a combination of these, but not a hospital.

The proposal satisfies this element of the SEPP HSPD in that the development is for purpose built self-contained dwellings that are for self-care accommodation of seniors or persons with a disability.

Chapter 3 – Development for seniors housing

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

Development Criteria			
Clause	Requirement	Proposal	Complies
PART 2 - Site Related Requirements			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	The site has access to public transport (buses) services to the central business areas of Dee Why, Brookvale, Narrabeen / Mona Vale and connecting services to the City. These local centres all contain a range of services for banking and finance, shopping and groceries, postal and government offices, community services, medical services and recreation facilities.	Yes
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400 metres away.	<p>The site is within 400m walking distance of two bus stops (including one (1) sheltered bus stop) on Wheelers Parade for access to regular services for Narrabeen / Mona Vale and the northern beaches, and southbound for Dee Why, Brookvale and connecting services to the city.</p> <p>A pedestrian crossing is located for safe access to bus services near the intersection of Wheelers Parade and Rose Avenue. Wheeler Heights shopping centre (with a supermarket, chemist, newsagent, butcher, cafe's, hairdresser and a variety of local shops / services) is also located 450m east of the site on Wheelers Parade.</p> <p>The secondary bus stops on Rose Avenue adjacent the Wheeler Heights Public School are not relied on for this application assessment.</p>	Yes
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	Not applicable	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure.	Reticulated water and sewerage is available. The proposal is subject to Sydney Water requirements via a "Section 73 Certificate". This issue is addressed by conditions.	Complies
29	Consideration must be given to whether the proposal is compatible with the surrounding land uses having regard	i) The existing site has a landscaped setting with a single dwelling houses adjacent and a primary school adjoining the rear boundary. The proposal is regarded as "infill" development under SEPP HSPD within low	Complies

Development Criteria			
Clause	Requirement	Proposal	Complies
	<p>to the following criteria specified in Clauses 25 (5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v):</p> <p>i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development</p> <p>iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development and any proposed financial arrangements for infrastructure provision,</p> <p>v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.</p>	<p>density residential environment. A landscaped setting will be maintained for the proposed buildings by the use of perimeter plantings in the front, side and rear setbacks, including the retention of suitable existing trees on site that are clear of excavation works.</p> <p>ii) All stormwater will be connected to Councils infrastructure in Berith Street and the site will use on-site stormwater detention to manage stormwater flow. Off-street carparking is not required where SEPP HSPD development has less than 8 dwellings however one (1) visitor space is provided. The availability of kerbside parking varies significantly due the adjacent primary school times and local resident parking on the street. The proposal will also be subject to Section 94A contributions to assist in providing future demand for local services and infrastructure as appropriate.</p> <p>v) The proposal is designed as a dwelling Units with the front Units in a duplex arrangement. The building uses flat a flat roof with a contemporary appearance. The adjacent housing stock has a mixed appearance with most building constructed in Australian post-war styles, some having undergone substantial renovation / alterations over time. The combination of single storey and two storey elements is consistent with the surrounding character. The building bulk is concentrated to the front building and the density of the development is therefore impacts on the landscaped setting.</p> <p>Subject to conditions to reduce some impacts on landscaping, building bulk and external materials the character of the development is compatible with the surrounding residential uses.</p>	
PART 3 - Design Requirements – Division 1			
30	A site analysis is provided.	Site analysis provides detail of the site features and surroundings.	Complies

Clause 31 Design of in-fill self-care housing

Pursuant to Cause 31 in determining a development application to carry out development for the

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

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

Section	Requirements	Comment
1. Responding to context	<p>Built Environment – New development is to follow the patterns of the existing residential neighbourhood in terms of built form.</p> <p>Policy environment – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.</p>	<p><u>Built Environment:</u></p> <p>The pattern of neighbourhood development in the vicinity of the site is dominated by detached style dwellings in landscaped settings. While the minimum lot size individual dwellings is 600 sqm within the zone, the SEPP permits higher density of housing for the purposes of the SEPP. Increased densities of housing also exist in proximity to the site in the form of other medium density / dual occupancy developments that are a legacy of past planning controls or policies. (Examples of higher density residential development in proximity of the site include; No.34 Rose Avenue (Seniors Living), No.38 Wheelers Parade (Seniors Living) No.22 / 22A Rose Avenue, No.42 to 44A Wheelers Parade, No.6A-62C Rose Avenue).</p> <p>Also the Narrabeen "RSL War Veterans" village is located 350m due north of the site.</p> <p>Therefore, the pattern of development contains a mix of low density development with places of higher density housing interspersed. The development will maintain semi-detached appearance within a landscaped setting. The use, for residential purposes, is compatible with the context of surrounding residential development, subject to conditions.</p> <p><u>Policy Environment:</u></p> <ul style="list-style-type: none"> The Warringah LEP has objectives for the zone that determine the character of

Section	Requirements	Comment
		<p>the area be made up of housing that provides for the needs of the community within a low density environment.</p> <ul style="list-style-type: none"> • That enables other land uses that provide facilities or services to meet the day to day needs of residents; and • Ensures that low density residential environments are characterised by landscape settings in harmony with the natural environment. <p>The proposal achieves these objectives for the character of the area in that it will provide to the needs of the community for HSPD housing. That housing is provided in detached style of villa units that have a compatible built form bulk and height to surrounding development. The units are designed with pitched roofs to be compatible with the visual appearance of surrounding low density dwellings.</p> <p>The proposal does not have an adverse impact on the provision of other facilities and service uses in the locality.</p> <p>The site complies with landscaping requirements of the SEPP and will maintain a landscape setting that includes native plants and trees to maintain harmony with the natural environment of Warringah and wider Northern Beaches area.</p>
2. Site Planning and design	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> -Minimise the impact of new development on neighbourhood character -Minimise the physical and visual dominance of car 	<p>The design of the proposal presents as a two storey building with 4 Units and a single storey building at the rear, containing 2 Units. The setbacks and landscape setting combined with building articulation, external materials, balconies and fenestration are balanced between</p>

Section	Requirements	Comment
	parking, garaging and vehicular circulation.	<p>two-storey and single storey elements. Conditions are however recommended to address impacts on adjacent land that are reflected by building bulk and non-compliant floor space ratio which translates to spatial separation issues that affect the amenity of adjacent development.</p> <p>Carparking is located within a basement area that provides adequate carparking and access to comply with the SEPP. All cars are able to enter and leave in a forward direction.</p>
3. Impacts on streetscape	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> -Minimise impacts on the existing streetscape and enhance its desirable characteristics -Minimise dominance of driveways and car park entries in streetscape. 	<p>Subject to conditions, the proposal will provide for appropriate levels of amenity for HSPD without creating unreasonable impacts on the adjoining properties, particularly as a result of building scale, overshadowing or privacy concerns. Subject to conditions, the front setback and landscaping is also compatible with the existing character of Berith Street.</p> <p>A new driveway entry point will be used for the principal access to the basement. Thus, the parking area is partly concealed from the street with the entry points remaining in the same location as the existing driveway access.</p>
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	<p>Subject to conditions, the proposal will not cause unreasonable impacts on neighbours amenity by the use of landscaping, building design to minimise overlooking, adequate spatial separation to minimise overshadowing, plus the provision of parking and drainage works accordance with Council's policy.</p> <p>Conditions of consent are also recommended to address potential environmental impacts during construction (such as safe handling of asbestos and dilapidation risks)</p>

Section	Requirements	Comment
		and ensure compliance with relevant environmental controls.
5. Internal site amenity	Objectives of this section are to: -Provide safe and distinct pedestrian routes to all dwellings and communal facilities.	Safe pedestrian access is provided from the public domain and internally for the development by ramps and pathways. Off street parking for residents is provided and complies with <i>Australian Standards</i> and the SEPP HSPD. The site has a moderate cross fall and therefore safe pedestrian gradients are available within the site.

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

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

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	Desirable amenity elements of the location include visual and acoustic privacy, detached style of development in landscaped settings, open space buffers of rear setbacks and private living environment with minimal overshadowing, parking availability and good road access to services and facilities.	Complies
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.	No heritage items are on the site or in close proximity.	Complies
	c. Maintain reasonable neighbour amenity and appropriate residential character by; (i) providing building setbacks to reduce bulk and overshadowing (ii) using building form and siting that relates	Reasonable neighbour amenity will be maintained in that the proposal has been designed: i) to satisfy the objectives of the building setback controls and height controls to minimise overshadowing impacts. ii) to provide a site layout that	Complies

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Control	Requirement	Proposed	Compliance
	consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	<p>open spaces at ground level are adjacent other private open space areas and separated by fencing and landscape screening. Upper floor balconies are provided with fixed privacy screens. The upper floors contain a secondary bedrooms and bathrooms along the side setbacks with living areas oriented toward the street or internal courtyards.</p> <p>Changes to site levels along the boundary are recommended to remain compatible with adjacent natural levels to minimise overlooking at ground level such as from rear terrace areas.</p> <p>Pathways will use bollard / directional lighting to minimise glare from security lighting.</p> <p>Conditions are recommended that the applicant provide replacement "lapped and capped" timber fencing where existing sections are dilapidated or require replacement to ensure acoustic and visual privacy between adjacent land. (This is shown on the plans as "1800mm high lapped and capped timber failing fence to boundary" by the applicant).</p>	
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site	Solar access requirements are maintained that will comply with the Warringah DCP controls in relation to neighbour's properties and private open space within the development. Details of overshadowing are shown on plans A10 drawn by <i>Barry Rush & Associates</i> , dated 7/11/2018.	Complies

Control	Requirement	Proposed	Compliance
	planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	The proposal has been submitted with a BASIX certificate and energy rating assessment to demonstrate that the dwellings will meet performance standard for thermal and cooling condition for sustainable building design and comfortable living.	
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	<p>A new stormwater connection will be required direct to the kerb pit in Berith Street.</p> <p>The the OSD design is satisfactory to manage stormwater in accordance with Council's stormwater policy, and <i>Technical Specification</i>.</p>	Complies. Subject to standard engineering conditions.
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the	<p>The driveway access is provided for the site that can be observed from within the site.</p> <p>Bollard lighting will be provided to ensure pathway areas are lit for safety and security.</p> <p>Access entry area are limited to two dwellings where doorways are close to each other. Visibility of approach is maintained.</p>	Complies.

Control	Requirement	Proposed	Compliance
	need to open the front door.		
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	<p>Berith Street will require a concrete footpath connection to be made to Rose Avenue. Engineering conditions are included to ensure compliant safe pathway access connection is made to the bus stop.</p> <p>Carparking and driveway areas are landscaped along their edges and the carparking area within the basement that includes resident and visitor parking that complies with AS2890. Parking for residents and visitors is addressed by considerations made specific to the site. This requires some minor adjustment to parking as detailed within this report.</p> <p>An access report has been provided by <i>Accessibility Solutions</i>, dated 15 October 2018, demonstrating appropriate access requirements have been met to satisfy SEPP HSPD.</p>	Complies
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	A garbage bin storage room is located at the front of the site with accessible entry within the site. The bin storage room complies with Council's Policy under the <i>Part C9 Waste Management</i> of the Warringah DCP.	Complies

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

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

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

Control	Required	Proposed	Compliance
Site Size	1000 sqm	1,269 sqm	Complies
Site frontage	20 metres	20.13m (Berith Street)	Complies

Control	Required	Proposed	Compliance
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	7.7m	Complies
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	All buildings are 2 storey. All buildings are 2.0m or greater setback from the side boundary.	Complies
	A buildings located in the rear 25% of the site must not exceed 1 storey in height. Consideration of the objectives of the 25% rear height control setback is made to assess consistency against the urban design objectives sought by the SEPP HSPD.	Applies to zones where residential flat buildings are not permitted. The rear 25% of the site covers an area 15.7m x 20.1m = 315.5 sqm. Within this area there are 2 single storey Units. <ul style="list-style-type: none"> Setback to the two storey elements is 23.3m Second storey elements do not encroach. 	Complies.

Clause 41 Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. The following table outlines compliance with the principles set out in Schedule 3 of SEPP HSPD.

Control	Required	Proposed	Compliance
Wheelchair Access	If the whole site has a gradient less than 1:10, 100% of the dwellings must have wheelchair access by a continuous path of travel to an adjoining public road. If the whole of the site does not have a gradient less than 1:10 the percentage of dwellings that must	Proposal is able to comply as demonstrated on the plans	Complies

Control	Required	Proposed	Compliance
	have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10 or 50% whichever is the greater.		
Security	Pathway lighting (a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and (b) Must provide at least 20 lux at ground level	Bollard style lighting is to be used. Condition of compliance is recommended for external paths.	Condition recommended to ensure compliance
Letterboxes	Letterboxes: (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel, and (b) must be lockable, and (c) must be located together in a central location adjacent to the street entry.	Proposal is able to comply	Condition recommended to ensure compliance
Private car accommodation	(a) Carparking space must comply with AS2890 (b) One space must be designed to enable the width of the spaces to be increased to 3.8 metres, and (c) any garage must have a power operated door or there must be a power point and an area for motor or control rods to enable a power operated door to be installed at a later date.	A compliant disabled persons carparking space is provided for each dwelling. All parking is located within a basement carpark.	Complies. Allocation of parking as per condition recommended.
Accessible entry	Every entry to a dwelling must comply with Clause 4.3.1 and 4.3.2 of AS4299	Each dwelling has an accessible path of travel to the front entry. Upper floor Units rely on lift and stair access.	Complies

Control	Required	Proposed	Compliance
Interior general	Widths of internal corridors and circulation at internal doorways must comply with AS1428.1.	Open plan living areas, bathrooms and bedrooms comply.	Condition recommended to ensure compliance
Bedroom	At least one bedroom within each dwelling must have: (a) An area sufficient to accommodate a wardrobe and a queen size bed (b) A clear area for the bed of at least 1200 mm wide at the foot of the bed and 1000mm wide beside the bed between it and the wall, wardrobe or any other obstruction. (c) Power and telephone outlets and wiring described in Clause 8 of Schedule 3.	Proposal is able to comply	Condition recommended to ensure compliance
Bathroom	The bathroom is to comply with the requirements described in Clause 9 of Schedule 3.	Proposal is able to comply	Condition recommended to ensure compliance
Toilet	The toilet is to comply with the requirements described in Clause 9 of Schedule 3.	Proposal is able to comply	Condition recommended to ensure compliance
Surface finishes	Balconies and external paved areas must have slip resistant surfaces.	Proposal is able to comply	Condition recommended to ensure compliance
Door hardware	Door handles and hardware for all doors must be provided in accordance with AS4299.	Proposal is able to comply	Condition recommended to ensure compliance
Ancillary items	Switches and power points must be provided in accordance with AS4299.	Proposal is able to comply	Condition recommended to ensure compliance
Living & dining room	A living room must	Proposal is able to comply	Condition

Control	Required	Proposed	Compliance
	have a circulation space in accordance with Clause 4.7.1 of AS4299, and a telephone adjacent to a general power outlet. Also a living and dining room must have a potential illumination level of at least 300 lux.		recommended to ensure compliance
Kitchen	The kitchen must comply with the requirements of Clause 16 of Schedule 3	Proposal is able to comply	Condition recommended to ensure compliance
Access to kitchen, main bedroom, bathroom & toilet	The kitchen, main bedroom, bathroom and toilet must be located on the entry level.	Proposal is able to comply	Complies
Laundry	The laundry must comply with the requirements of Clause 19 of Schedule 3.	A laundry facility is provided for each dwelling. Private open space terraces are available for open air clothes drying also.	Condition recommended to ensure compliance
Storage	A self-contained dwelling must be provided with a linen storage in accordance with Clause 4.11.5 of AS4299	Not identified on the plans.	Condition recommended to ensure compliance
Garbage	A garbage storage area must be provided in an accessible location.	Garbage bin storage room is located at the front of the site with accessible entry within the site. The bin storage room complies with Council's Policy under the Warringah DCP.	Condition recommended to ensure compliance and that the bin room is clear of the minimum 0.9m setback to a side boundary.

Part 5 Development on land adjoining land zoned primarily for urban purposes
This part is not applicable to the subject site.

Part 6 Development for vertical villages
This part is not applicable to the proposed development.

Part 7 Development standards that cannot be used as grounds to refuse consent
Clause 46 Inter relationship of Part with design principles in Part 3

Clause 46 states that nothing in Part 7 permits the granting of consent pursuant to the Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

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

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

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

Control	Required	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below).	7.0m	Complies
Density and scale	0.5:1	0.57:1	Does not comply. This non-compliance impacts the building bulk by the inclusion of additional floor space the affects the spatial between adjacent dwellings. The additional bulk thereby affects overshadowing and visual amenity for neighbours. A reduction in the FSR is recommended by a minor adjustment to the mid section of the site wall. This will increase the existing recess of the side setback by 500mm (external wall to Bedroom 2 & 3), to improve neighbours amenity (including addressing neighbours objection concerns regarding bulk & scale, sunlight and spatial separation).
Landscaped area	30% of the site area is to be landscaped.	32% 411 sqm of site area is landscaped	Complies, however there are some minor anomalies between the landscape plans and the architectural

Control	Required	Proposed	Compliance
			<p>plans, to be addressed by conditions.</p> <p>In addition to this, the natural ground level changes at the rear of the site are severe creating a 3.1m height between the top of the fence and excavated courtyard level. A condition is recommended that landscape excavation within 2.0m of the boundary fence be graduated in steps / terraces. In summary there should be no excavated change to the existing ground level within 1.0m of the rear or side boundaries to reduce issues of drainage, fencing, tree damage, privacy and maintain continuity between adjacent property levels.</p>
Deep soil zone	<p>15% of the site area deep soil (190 sqm).</p> <p>Two-thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.</p>	<p>32% (411 sqm) of site area is deep soil of 1m depth or more. 160 sqm is at the rear of the site (surrounding the rear dwellings).</p> <p>Landscape widths included in calculation vary from 2.0m to 5.0m wide, and areas that are 3.0m wide total 186sqm</p>	Complies for site area and distribution of landscaping including depth and width.
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between	<p>Dwelling 1: 3 hours direct light between midday to 3pm 21 June available to the private open space.</p> <p>Dwelling 2: 3 hours direct light between midday to 3pm 21 June</p>	<p>Complies for >70% of dwellings.</p> <p>(Dwelling 5 has less solar access in the POS area, partly shadowed by the adjoining Unit and by</p>

Control	Required	Proposed	Compliance
	9am and 3pm in mid winter.	available to the private open space. Dwelling 3: 3 hours direct light between midday to 3pm 21 June available to the private open space. Dwelling 4: 3 hours direct light between midday to 3pm 21 June available to the private open space. Dwelling 5: 2 hours direct light between 9am to 12pm 21 June available to the private open space. (Does not comply) Dwelling 6: 3 hours direct light between 9am to 12am 21 June available to the private open space.	being east facing, receiving less afternoon sun to the courtyard.)
Private open space	15sqm of private open space per dwelling not less than 3 metres long and 3 metres wide.	Dwelling 1: 43 sqm Dwelling 2: 33 sqm Dwelling 3: 19 sqm Dwelling 4: 19 sqm Dwelling 5: 85 sqm Dwelling 6: 84 sqm (only areas 3m x 3m included)	Complies
Parking	0.5 spaces per bedroom. (16 bedrooms proposed – 8 carparking spaces required)	8 carspaces for 16 bedrooms.	Complies
Visitor parking	None specified.	Applicant has provided visitor parking spaces. Conditions are recommended to improve visitor access / convenience and reduce the reliance on kerbside parking. Driveway area has adequate visibility for visitors, if entering the site to reverse / exit in a forward direction safely.	Complies.

Chapter 4 – Miscellaneous

Comment: No miscellaneous provisions apply to the proposal.

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 application was referred to *Ausgrid* who did not raise any comment or objection to the proposal.

Other Service Authorities

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings*: RL83.7	8.5m	7.7m	N/A	Yes

SEPP HSPD *prevails* against this development standard. Refer to the heading SEPP HSPD within this assessment report.

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height (Measured to underside of ceiling along outer wall plane)	7.2m	6.2m	N/A	Yes
		6.9m (to clerestory)	N/A	Yes
B3 Side Boundary Envelope	45 degrees at 4m	Within envelope	N/A	Yes
B3 Side Boundary Envelope	45 degrees at 4m	Within envelope	N/A	Yes
B5 Side Boundary Setbacks - North	0.9m	3.0m to 4.6m Basement wall	N/A	Yes
		2.5m to 3.0m Ground floor	N/A	Yes
		2.5m to 3.0m First floor	N/A	Yes
B5 Side Boundary Setbacks - South	0.9m	1.5m to 3.0m Basement wall / steps	N/A	Yes
		2.5m to 3.0m Ground floor**	N/A	Yes
		2.5m to 3.0m First floor	N/A	Yes
		0.0 Bin storage area	100%	No*
				*Condition for 1.0m side setback)
B7 Front Boundary Setbacks	6.5m	16.3m Basement wall	N/A	Yes
		9.4m to 12.6m Terrace structure	N/A	Yes
		16.7 to 17.7m Ground floor	N/A	Yes

		wall 0.0m Entry portico over letterbox / entry gate	100%	No** (**Condition for 1m setback)
B9 Rear Boundary Setback	6.0m	7.9m Basement wall 3.0m Terrace area 5.5m to 6.7m Rear wall	Yes <50% rear setback 9%	Yes Yes No
D1 Landscaped Open Space (LOS) and Bushland Setting* (Site area 1269sqm)	40% 507sqm	32% 411sqm	19%	No

*SEPP HSPD *prevails* against *Part D1 Landscaped Open Space*. Refer to the heading SEPP HSPD within this assessment report.

The SEPP *does not* prevail against any setback controls, building envelope or wall height.

**Bin room is not permitted within the side boundary setback (addressed as part of streetfront setback area).

Footpaths, steps etc are exempt in the side setback if less than 1m above existing ground level.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
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
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	No	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

Detailed Assessment

B7 Front Boundary Setbacks

Description of non-compliance

The proposal has a bin room abutting the side boundary and a portico structure against the (front boundary) pedestrian access point.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The bin room is permitted in the front setback in accordance with Council requirements however setting it off the side boundary by 1.0m will less impact on neighbouring land and provide opportunity for landscaping to screen the structure from the southern side when viewed from the street. The portico structure is flat roof structure with four posts and a low letterbox structure within and is therefore considered to be appropriately open for the street.

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

Comment:

A setback of 1.0m for the portico entry is considered to be appropriate for the site since these

structures combined with multiple letterboxes are not a feature of the front pedestrian entry for the streetscape. A 1.0m setback maintains BCA compliance and reduces the precedent for other similar roofed portico structures to be abutting the street boundary.

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

Comment:

Setting back the bin room from the side boundary by 1.0m and the portico structure 1.0m from the front boundary is consistent with maintaining the visual quality of the streetscape. The bin room is required to be within 6.5m of the front setback but not abutting the side boundary. The portico structure is a lightweight, flat roofed structure and suitable to protect / cover the entry area where the letterbox facility / site entry is located.

- *To achieve reasonable view sharing.*

Comment:

The bin storage area and entry portico does not have an unreasonable impact on any coastal or district views.

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

B9 Rear Boundary Setbacks

Description of non-compliance

The rear wall includes a setback for part of the rear dwelling wall of 5.5m

Merit consideration:

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

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

Comment:

The proposal maintains 50% of the rear setback as deep soil zone with 3.0m to the rear fence. Excavation up to the side boundaries is not supported and a setback of at least 1.0m for retaining walls / terracing near the side boundaries is recommended by conditions.

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

Comment:

The rear yard is adjacent the Wheeler Height Public School tennis courts that are open but have no landscape buffer. Therefore a setback of 3.0m for deep soil within the subject land is recommended. Trees are also to be retained around the perimeter of the rear setback (as shown on the landscape plan). The rear building is single storey with a flat roof and therefore has a low

visible impact on the landscape for a building above the adjacent fenceline.

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

Comment:

The applicant will be required to replace the boundary fencing with a 1.8m timber paling fence to assist in maintaining privacy to adjacent land. The minor encroachment of the rear building / roof element and courtyard area will not create an unreasonable impact on privacy and amenity, subject to conditions.

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

Comment:

The proposal is permitted under the SEPP HSPD that allows building within the rear 25% of a site. Therefore, while this may change the pattern of rear buildings in that there are no existing dwellings adjacent the SEPP requires that the rear building is single storey. A landscape setting is to be maintained around the perimeter of the rear building and therefore the variation to the rear setback is considered to be acceptable such as the seniors living proposal.

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

Comment:

The proposal will maintain reasonable privacy between dwellings by virtue of the gently sloping topography at the rear, side fencing, landscaping and living area arrangement with the POS at the rear adjacent the adjacent school.

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

C3 Parking Facilities

Merit consideration

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

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Housing	Resident	16 bedrooms	7 parking	-1

for Senior's or persons with a disability.	parking: SEPP HSPD prevails over DCP Appendix 1. SEPP requires 0.5 carparking spaces per bedroom for residents.	requires 8 resident carparking spaces.	spaces, each with disabled persons accessibility	
	Visitor parking: SEPP does not specify, therefore DCP prevails.	DCP: 1 per 5 units. 6 Units = 2 Visitor carspaces	1 visitor space with disabled persons accessibility	-1
Total		10	8	-2

- The SEPP does not require all carparking for Seniors Living to be Conditions are recommended to ensure 3 visitor carparking spaces and one (1) AS1428 compliant car space per Unit which will provide an even distribution of carparking (1 per Unit). This is achieved by an alternate allocation of spaces "1" and "8" (which are double width), and allows for a third visitor carparking space that is AS1428 compliant. Clause 5 of Schedule 3 Part 1 of the SEPP has been considered in this assessment. In this regard, Seniors Living is may be reliant on visitor parking such as for domestic assistance, nursing care, community based care (meals on wheels) as well as family / friends visiting. Therefore, 3 visitor parking spaces for the building would provide a high level of service for the building within minimal impact on kerbside parking in the street.
- NOTE: The provisions of Clause 50 of the SEPP does not impose any limitations on the grounds on which a consent authority may grant development consent.
- Seniors housing means a building or place that is:**
 - (a) a residential care facility, or
 - (b) a hostel within the meaning of clause 12 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, or
 - (c) a group of self-contained dwellings, or
 - (d) a combination of any of the buildings or places referred to in paragraphs (a)–(c), and that is, or is intended to be, used permanently for:
 - (e) seniors or people who have a disability, or
 - (f) people who live in the same household with seniors or people who have a disability, or
 - (g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place, but does not include a hospital.
- To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.

Comment:

The proposal is designed with a basement carpark with access on the northern side of the building facing the street. The access drive is in the same location as the existing driveway, and site excavation is required to achieve ramp gradient / distance into the basement structure. The garage vehicle entry is integrated into the building facade and setback further than the minimum front boundary setback control. The basement parking access will not have an unreasonable 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 access to the garage will have a security door and the entry is recessed under the ground floor level of the building to ensure it does not dominate the street frontage.

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

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposal includes a variation to the DCP for landscape open space requirement. While the SEPP prevails on the numerical standards

Note: Under SEPP Seniors Living the proposal cannot be refused if the development includes 30% landscaped open space with 15% of that area as deep soil zone (with two-thirds of the deep soil at the rear of the site). The proposal is compliant with the landscaping controls of the SEPP HSPD. Total landscaping on the site including areas less than 2.0m wide is 493 sqm (35%) with the majority (73%) deep soil.

Merit consideration

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

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

Comment:

Landscape planting is proposed at the street frontage and some existing trees and other small feature trees with shrub plantings are suitably located to provide a landscape setting for the buildings. Conditions are recommended to assist protection of selected trees. The existing mature street trees will be retained along Berith Street and lawn areas within the front setback areas are also provided to support a landscaped setting for the development. The is low landscaped sandstone wall with garden areas and maintains visibility of the front of the building in a landscape setting and passive observation of the street.

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

Comment:

All trees and vegetation is to be removed for the development, however new landscape planting will retain a mix of native and exotic vegetation to provide screen planting and habitat for native wildlife. Landscaping is provided around the perimeter of the site and also in open space areas adjacent the buildings to enhance the landscape setting of the development.

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

Comment:

Plants selected range in height from medium trees of 15m to small shrubs and ground cover of less than 1.0m. Where planting spaces of approximately 1.0m-2.0 wide are available shrubs and screen planting with a mature height of 2.0 to 4.0+m are appropriate to be used. The plant selection and landscape design is suitable to provide plants that are commensurate with the height and setbacks available to reduce the impacts of visual bulk and scale of the buildings and assist privacy.

- *To enhance privacy between buildings.*

Comment:

Screen hedge planting is provided around the perimeter of the to enhance the privacy screening provided by boundary fencing between adjacent properties. All principle living areas and one bedroom are provided at ground floor level and therefore no unreasonable privacy issues will result from medium height landscape screening. The upper storey of the proposed dwellings contains secondary bedrooms and secondary living rooms and bathrooms with secondary balconies overlooking adjacent land. The setback perimeter is interspersed between setback private open space area. Therefore, landscaping provided will assist to enhance privacy and compliment the design and layout of the development.

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

Comment:

The proposal is for housing for aged and disabled persons and therefore extensive landscaped private open space areas for active recreation are no needed to suit the needs of the occupants. Landscaped courtyards are provided with outdoor decks facing the street or rear yard in alignment with the subdivision pattern and alignment of adjacent dwellings. The perimeter of the building also contains some with small planter box areas and landscaped side setback areas that are suitable for the landscape setting and do not adversely affect the requirements of the occupants for outdoor private open space.

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

Comment:

All dwellings are provided with their own private outdoor clothes drying areas and the landscaped areas are adequate to accommodate service functions for maintenance access, provision of drainage, waste collection area, pathways and carparking within a landscaped setting.

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

Comment:

On-site detention will be provided in a landscaped onsite detention basin in the front setback that drains to Council infrastructure in Berith Street to manage stormwater effectively. This area is a deep soil zone and a condition is recommended that the Norfolk Pine tree where "Pit 3" is located be retained and the drainage pit relocated or deleted as appropriate since the basin contains a second pit. The Norfolk Pine provides a feature within the front garden and is currently a small sized (young) tree.

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

D2 Private Open Space

Description of non-compliance

The proposal includes the allocation of private open space areas for each Unit in the form of ground floor terraces and upper floor balconies. The private open space areas are oriented toward Berith Street or the rear yard. There is also a central landscaped space between the front Units and rear Units.

Merit consideration

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

- *To ensure that all residential development is provided with functional, well located areas of private open space.*

Comment:

The development is designed to provide a residential outlook toward Berith Street and toward the rear or centre courtyard. Maintaining a residential outlook with a landscaped setting provide passive observation of the street and an active streetscape. Privacy is maintained within the building by a practical floor plan and ensuring the living area are well connected to the outdoor areas. The proposal has suitably located private open space for each dwelling in regard to this objective.

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

Comment:

All private open space areas are integrated to the living areas of each dwelling unit and are directly accessible from the same floor level of unit the open space serves. Street access is also available directly from Berith Street providing connection to the public domain at the front entry area. Each terrace or balcony area is of sufficient area and dimensions to be practically usable

in conjunction with the indoor living area. The development does not have an unreasonable design approach to this objective.

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

Comment:

The private open space areas that encroach within the front setback area and the balconies and ground floor terraces are to be fitted with fixed timber (louvered) screens to minimise any adverse impact of the open space area. Adjacent land uses to the north and south are detached dwelling houses and Wheeler Heights adjoins the eastern boundary. A combination of landscaping, replacement fencing, privacy screens and spatial separation will assist to ensure not unreasonable impacts on adjacent or nearby private open space areas. Therefore, subject to conditions, the proposal will not have an unreasonable impact on adjoining buildings or their associated private open space areas for the surrounding residential living environment.

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

Comment:

The dwelling design does permit all units to have compliant solar access due to the East-West orientation of the Lot. In this regard the Units on the northern side of the site received more sunlight than the Units on the southern side. However, the proposal has been designed as a front and rear building with a central open space area, including and the

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) 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

With regard to the consideration for a variation, 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 involves the demolition and clearing of the site including all structures (house, pool, garage, sheds, paving and the like) and most of the existing vegetation. Replacement landscaping and new boundary fencing (subject to adjacent property requirements) will be provided to assist privacy at ground level. In addition, to this some of the finished site levels for ground level areas are excavated / levels and where they are below existing ground level this may assist privacy, subject to conditions to ensure excavation works do not have an adverse impact on adjacent tree roots or drainage management or building foundations. Upper storey privacy screens are shown along the side elevations ("timber screens") for selected windows where overlooking or adjacent window spaces may reduce visual and acoustic privacy for most

side windows. However, the closeness of windows to bedroom 3 to the adjacent living area (north facing side window) raises some concerns for No.5 Berith Street which is addressed in further details under the "submissions" section of this report. The detail of the siting and design are shown on the Plans No. A08, A09 and A11, drawn by *Barry Rush Associates Pty Ltd*. Therefore, privacy considerations have been addressed in accordance with this objective, subject to conditions.

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

Comment:

The proposal has been designed to ensure a principal outlook toward the street elevation or the rear yard for outdoor open space areas. Privacy between two adjacent bedrooms is generally considered to be lower impact as these rooms are less occupied during the day compared to living / kitchen areas, and at night (during sleeping periods) bedroom areas can normally be screened by closing internal blinds or curtains. The design of the building has considered privacy issues and subject to conditions the design is satisfactory.

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

Comment:

The site will have suitable boundary fencing for the rear and side setbacks to assist security and privacy. for the street frontage provides passive observation to the public areas of the site from the dwellings. The proposal is satisfactory having regard to Crime Prevention Through Environmental Design considerations to ensure reasonable personal and property security for occupants and visitors.

Having regard to the above assessment, it is concluded that the proposed development, subject to conditions, is consistent with the relevant objectives of WDCP and the objectives specified in section 5 (a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is 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 has raised concerns with regard to building bulk (and excessive floor space under SEPP HSPD) in terms of how the size and scale of the building compares to adjacent dwelling houses, including the amenity of adjacent property. The rear dwelling units are single storey and it is considered that this rear building has no unreasonable building bulk and is consistent with the rear setback, even though there is a non-compliance with the 6.5m rear setback control. Visual appearance (colours and materials is addressed under Council's Urban Design referral response).

The front building contains 4 dwelling Units and is a much larger building, but is not inconsistent in height. However, the floorspace alignment is extended in length (along the depth of the site) and therefore the wall planes impact adjacent land. In order to reduce the impact of wall massing and improve the urban environment for adjacent amenity the deletion of Bedroom 3 is recommended so that this section of wall (and roof) is (recessed) setback 4.5m from the side boundary. This issue is addressed by conditions.

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

Comment:

The visual impact of the wide and solid, double front balconies is considered to warrant a minor change to minimize impact when viewed from the street frontage. In this regard a condition is recommended for the balcony balustrade to include more lightweight elements (up to 50%) that may be a glazed section, or other suitable lightweight suitable open-style balustrade material.

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

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 \$28,299 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,829,900.

CONCLUSION

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

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

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

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

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

In conclusion to the assessment, principal issues with the development proposal include FSR variation, traffic access, parking, landscaped setbacks, privacy, compliance with SEPP HSPD, building bulk, parking provisions, pedestrian safety, access to transport, and the intensity of the development within the character of a low density residential area.

These issues have been considered within the report and the appropriate "internal" and "external" referrals made with detailed comments provided with respect to engineering, traffic, landscaping, building accessibility and waste management. Council's development engineers have sought civil design for the stormwater connection pit, addressed by conditions. Council's Traffic Engineer, Waste Services, Urban Design, Building Assessment Officer are satisfied with the development application subject to conditions to address relevant specialist assessment referral issues. Council's Landscape Officer has no objection to the tree removal proposed and landscaping plan, and conditions are recommended to ensure selected trees (T1, T2, T3, T4, T9, T10 and T11 are retained). These changes are appropriate to be included with the construction certificate.

A number of public submissions were received in respect to the proposal and issues raised include concerns relating to neighbourhood amenity, streetscape character, visual privacy, spatial separation, outlook, traffic, pedestrian safety, dilapidation risk, visitor parking and tree protection have been considered and addressed in the report. Conditions are recommended to appropriately address those concerns raised in the public interest. Overall the proposal is considered to be of an acceptable appearance and density for the site and will not have an unreasonable visual or adverse amenity impact on the streetscape character.

In summary, the proposal is recommended for approval subject to conditions, provided in accordance with the *Environmental Planning and Assessment Act 1979* and Regulations.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2018/1828 for Construction of a Seniors Housing development comprising 6 x infill self care housing units and basement parking on land at Lot A DP 411784, 3 Berith Street, WHEELER HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A03 Basement Floor Plan	7.11.2018	Barry Rush & Associates Pty Ltd
A05 Site / Ground Floor Plan*	7.11.2018	Barry Rush & Associates Pty Ltd
A06 First Floor Plan	7.11.2018	Barry Rush & Associates Pty Ltd
A07 Roof Plan	7.11.2018	Barry Rush & Associates Pty Ltd
A08 Elevations	7.11.2018	Barry Rush & Associates Pty Ltd
A09 Elevations* & Sections A-A	7.11.2018	Barry Rush & Associates Pty Ltd
A11 External Colour Schedule*	7.11.2018	Barry Rush & Associates Pty Ltd

*Subject to consistency between plans and schedule details shown on the architectural plans and conditions of consent.

Engineering Plans		
Drawing No.	Dated	Prepared By
A04 Footpath Plan	7.11.2018	Barry Rush & Associates Pty Ltd
Sheet 1A Stormwater Management Plan*	21.8.2018	Taylor Consulting
Sheet 2 Stormwater Management Details	21.8.2018	Taylor Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arborist Report - 3 Berith Street	12.6.2019	Ross Jackson

Basix Certificate 952573M	8.11.2018	Building Sustainability Assessments
Preliminary Geotechnical Assessment MN28241	25.6.2012	Jack Hodgson Consulting
Access Report - 3 Berith Street	15.10.2018	Accessibility Solutions
Design Compliance Report	4.9.2018	Private Certifiers Australia

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
1921.GD01 Landscape Plan*	10.9.2018	Greenland Design
192.GD.02 Landscape Details and Specification	10.9.2018	Greenland Design

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.

- (j) All sound producing lift plant, door motors, air conditioning machinery or fittings and the like, to service the building must not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room (s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997
- (l) Swimming pools and spas (if installed) must be registered with the Division of Local Government and comply with relevant Australian Standards and the Swimming Pools Act (NSW).

(Note: Any open landscape / stormwater pond areas on-site deeper than 300

millimetres must be protected from potential drowning hazard)

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$28,299.00 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 \$2,829,900.00.

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

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.

5. Security Bond

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

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

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

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

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

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

A Bond of \$5,000 as security against any damage or failure to complete the construction of Stormwater drainage works in Berith Street as part of this consent.

Reason: Protection of Council's Infrastructure

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

A Bond of \$40,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

Reason: Protection of Council's Infrastructure

8. **Construction, Excavation and Associated Works Bond (Failure to Remove Waste)**

A bond of \$5,000 as security against damage to Council's road(s) fronting the site caused by the transport and disposal of materials and equipment to and from the site.

Reason: Protection of Council's Infrastructure

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

9. **Amendments to the Approved Plans**

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

a) Excavation

i) No excavation for retaining walls / terraces within 1.0m of the side boundaries behind the building line, or within 3.0m of the rear boundary. (In order to maintain continuity of existing ground levels for natural runoff, residential amenity and protect trees).

b) Ancillary Structures

i) The bin room is to be setback 1.0m from the southern side boundary and the portico pedestrian entry is to be setback 1.0m from the front boundary in order to reduce impacts on the streetscape. (In order to reduce visible impacts on streetscape)

c) Seniors Living Buildings

i) The outer wall & roof recess for bedrooms 'B2' and 'B3' for Units 3 and 4 (upper storey) shall be setback an additional 500 millimetres from the side boundary. (In order to reduce floor space variation and improve the amenity of adjacent land).

ii) The front balconies for the upper level are to include 50% open style or glazed or lightweight (infill) balustrade sections facing the street to reduce visual impact on the streetscape. (In order to enhance streetscape amenity)

iii) Secondary colours and material change is to be made to the upper wall side walls for Units 5 and Unit 6 to improve visual interest and design, consistent with the external colours and materials used for Unit 1 to Unit 4. (In order to enhance visual amenity of surrounding land)

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

Reason: Maintain requirements of the WDCP and SEPP HSPD.

10. **On-site Stormwater Detention Compliance**

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's WARRINGAH WATER MANAGEMENT POLICY PL850 and generally in accordance with the concept drawing by Taylor Consulting, drawing number SHEET - 1/A dated 10 September 2018 and SHEET - 2, dated 21 August 2018.

The stormwater drainage is to be re-designed to comply with the following requirement(s):

- 1) Connection point to Council's pipeline in Berith Street must be to the south of the proposed vehicle crossing.
- 2) Where there are any conflicts between the proposed stormwater pipeline and any utility services in the road reserve, all costs related to re-locating the affected utility services must shall be borne by the applicant.
- 3) Connection to Council's pipeline must be in accordance with Council's standard drawing A2 5476/A and must include a minimum 1.8 m lintel.
- 4) Above stormwater inlet pit and lintel must be located minimum 1 metre from the driveway.
- 5) Pit 3 (and connecting pipes) within the OSD basin is to be relocated in order to retain and protect the existing Norfolk Island Pine (T3) within the landscaped basin area.

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

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

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

An Application for Works to be approved within Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the design of civil works required for the development (as outlined below) which are to be generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and/ or Council's Minor Works Policy. The plan shall be prepared by a qualified structural engineer.

The design must include the following information:

- 1) 1.5 metre wide concrete footpath along the full frontage of the development site on Berith Street and must extend to the existing footpath in Rose Avenue,
- 2) 5.5 metre wide vehicle crossing incorporating Council's standard 'Normal' driveway profile
- 3) Stormwater inlet pit with 1.8m lintel on the south side of the vehicle crossing in Berith Street in accordance with Council's standard drawing A2 5476/A

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 Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To provide public and private safety.

12. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required.

All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

(a) maximum height of 900mm above or below ground level and *at least* 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

13. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings.

Council approval is required if temporary ground anchors are to be used within Council land. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal 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.

14. **Soil and Water Management Program**

A Soil and Water Management Plan prepared in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and implemented on site until the works are completed.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACHPC02)

15. **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. (DACPLC02)

16. **Requirements for Seniors Housing or Housing for Persons with a Disability**
The development is for the purposes of Seniors Housing or Housing for Persons with a Disability and is required to comply with all the standards specified in Schedule 3 - "*Standards concerning accessibility and useability for hostels and self-contained dwellings*".
- Details demonstrating compliance with the above requirement are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
- Reason: To ensure public safety and equitable access for seniors or people with a disability. (DACPLC16)
17. **Submission of Engineering Plans**
Engineering plans are to be submitted to the Certifying Authority for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of:
- A pedestrian Refuge on Berith Avenue at Rose Avenue
- These 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 and or Council's Minor Works Policy. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
- Section 138 and/or 139 applications are to be submitted to Council for Local Traffic Committee approval.
- Reason: To ensure compliance with Council's specification for engineering works. (DACTRCPC1)
18. **Waste and Recycling Requirements**
Details demonstrating compliance with Northern Beaches Council Waste Management Guidelines, including the required Northern Beaches Council Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate. Including but not limited too:
- The garbage bin room and bulk waste room must be two separate rooms with individual access.
 - The garbage bin room is suitable to accommodate 5 x 240L bins.
- Note: If the proposal, when compliant with Northern Beaches Council Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.
- Reason: To ensure adequate and appropriate waste and recycling facilities are provided. (DACWTC01)
19. **Waste Management Plan**
A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.
- Details demonstrating compliance must be provided to the Certifying Authority prior to the issue

of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. 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.

21. 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. Specifically the Site Manager and Appointed Certifier is to ensure that Trees "T1, T2, T3, T4, T9, T10 and T11" are protected within their Critical Root Zones from adverse site work impacts and retained in situ.

ii) Trees located on adjoining land

(b) Tree protection

i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.

ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.

iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.

iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause

E1 Private Property Tree Management and AS 4373 Pruning of amenity trees

v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

22. Dilapidation Report

A photographic survey of adjoining properties of adjoining property assets, detailing the physical condition of those properties, both internally and externally (as appropriate to the proximity of site work risks), including such items as walls, ceilings, roof, structural members, access and other similar items, SHALL BE submitted to Council/Accredited Certifier prior to the issue of a Construction Certificate. This survey is to be prepared by an appropriately qualified person.

On completion of the excavation and building works and prior to occupation of the building, a certificate prepared by the appropriately qualified person to the effect that no damage has resulted to adjoining premises, is to be provided to the Principal Certifying Authority.

If damage is identified by the appropriately qualified person which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to a final Occupation Certificate being issued.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant **MUST DEMONSTRATE**, in writing, to the satisfaction of Council/Accredited Certifier that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

(Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible).

Reason: Proper management of records to minimize dilapidation risks (DACPLDPC1)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. Road Reserve

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

Reason: Public Safety.

24. 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.

25. Demolition Works - Asbestos

If any asbestos exists within the existing structures on the site then 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.

26. **Civil Works Supervision**

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority

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

27. **Footpath Construction**

The applicant shall construct a 1.5 m wide footpath to connect to Rose Avenue. The works shall be in accordance with the following:

(a) All footpath works are to be constructed in accordance with Council's Specification for access appropriate to Seniors Living development and include widening of the existing connection to the appropriate bus stop in Wheelers Parade within 400m of the site, and Clauses 26(2) and 38 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*

(b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's specification for footpath. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

28. **Notification of Inspections**

Council's Development Engineer is to be given 48 hours 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) 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. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification

Reason: To ensure new Council infrastructure is constructed to Council's requirements.

29. **Vehicle Crossings**

The provision of one vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 Normal and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

30. **Stormwater Pipeline Construction/Connection**

Where connection to Council's nearest stormwater drainage system is required, being in Berith Street, the applicant shall construct the pipeline in accordance with AUSPEC specification for engineering works (see www.northernbeaches.nsw.gov.au) and shall reconstruct all affected kerb and gutter, bitumen reinstatements, adjust all vehicular crossings for paths, grass verges and household stormwater connections to suit the kerb and gutter levels. All works shall be undertaken at the applicant's cost, and upon completion certified by an appropriately qualified and practicing Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

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. **Protection of rock and sites of significance**

a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

33. **Traffic Management**

Traffic management procedures and systems must be in place and practiced during the course of the site works for 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 to the satisfaction of the Certifying Authority is to be

submitted prior to the commencement of site works to ensure it remains in appropriate use throughout the works period.

Reason: To ensure pedestrian safety and continued efficient network operation. (DACTREDW1)

34. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

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

35. **Authorisation of Legal Documentation Required for Onsite Detention**

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

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

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

Reason: To identify encumbrances on land.

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

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

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

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

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

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's

delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

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

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

39. **Required Planting**

Trees shall be planted in accordance with the following schedule:

No. of Trees Required.	Species	Location**	Pot Size
6 (six)	Tree/s selected from Council's Plants and Trees List available at www.northernbeaches.nsw.gov.au or species capable of attaining a minimum height of 6 metres at maturity. **Planted in deep soil areas, suitably clear of services, structures and boundaries.	2 x front setback area, and 2 x south side setback area, and 2 x north side setback area.	200 millimetres (mm) minimum.

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

Reason: To maintain environmental amenity.

40. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management. (DACPLF01)

41. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

The garbage bin room and bulk waste room must be two separate rooms with individual access.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.
(DACPLF03)

42. **House / Building Number**

House/building number is to be affixed to the building / letterbox 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. (DACPLF04)

43. **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.

44. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

45. **Occupation of Seniors Housing or Housing for Persons with a Disability**

A positive covenant pursuant to s88E of the Conveyancing Act 1919 is to be registered on the title of the land to which this development consent applies.

The covenant shall stipulate that Council is the sole authority to release or modify the covenant and that the development is only permitted to be occupied by persons detailed as follows:

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

(Note: Under State Environmental Planning Policy (Housing for Seniors or People with a Disability 2004):

Seniors are people aged 55 or more years, people who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 <http://www.comlaw.gov.au/> of the Commonwealth) is provided and/or people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

AND

People with a disability are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.)

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

Reason: Statutory requirements. (DACPLF11)

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 Principal Certifier prior to the issue of any Interim or Final Occupation Certificate.

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

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

47. **Side and Rear Boundary Fencing**

The applicant is to replace all side and rear boundary fencing (above ground) with the agreement of and at not cost to, adjoining property owners with 1.8m 'lapped and capped' timber paling fencing, as indicated on the plans. Any fencing forward of the building line shall transition to a 1.2m height.

Details to be provided to the satisfaction of the Certifying Authority prior to the Interim Occupation Certificate.

Reason: To maintain visual privacy and property security. (DACPLFPOC1)

48. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with Northern Beaches Council Waste Management Guidelines

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

to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided. (DACWTF01)

49. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

50. **Positive Covenant for Waste Services**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

51. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land. (DACWTF04)

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

52. **Allocation of Spaces**

Car parking spaces provided shall be provided, made accessible and maintained at all times. The spaces shall be allocated as follows:

- 6 - Residential* cars (as shown on the plans being spaces 2 to 7)
- 2 - Visitor* standard width carspaces
- 1 - Visitor* carspace for persons with a disability

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking resident space allocated to a particular unit / or visitor use shall be line marked and numbered or signposted to the allocation*.

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

Reason: To ensure that adequate parking facilities to service the development are provided on

site. (DACPLG01)



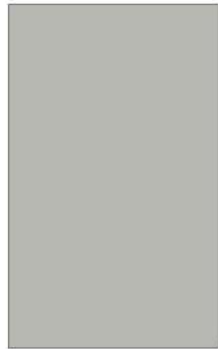




LEGEND



I TIMBER SCREENS



C COLORBOND "SHALE GREY"



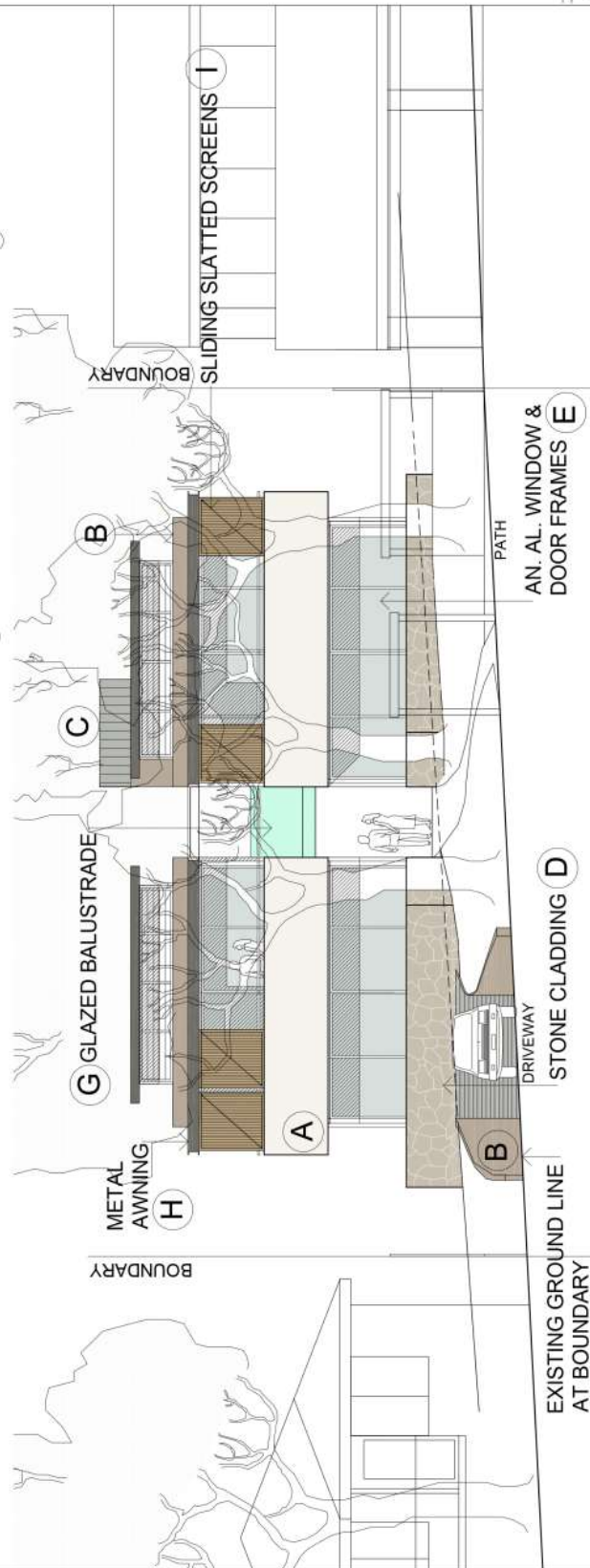
H COLORBOND "WALLABY"



B PR2 WATTLE "SUBTLE HINT"



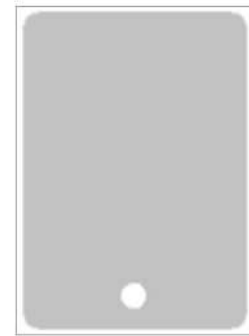
A PR1 DULUX "NATURAL WHITE"



WEST ELEVATION (FACING BERITH ST)

EXTERNAL FINISHES & COLOURS SCHEDULE

(A)	PR1 PAINTED RENDER	WATTLE "CHALKDUST"
(B)	PR2 PAINTED RENDER	WATTLE "CASTLE GREY"
(C)	METAL ROOFING, FLASHINGS & DPS	COLORBOND "WINDSPRAY"
(D)	STONE CLADDING	IRREGULAR SANDSTONE
(E)	DOOR & WINDOW FRAMES	"SATIN SPANISH SILVER" ANODISED ALUMINIUM
(F)	HANDRAILS	SATIN STAINLESS STEEL
(G)	BALUSTRADE	GLAZED
(H)	METAL AWNINGS	POWDERCOAT "COLORBOND WINDSPRAY"
(I)	SLIDING TIMBER SCREENS	TIMBER



E "SATIN SPANISH SILVER" ANODISED ALUMINIUM



D SANDSTONE CLADDING

DATE: 10/01/2019



BARRY RUSH & ASSOCIATES Pty Ltd
ARCHITECTS
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Client:

ABTUTE INVEST Pty Ltd
ACN 629 772 785

Project:

**3 BERITH STREET
WHEELER HEIGHTS
LOT 4 IN DP 411784**

Drawings:

**EXTERNAL COLOUR
SCHEDULE**

Scale:	1:15	Drawn:	LD
File:	EX Berith St A rough.dwg	BLK:	
Plot:	20/01/2019 4:22 PM		
Author:	LD		
Checker:	LD		
Version:	1.0		
Drawn by:	LD		
Checked by:	LD		
Drawn by:	LD		
Checked by:	LD		

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ITEM 3.5

**DA2019/0409 - POR 1113 / 752038 OXFORD FALLS ROAD,
FRENCHS FOREST - DEMOLITION WORKS AND
CONSTRUCTION OF A SENIORS HOUSING DEVELOPMENT
COMPRISING SERVICED SELF-CARE UNITS WITH
ASSOCIATED BASEMENT CARPARKING, INTERNAL ROADS
AND SITE LANDSCAPING**

AUTHORISING MANAGER STEVE FINDLAY

TRIM FILE REF 2019/486411

ATTACHMENTS

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

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel for a public hearing and Panel recommendation to then be referred to the General Manager for determination.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, recommends **refusal** of Application No. DA2019/0409 for demolition works and construction of a seniors housing development comprising serviced self-care units with associated basement carparking, internal roads and site landscaping at Lot 1113 DP 752038, 1113 / 752038 Oxford Falls Road, Frenchs Forest for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0409
Responsible Officer::	Lashta Haidari
Land to be developed (Address):	Lot 1113 DP 752038, 1113 / 752038 Oxford Falls Road, Frenchs Forest
Proposed Development:	Demolition works and construction of a seniors housing development comprising serviced self-care units with associated basement carparking, internal roads and site landscaping
Locality :	B2 Oxford Falls Valley under WLEP 2000
Category:	Category 2 – Housing for older people or people with disability
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	Yes
Owner:	Anita Spaliviero
Applicant:	Dukor 24 Pty Limited
Application lodged:	18 April 2019
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Residential - Seniors Housing
Notified:	11 May 2019 – 10 June 2019
Advertised:	11 May 2019
Submissions:	43 Submissions
Recommendation:	Refusal
Estimated Cost of Works:	\$ 22,870,089.00

Executive Summary

This Report involves the detailed assessment of a Development Application for the construction of a seniors housing development comprising 41 serviced self-care dwellings.

The application is made pursuant to Warringah Local Environmental Plan 2000 and is within the “*Deferred Lands*” under Warringah Local Environmental Plan 2011.

The site is the subject of a prior approval for a 72 bed Residential Care Facility (RCF) under DA2017/0206. The DA was initially refused by the Sydney North Planning Panel but subsequently approved by the Land and Environmental Court.

The current proposal has a design and configuration that is consistent with the footprints of the approved RFC, which are a series of pavilions or modules stepping down the sloping site. The current proposal seeks to diminish that outcome with the introduction of new

structures in the intervening spaces of some of the buildings. That change in outcomes and associated impacts is not supported.

The seniors housing provisions within WLEP 2000 are contained in Clause 29, Clause 40 and Schedule 16. In particular, the accessibility requirements under Clause 40 are of specific note in that the proposed development is required to provide "adequate access" for residents to off-site services and facilities and that access is adequate only if the facilities or services are located within 400m or a bus stop is situated within 400m of the site.

The subject site is situated 450 to 550 metres from the nearest bus stops, which does not comply with Clause 40. Furthermore, the means of pedestrian access to those bus stops is problematic, in that there are presently no footpaths in the connecting streets and the application does not include the construction of a suitable footpath.

Importantly, the approved RCF development was provided with only a "*private*" transport service on the basis that the residents of such a facility would not need to have a high level of access to nearby shops and facilities due to their physical condition and hence lack of independence. This was considered reasonable in the particular circumstances of a RCF.

The private mini-bus service will only provide a partial solution to the issue of adequate accessibility for future occupants of the current proposal. As the application has not demonstrated that the requirements of Clause 40 have been satisfied, the application is recommended for refusal for reasons of inadequate access and the unsuitability of the site for a self-care model of seniors housing.

The application is also deficient with respect to the other requirements of Clause 40, including the access of support services such as meals, personal care and home nursing and assistance with housework.

The public notification of the application resulted in 43 submissions and a number of issues are concurred with and included in the reasons for refusal.

A number of interdepartmental referral issues relating to the environmental impacts of the development on the site (trees, rock outcrops, extent of excavation and biodiversity), remain unresolved and also form reasons for refusal of the application. The application is Integrated Development and the RFS have provided their approval.

Accordingly, it is recommended that the Northern Beaches Local Planning Panel, as the determining authority, refuse the application for the reasons detailed within the "Recommendation" section of this report.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the EP&A 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 EP&A Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;

- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority officers on the proposal.

SITE DESCRIPTION

The site is located on the northern side of Barnes Road and is legally known as Lot 1113, DP 752038, Oxford Falls Road, Frenchs Forest. Barnes Road is only a partially constructed road. Oxford Falls Road borders the site to the east.

The site is irregular in shape and has a total area of 33,710m² or 3.371hectares.

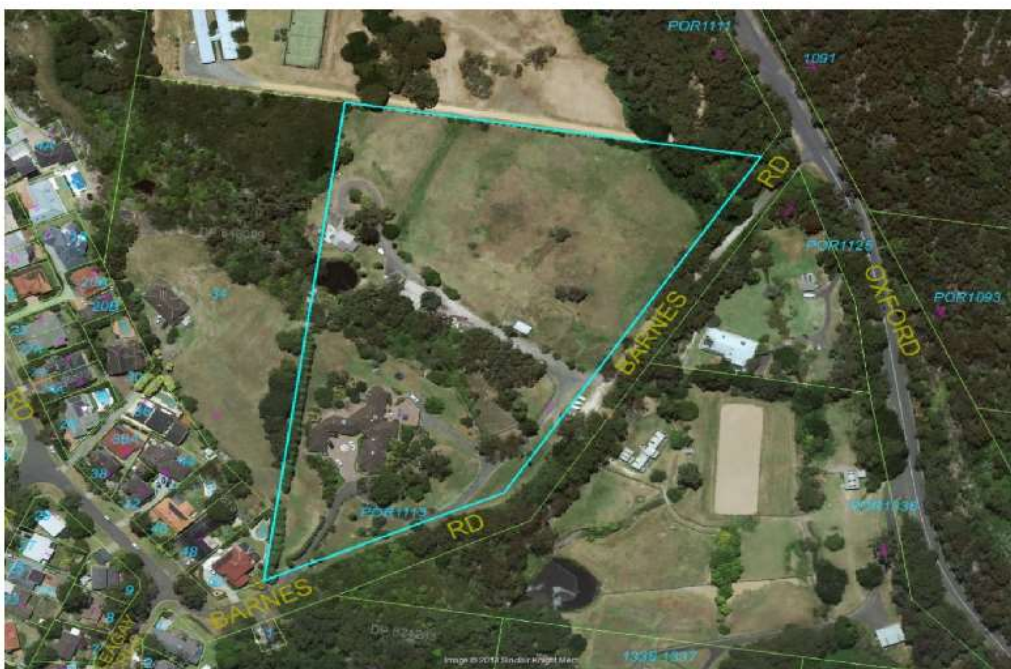


Figure 1 – Subject Site

Presently, the site accommodates a detached dwelling house and associated outbuildings. An internal driveway provides access to the property from the small section of constructed road in the Barnes Road reserve.

Topographically, the site is separated into two halves. The steeper southern half is elevated between RL110 and RL90 and accommodates a dwelling house, landscaped garden areas, outbuildings and internal driveways. The northern half is situated at a lower level of between RL90 and RL84 and accommodates a large open grassed area. The site has a fall of 26m from the south-western corner to the north-eastern corner.

The southern part of the site has been partly cleared to support the dwelling, outdoor spaces and the paddock area to the north-east. A large grouping of trees is located in an east-west alignment across the centre of the site (adjacent to the internal central roadway). A smaller grouping of trees is also located to the south of the dwelling.

Surrounding development consists of low-density residential dwellings in the suburb of Frenchs Forest to the west and semi-rural lands with dwelling houses and ancillary development and recreational facilities in the suburb of Oxford Falls to the north, east and south.

RELEVANT BACKGROUND

The following is a brief history of the subject site and the process leading up to the lodgement of the current Development Application:

Part 3A Application No. MP 05 -0113 for Seniors Living Resort

The site formed part of an earlier Part 3A Application which was lodged with the Department of Planning on 23 October 2008 (application No. MP 05-0113).

That application sought consent for a Concept Plan to develop multiple sites for the purposes of a Seniors Living Resort and Associated Services and Facilities, known as the *Sid Londish Site*. The proposal consisted of the following:

- Use of the site for Seniors Living, office, retail, recreational and open space purposes and adaptive reuse of existing buildings on site for ancillary services
- Construction of 20 buildings ranging in height from 3 – 4 storeys comprising 393 self-care dwellings, 100 serviced apartment dwellings and 80 bed high care (nursing home) facility
- 607 car parking spaces comprising 547 residents and 60 visitor spaces
- Total Gross Floor Area of 63,550m²

The application was refused by the Minister for Planning on 14 February 2011.

Development Application No. 2004/1402

This Development Application was lodged with Council on 5 November 2004.

The application sought consent for a Concept Plan for a Seniors Living Development for approximately 700 to 850 residents in a range of self-care apartments, 60 bed nursing home, and associated facilities.

The application was referred to the former Warringah Independent Hearing and Assessment Panel (IHAP) on 9 March 2005 with a recommendation for refusal. At that meeting, the IHAP resolved to refuse the application.

Figure 2 below shows the parcels of land included in each of the proposals listed above.

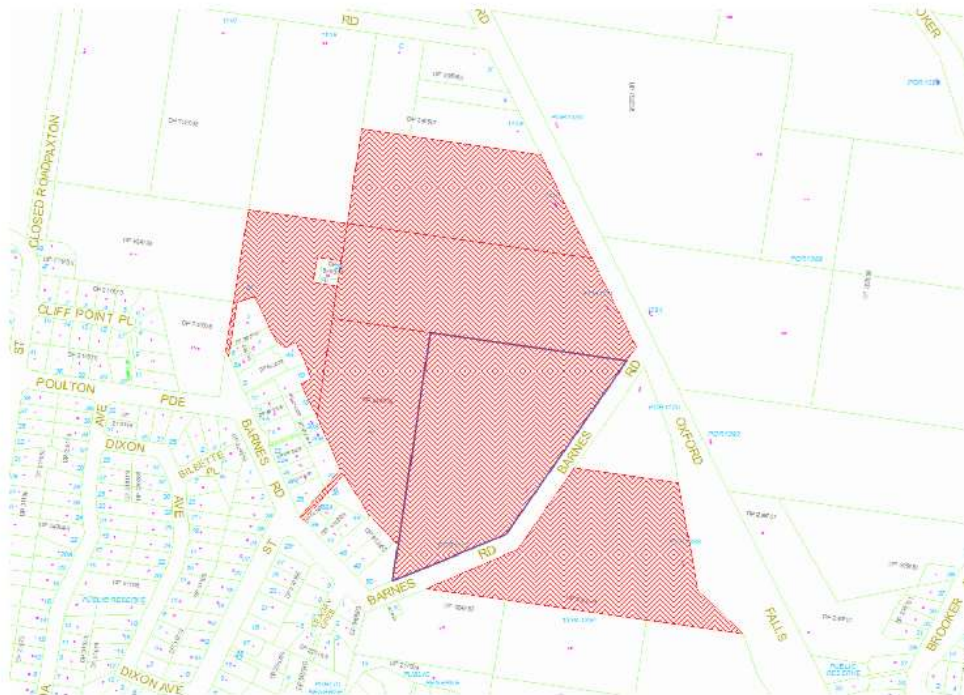


Figure 2 - Land included in DA2004/0585, DA2004/1402 and the Part 3A Application for a Seniors Living Resort and Associated Services and Facilities (Sid Londish Site). The site of the current application is outlined in purple.

The following Development Applications directly relate to the subject site:

Development Application No. DA2013/0575

This Development Application was lodged with Council on 15 May 2013.

The application sought consent for alterations and additions to a dwelling-house and a change of use to a Residential Care Facility (RCF) for **10 beds** and construction of an extension to a road, internal access road, carpark and recreation facilities.

This application relied upon the use of the Barnes Road road reserve and a portion of the neighbouring allotment to the south (Lot 1336 in DP 752038, No. 1336 -1337 Oxford Falls Road, Beacon Hill) to accommodate inner and outer Asset Protection Zones (APZ's).

The application was referred to the former Warringah Development Assessment Panel (WDAP) on 2 October 2013 with a recommendation for refusal. At that meeting, the WDAP resolved to defer the matter to allow Council time to review the legal argument put forward concerning the use of the Road Reserve to accommodate the APZ's.

On review, Council formed the opinion that the use of the road reserve for the purposes of allowing the APZ was acceptable on the basis that it would improve the existing situation in terms of access to the site. The application was referred back to the WDAP on 13 November 2013 with the recommendation for approval.

The application was approved by the former WDAP on 13 November 2013 subject to conditions which included a condition requiring the applicant to obtain consent under Section

138 of the *Roads Act 1993* (as necessary), in relation to any works associated with the APZ within the Barnes road reserve.

Development Application No. DA2014/1062

This Development Application was lodged with Council on 3 October 2014.

The application sought consent to demolish the existing dwelling and construct a new **45-bed** residential care facility with associated works.

The application was referred to the former *Joint Regional Planning Panel* (JRPP) on 12 August 2015 with a recommendation for refusal for the following reasons:

1. *Pursuant to Section 91A(4) of the Environmental Planning and Assessment Act, 1979, the NSW Rural Fire Service has refused to provide General Terms of Approval.*
2. *Pursuant to Section 79C (1) (a) (i) of the Environmental Planning and Assessment Act, 1979 and Clause 2(1) (c) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, the proposed development is not consistent with the aims of the policy.*
3. *Pursuant to Section 79C (1) (a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(3) (b) of Warringah Local Environment Plan 2000 (as amended), the proposed development is inconsistent with the Desired Future Character statement for the B2 Oxford Falls Valley Locality.*
4. *Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(1)(a) of Warringah Local Environment Plan 2000 (as amended), the development is inconsistent with the following General Principles of Development Control as follows:*
 - a) *Clause 56 Retaining Unique Environmental Features,*
 - b) *Clause 57 Development on sloping Land,*
 - c) *Clause 58 Protection of Existing Flora,*
 - d) *Clause 60 Watercourses & Aquatic Habitats,*
 - e) *Clause 66 Building Bulk.*
5. *Insufficient information has been submitted to demonstrate compliance with the following provisions of Warringah Local Environment Plan 2000:*
 - a) *Clause 40 Housing for Older People and People with Disabilities (support services),*
 - b) *Clause 57 Development on Sloping Land,*
 - c) *Clause 43 Noise,*
 - d) *Clause 68 Conservation of Energy and Water,*
 - e) *Clause 77 Landfill.*
6. *Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Warringah Local Environment Plan 2000 in that the proposed development is not consistent with following Schedules:*
 - a) *Schedule 5 - State Policies,*
 - b) *Schedule 16 - Principles and Standards for Housing for Older People or People with Disabilities (Clause 21 - Neighbourhood Amenity and Streetscape).*

7. Pursuant to Section 79C (1) (c) of the Environmental Planning and Assessment Act, 1979, the subject site is considered to be unsuitable for the proposed development.
8. Pursuant to Section 79C (1) (e) of the Environmental Planning and Assessment Act 1979, the development is not in the public interest.

The JRPP approved the application on 12 August 2015 and provided the following reasons for its decision:

Reasons for the panel decision:

The majority of the Panel considered the recommendation of the assessment report to refuse the application; however it did not accept the recommendation for the following reasons:
The first reason for refusal, the lack of General Terms of Agreement from the Rural Fire Service, no longer exists, as the Service has provided GTAs on 12 August 2015.

Apart from the above reason, the principal reason for refusal in the assessment report is that the proposal is inconsistent with the Desired Future Character of the area. The majority of the Panel believes, however, that the proposal, especially the component to preserve the northern part of the site in an undeveloped condition, to regenerate bushland on it and provide a 30m wide biodiversity corridor, is consistent with the Desired Future Character as expressed in the LEP. The majority of the Panel notes that a residential care facility is a permissible use in the zone, that such a facility cannot reasonably be expected to take the form of rural-residential development, that the proposed buildings are nestled into the slope of the site and that the FSR of the proposal is around 0.2:1. The majority also considers that concentrating the buildings on the southern part of the site and regenerating the vegetation on the rest is a better solution environmentally and visually than dispersing them over the site in an attempt to imitate the form of rural-residential development.

As regards the concerns expressed in the assessment report about the lack of information in relation to environmental impact, the majority of the Panel considers that the proposal to regenerate bushland and provide a biodiversity corridor on the site is a net environmental benefit.

The Panel has carefully considered the views of objectors, whose concerns, additional to those mentioned in the assessment report, related to the impact on threatened fauna species (Eastern Pygmy Possum and Powerful Owl) and inadequate parking. The Majority is persuaded that the proposal will not impact adversely on these species. It notes that the parking provided complies with the council's controls.

Development Application No. DA2016/0897

This Development Application was lodged with Council on 26 August 2016.

The application sought consent to demolish the existing dwelling and construct a new **70-bed** residential care facility, thus increasing the intensity of the development from 45 beds to 70 beds.

The applicant subsequently withdrew the application on 23 December 2016, following advice from Council that the proposal could not be supported on the basis of inconsistency with the Desired Future Character Statement and Building Bulk.

Development Application No. DA2017/0206

This Development Application was lodged with Council in March 2017.

The application sought consent to demolish the existing dwelling-house and construct a new **71 bed** residential care facility, thus increasing the intensity of the development from 45 beds to 71 beds.

The DA was recommended for refusal by staff and refused by Sydney North Planning Panel for the following reasons:

Reasons for Refusal:

That the Sydney North Planning Panel, as the consent authority, pursuant to Clause 80(1) (a) of the EP&A Act 1979 (as amended), REFUSE Development Consent to Development Application No DA2017/0206 for demolition works and construction of a residential care facility with associated car parking, internal roads and landscaping on land at Por 1113/752038, Oxford Falls Road FRENCHS FOREST subject to the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act, 1979* and Clause 2(1)(c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, the proposed development is not considered to be consistent with the Aims of the policy.
2. Pursuant to Section 79C (1) (a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(3) (b) of *Warringah Local Environment Plan 2000* (as amended), the proposed development is inconsistent with the Desired Future Character statement for the B2 Oxford Falls Valley Locality.
3. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act, 1979* and Clause 12(1)(a) of *Warringah Local Environment Plan 2000* (as amended), the development is inconsistent with the following General Principles of Development Control as follows:
 - a) Clause 58 Protection of Existing Flora
 - b) Clause 66 Building Bulk
4. Pursuant to Section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposed development is inconsistent with the provisions of *Warringah Local Environmental Plan 2000* in that the proposed development is not consistent with Schedule 5 - State Policies.
5. Pursuant to Section 79C(1)(c) of the *Environmental Planning and Assessment Act, 1979*, the subject site is considered to be unsuitable for the proposed development.
6. Pursuant to Section 79C (1) (e) of the *Environmental Planning and Assessment Act, 1979*, the public interest, as expressed in the submissions received during the public exhibition of the Development Application, will not be served by the proposed development.

The DA was the subject of a Class 1 Appeal and was subsequently approved by the Land and Environment Court (LEC) in July 2017.

Pre-Lodgement Meeting

A pre-lodgement meeting was held with Council on 30 November 2018 in relation to the current serviced self-care proposal. The critical planning advice provided to the Applicant was in relation to Clause 40 and the adequacy of the future resident's access to services and facilities. The following commentary was made in the Notes:

The main planning issue relates to the increased intensity of the development and the fact that the site is not located within 400 metres of essential facilities and services and is substantially further than 400 metres from a public transport service (bus).

...it is a practical reality that the future residents of a serviced self-care housing development on the subject site will have a significantly higher need to access the local and nearby shops and facilities and for that access to be provided for pedestrians than is the case with a RCF. The access should not be solely provided for in the form

of private motor vehicles and the community bus. To rely upon motorised transport only would be "sub-optimal" for older persons and cause social and amenity impacts.

Compliance with the requirements of Clause 40 of the WLEP 2000 to existing public transport services is not achievable. The proposal is considered unsuitable for the subject site in this regard.

In this regard, given the sites relative isolation from transport and other services and non-compliance with Clause 40 is considered to be problematic.

DEVELOPMENT APPLICATION HISTORY

On 18 April 2019, the current DA2019/0409 was lodged with Council.

On 2 May 2019, the Applicant filed a Class 1 application with the Land and Environment Court against the deemed refusal of the DA.

The hearing date is set down for 3 October 2019.

PROPOSED DEVELOPMENT

The proposal seeks consent for demolition works and construction of a Seniors Housing Development, comprising the following:

- Site clearance and removal of trees and demolition of the site's existing dwelling
- Excavation for 95 basement car parking spaces, a gym, pool and ancillary recreational facilities
- The construction of 41 serviced Independent Living Units (ILU's)
- Landscaping works
- Riparian rehabilitation works
- Construction of internal roads
- Use of Barnes Road as an Asset Protection Zone (APZ)
- Site improvement, civil works, staff facilities and sediment collection

The proposed scheme has been developed around the previously approved 71 bed RCF. The applicant has indicated that the key alterations to the approved development can be summarised as follows:

- The proposal involves serviced independent living units (ILUs) as opposed to the previously approved residential care facility. Forty-one (41) ILUs are proposed as opposed to the 71 bed Residential Aged Care Facility (RACF)
- Increase in car parking provision from 36 to 95 parking spaces and providing basement car parking

- Decrease in building footprint for individual units and associated Gross Floor Area (GFA), with a previous GFA of 7,238m², decreasing to a GFA of 6,446.7m²
- Provision of facilities including a gym, pool and physio room
- Conversion of the central connecting corridor into an open breezeway

Figure 3 below shows the comparison of the building footprints.



Figure 3 – Comparison of Building Footprints (Source: SEE prepared by City Plan Services)

As the site is located outside the 400m distance to shopping and medical facilities and public bus services, the development will also provide for the use of a dedicated mini-bus, which will be parked on the site and made available to the residents of the facility for outings, convenience shopping needs or attendance at appointments.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act 1979)

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See the 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 DCP as it relates to the notification is applicable to this application.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None Applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p>The <i>EPA Regulations 2000</i> requires the consent authority to consider the provisions of the Building Code of Australia. This matter can be addressed via a condition of consent should this application be approved.</p> <p>Clause 92 of the <i>EPA Regulations 2000</i> requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter can be addressed via a condition of consent should this application be approved.</p> <p>Clause 50(1A) of the <i>EPA Regulations 2000</i> requires the submission of a Design Verification Statement from the designer at lodgement of the development application.</p>

Section 4.15 'Matters for Consideration'	Comments
	The proposed development is a two-storey development, therefore SEPP 65 is not applicable to the proposed development and therefore a Design Verification Statement is not required for the proposed development.
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. The environmental impacts of the proposed development on the natural and built environment are addressed under the <i>Warringah LEP 2000</i> section of this report. A number of inconsistencies with the relevant controls have been identified which indicate the impact of the development on the built environment is not acceptable.</p> <p>ii. The development will provide seniors housing in the locality, therefore the development ensures that the housing stock caters for a broad cross section of the community. In terms of the provision of housing, the proposed development will not have a detrimental social impact on the locality.</p> <p>iii. The proposed development will not have a detrimental economic impact on the locality considering the nature of the proposed land uses.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	<p>The site is not considered suitable for the development given its location within an area, which renders the development inconsistent with the applicable planning controls as they apply in relation to access to services and facilities.</p> <p>In this regard, the site is not suitable for the proposed development, given the excessive distance to the closest public transport services and the lack of pedestrian connectivity (no existing or proposed footpaths) to those transport services.</p>
Section 4.15 (1) (d) – any submissions made in accordance with the <i>EPA Act</i> or <i>EPA Regs</i>	The 43 public submissions received in response to the proposed development are addressed under 'Notification & Submissions Received' within this report. Several issues were raised which warrant the refusal of the application.
Section 4.15 (1) (e) – the public interest	The public interest has been considered as part of the application process. Overall, the public interest is best served by the consistent application of the requirements of the relevant planning controls, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised and/or managed. The proposal has been assessed against the provisions of the relevant planning controls and is deemed to be unacceptable in terms of its impact on the natural environment. On this basis, the proposal is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights do not apply to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The DA was publically exhibited in accordance with the EP&A Act, *Environmental Planning and Assessment Regulation 2000* and Warringah Development Control Plan. The development application was notified from 11 May 2019 to 10 June 2019. Additionally, the application was advertised in the Manly Daily on 11 May 2019 and a notice was placed on the site

As a result of the public exhibition process, Council is in receipt of 43 submissions, each raising objections to the proposed development.

Name:	Address:
Mr Samuel Philip Croll	10 Karabah Place, French Forest
Mr John William O'Sullivan	27 Bluegum Crescent, French Forest
Ms Deborah Anne Hicks	24 Bimbadeen Crescent, French Forest
Mr Geoffrey John Davidson	20 A Barnes Road, French Forest
Mr Stephen Peter Johnco	26 Barnes Road, French Forest
Joseph James Earl	87 Wearden Road, French Forest
Mr John Randall Dillon	PO Box 7010, Warringal Mall 2100
Mr Shawn Christian Richardson	16 Myra Street, French Forest
Mrs Carolyn Lynda Richardson	16 Myra Street, French Forest
Mr David Allan Tuckwell	Po Box 4006 MILPERRA NSW 1891
Mr Timothy John Fergusson	16 Dixon Avenue, French Forest
Withheld	-
Withheld	-
Mr Alistair Bell	3 Winslea Avenue, French Forest
Mr Christopher Miles Low	7 Myra Street, French Forest
Ms Alice Chuang	128 Frenchs Forest Road West, French Forest
Terry Robert Vibert and Mrs Corinne Julie Vibert	44 Barnes Road, French Forest
Mr Geoffrey Lionel Broadbent	56 Iris Street, French Forest
Mr Christopher John Tanner	9 Karabah Place, French Forest
Mr Richard Cover	50 Barnes Road, French Forest
Phillip John Patrick Condon	29 Myra Street, French Forest
Mr Philip Martin	5 Karabah Place, French Forest
Mrs Kathryn Elizabeth Condon	29 Myra Street, French Forest
Mr Simon John Waight	38 Barnes Road, French Forest
Mr Maxwell Jackson	16 Karabah Place, French Forest
Alan Hombuckle	25 Myra Street, French Forest
Ms Patricia Nettleton	5 Myra Street, French Forest
Mr Desmond John Griffin	4 Winslea Avenue, French Forest
Bruce Harvey Cohn	8 Myra Street, French Forest
Mr Andrew Phillip Nicholls	12 Barnes Road, French Forest
Christine Elizabeth Milne	21 Dixon Avenue, French Forest
Mr Phillip Vivian Strugnell Mrs Kay Strugnell	4 Myra Street, French Forest
Craig Root	-
Mrs Jeanette Elizabeth Root	38 A Barnes Road, French Forest
Mrs Ellen Mary Jackett	17 Myra Street, French Forest
Mr Mark Antico and Mrs Leanne Michelle Keys	12 Dixon Avenue, French Forest
Ann Elizabeth Sharp	77 Brighton Street, Curl Curl
Mr Gregory Mark Sainty	27 Myra Street, French Forest
Ms Megan Andrea Laurence	1 Leagay Crescent, French Forest
Mr Wen Er Zhou	16 Barnes Road, French Forest
Duffys Forest Residents Association	PO Box 567, Terrey Hills
Conny Harris	-
Mr Ian Coulter McKenzie	8 Barnes Road, French Forest
Ashley Robert King	81/77 Riley Street, Darlinghurst

Assessment of Residents Issues

The relevant matters raised within the submissions have been considered and are addressed as follows:

1. Increased Traffic and Street Parking

Concerns have been raised that the proposal will create unreasonable traffic impacts on surrounding roads and the neighbouring area, through congestion, prevalence of traffic hazards and noise pollution. Additionally, the received submissions have expressed concerns relating to street parking as a result of the additional traffic.

Comment: This issue is addressed under the referral section of this report (refer to Council's Traffic Engineers comments). In summary, there is insufficient information submitted within the applicant's Traffic Report to accurately determine the traffic impact of the development on the local road network.

This issue constitutes a reason for the refusal of the application.

2. Out of Character with the Locality

Concern has been raised that the proposal does not comply with the Oxford Falls Valley Locality statement, as the proposed development is not in keeping with the local area and will destroy a unique enclave and community on the Northern Beaches. Particularly a number of submission have listed the development as a high-density development within a semi-rural area.

Comment: This issue has been discussed at length throughout this report and forms a reason for the refusal of the DA. In summary, it has been found that the development is inconsistent with the DFC statement for the B2 – Oxford Falls Locality.

3. Impact on native wildlife and vegetation

Concerns have been raised that the proposed development will result in adverse impacts on the natural environment. Specific issues that were identified within the submissions include the destruction of native vegetation and habitat for wildlife and pollution caused by the proposed stormwater system, garden fertilisers and cleaning chemicals.

Additional concerns have also been raised that the proposed development is found to be inconsistent with the recommendations of the Planning Assessment Commission (PAC) report.

Comment: This issue as it relates to environmental impacts are addressed in the relevant referral comments by Council's Landscape Officer and Natural Environment (Biodiversity). In summary, the impact on the natural environment is found to be unsatisfactory and is included as a reason for refusal.

In relation to the Planning Assessment Commission (PAC) report, the subject site is not part of PAC study area and there are no statutory requirements for Council to refuse the application on the outcome of the PAC report.

4. Inadequate Access to Public Transport

A number of submissions have listed the sites exclusivity as an issue, in relation to access to public transport.

Concerns have also been raised within the submissions that the local area lacks public infrastructure like pathways and it is believed that the development is unable to provide safe access for its residents to nearby facilities and services.

Comment: Clause 40 of WLEP 2000 requires this type of development to be located within 400m of a shopping centre or bus stop, or be serviced by a transport service that is located not more than 400m from the site and is available both to and from the development during daylight hours at least once per day from Monday to Friday (inclusive). The SEE notes that the site is serviced by a mini-bus, which is parked on the site and is therefore, available to the residents of the facility for outings, convenience shopping needs or attendance at appointments.

Therefore, with regards to access to shops and/or medical facilities, the assessment of the application found that the provision of the mini-bus does not satisfy the access requirements of the 'Support Services' section under Clause 40 of the WLEP 2000.

This issue constitutes a reason for the refusal of the application.

5. Bushfire Risk

Concern has been raised over the threat of bushfires to the area and the effect that the proposal will have on neighbouring properties, future residents and the environment.

Comment: The subject site is identified as being bushfire prone land. The application was referred to the NSWRFs (see referral response in the Referrals section in this report), who have also raised no objection to the proposed development based on the bushfire impact and evacuation.

6. Non-compliance with SEPP (HSPD) 2004

Concern is raised that the development does not satisfy the relevant controls in SEPP HSPD for seniors living and/or people with a disability. In particular, the submissions identify that the development is not located within easy walking distance to shops and/or medical facilities.

Comment: The development is lodged under the provision of WLEP 2000 and not SEPP (HSPD) 2004 so the provision of access requirements of the SEPP is not applicable to the proposed.

The issue of accessibility is addressed under Clause 40 of WLEP 2000 and due to issues in relation to the adequacy of the access, is included as a reason for refusal.

7. Acoustic Impact

A number of submissions have raised concerns relating to the noise spill over caused from the operation of the development. Further, residents are concerned that due to the geographical characteristics of the area, sound will echo throughout the valley and unreasonably detract neighbourhood amenity.

Comment: This issue have been addressed under Clause 43 of WLEP 2000. In summary, it has been found that the development has generally satisfied the requirements to manage acoustic privacy.

Therefore, this issue should not be given determining weight.

8. The development is incrementally stepping towards an even larger proposal

Concerns have been raised that the development is stepping towards a larger proposal.

Comment: There is no evidence currently before Council to indicate that the subject application forms part of a larger future proposal.

In this regard, Council cannot speculate on the future intentions of the Applicant and is obliged to consider the subject application on its own terms and against the relevant legislation, controls and policies in place at the time.

This matter does not warrant the refusal of the application.

9. Impact of Asset Protection Zones (APZ) on Native Bushland

Concerns have been raised within the received submissions that the proposed APZ will have adverse impacts on the surrounding bushland environment, as the APZ's are "*within the riparian buffer of Middle Creek and the tributary located on the adjoining property to the south*". It is therefore believed that this will create a conflict between environmental conservation and bushfire protection.

Comment: The application is dependent upon the use of the Barnes Road road reserve (public land) for the purposes of providing for APZ's. The provision of an APZ within the road reserve was endorsed as part of the previous approval for the site and Council's Asset Manager has provided suitable conditions to manage the APZ within the road reserve.

This matter does not warrant the refusal of the application.

10. Impact on Riparian Lands

Concern has been raised over the 10.0m width of the vegetation corridor placed adjacent to Middle Creek, as it is believed to be too narrow to effectively manage surrounding native vegetation.

Comment: As noted in the comments by the Riparian Section of Council's Natural Environment Unit, the application proposes works, which are located within the 40m buffer zone to a waterway. In this respect, the impact of the proposed development is found to be satisfactory as outlined in the referral section of this report.

This matter does not warrant the refusal of the application.

11. Excessive Excavation

Concerns have been raised over the excessive level of excavation required for the proposed basement carpark. The submissions raise the issue that the proposed excavation will result in the removal of natural rock outcrops and unreasonably disrupt the natural landform and hydrology of the site.

Comment: This issue is addressed in detail in this report, including within referral comments from Council's Landscape officer. In summary, the impact resulting from the proposed excavation is found to be unacceptable for the specific reasons referred to and is included as a reason for refusal of the application.

MEDIATION

Mediation was not requested.

EXTERNAL REFERRALS

External Referral Body	Recommendation/Comments
Department of Natural Resources Access Regulator	No Integrated Approval Required The application was referred to Natural Resources Access Regulator's as Integrated Development. The Department provided their comments on 4 June 2019 stating that a controlled activity approval is not required for the proposed development and no further assessment is therefore necessary.
NSW Rural Fire Services (NSW RFS)	Approval (Subject to Condition) The application was referred to the NSW RFS as Integrated Development on 6 May 2019. Section 100B of the <i>Rural Fires Act 1997</i> enables the Commissioner of the NSW RFS to issue a Bushfire Safety Authority for 'Special Fire Protection Purpose' development. Section 100B (6) of that <i>Rural Fires Act 1997</i> identifies Seniors Housing (within the meaning of the <i>SEPP (HSPD) 2004</i>) as such development. The RFS by letter dated 3 June 2019 issued their General Terms of Approval, which are to be included as conditions of consent should the application be considered worthy of approval.
Aboriginal Heritage office	Refusal (insufficient information provided) The Aboriginal Heritage Office requires a preliminary inspection ('due diligence' under the <i>National Parks and Wildlife Act 1974</i>) by a qualified Aboriginal heritage professional. The assessment would provide information on what potential Aboriginal heritage issues exist on the land and recommendations for any further action if required.
Ausgrid	No response received The application was referred to Ausgrid under clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007. To date, no response has been provided and it is assumed that no objection is raised concerning the proposal and hence there are no specific Ausgrid requirements to be imposed on any consent.

INTERNAL REFERRALS

Internal Referral Body	Recommendation/comments
Building Assessment - Fire and Disability upgrades	Approval (Subject to conditions) The application has been investigated with regard to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.
Environmental Health (Industrial)	Approval (Subject to conditions) No objection subject to conditions.
Waste Officer	Approval (Subject to conditions) No objection subject to conditions.
Natural Environment and Climate Change (Bushland and Biodiversity)	Refusal Council's Bushland and Biodiversity section has provided the following comments: <i>In response to the previous referral comments, the applicant provided a letter from Travers bushfire & ecology (19 July 2019) which states that the creation of the asset protection zone within the southern portion of the Barnes Road Reserve will not require the removal of native vegetation, and therefore will not trigger the NSW Biodiversity Offset Scheme (BOS). They state that only hand removal of exotic species is required in order to achieve the required asset protection standards.</i> <i>The vegetation within the road reserve area has previously been mapped by Travers as 'Canopy with managed understorey' and 'Canopy with dense weed understorey' (Bushland Regeneration and Biodiversity Management Plan Travers Bushfire & Ecology 12 April 2019). For the purposes of determining whether or not the BOS is triggered under the area clearing threshold, additional information regarding the extent of native vegetation within the road reserve would have been of assistance to support their claims. Based on a recent site visit it was confirmed that non-native plant species dominate within the road reserve area, although the claim that no native vegetation will require removal could not be verified. It is considered that while creation of the APZ would contribute to the total amount of</i>

Internal Referral Body	Recommendation/comments
	<p>native vegetation impacted by the development, the amount required to create the asset protection zone would not lead to the area threshold being exceeded.</p> <p>However, following discussions with Council traffic engineers and transport assets staff, they consider that an upgrade to the northern portion of the Barnes Road Reserve is required for the road to comply with Planning for Bush Fire Protection. The NSW RFS, in their General Terms of Approval, state that the internal road from the development is linked into the northern end of Barnes Road to form a secondary access / egress route. They do not specify any requirements for the road reserve itself, so it is up to Council to specify any requirements to satisfy Planning for Bushfire Protection. Any changes to the access from Oxford Falls road to the site should be part of the current development application. Associated with this is an increase in biodiversity impacts, with additional clearing of native vegetation associated with widening of Barnes road required.</p> <p>Based on this the biodiversity report must be updated, and a Biodiversity Development Assessment Report, in accordance with the Biodiversity Assessment Method 2016 (BAM) established under Section 6.7 of the NSW Biodiversity Conservation Act 2016 must be prepared if the BOS is triggered under the area clearing threshold.</p>
Natural Environment and Climate Change (Riparian Lands and Creeks)	<p>Approval (Subject to conditions) Council's Riparian section has provided the following comments:</p> <p>This development has been assessed under:</p> <ul style="list-style-type: none"> • Warringah Local Environment Plan 2000 (WLEP 2000) • Warringah Development Control Plan 2000 (DCP 2000) • Protection of Waterways and Riparian Land Policy, PL 740 Waterways, Warringah Council. <p>The application proposes a 10-metre core riparian zone with a 10-metre vegetated buffer. This core riparian zone and buffer must be maintained. The development must ensure Bushfire Asset Protection Zones (APZ's) are maintained outside of riparian land in accordance with section 3.1 of the Protection of Waterways and Riparian Land Policy. The development must be sited and designed to maintain and enhance natural watercourses and aquatic habitat in accordance with section 60 of the WLEP 2000.</p> <p>The application is supported, as it complies with the above policies.</p>
Natural Environment and Climate Change (Water Management)	<p>Approval (Subject to conditions) Council's Riparian section has provided the following comments:</p> <p>The proposal complies with the water management requirements of Council's Water Management Policy. As such, no objection to the proposed development is raised subject to conditions as recommended.</p>
Landscape Officer	<p>Refusal Council's Landscape Officer has provided the following comments:</p> <p>It is noted that there is an existing approval on this site for a Residential Care Facility with a similar building footprint and layout to the current application.</p> <p>This application is for Seniors Housing development. Some amendments to the existing approval include:</p> <ul style="list-style-type: none"> • Additional excavation for basement parking, pool and gym • Additional driveway accesses for basement parking • Amended internal footpath access • Amended alignment of the northern section of the driveway • Increase in building footprint in the northern portion of the site. <p>1. <u>Tree and Landscape Impacts</u></p>

Internal Referral Body	Recommendation/comments
	<p>The excavation for the pool and gym will require removal of several trees required to be retained under the existing consent. These trees are noted as:</p> <ul style="list-style-type: none"> • Tree 698 <i>Eucalyptus sieberi</i> 12m ht. • Tree 418 <i>Angophora costata</i> 23m ht. • Tree 410 <i>Eucalyptus piperita</i> 18m ht. • Tree 420 <i>Angophora costata</i> 17m ht. • Tree 422 <i>Eucalyptus piperita</i> 22m ht. • Tree 688 <i>Melaleuca styphelloides</i> 11m ht. • Tree 687 <i>Melaleuca styphelloides</i> 11m ht. <p>Additionally, the approved Landscape Plan proposed additional tree planting in the area now proposed to be occupied by the pool and gym as follows:</p> <p>3 x <i>Eucalyptus haemastoma</i> 8 x <i>Archontophoenix cunninghamiana</i> 8 x <i>Elaeocarpus reticulatus</i> 4 x <i>Cyathea cooperi</i>.</p> <p>The proposed landscape plan now indicates replanting of:</p> <p>1 x <i>Elaeocarpus reticulatus</i> 3 x <i>Cyathea cooperi</i></p> <p>The new proposal therefore represents a net loss of 26 trees around the built form that provided important retention of existing native trees and provision of additional trees that helped to break down the bulk and scale of the buildings stepping down the site.</p> <p>Consequently, the excavation for the pool and gym as proposed is not supported.</p>
Development Engineers	<p>Approval (Subject to conditions) No objection subject to conditions.</p>
Traffic Engineer	<p>Refusal Council's Traffic Engineer has provided the following comments:</p> <p>The proposal is for demolition works and the construction of a 41 self-contained dwellings (Seniors Housing) with basement car parking, internal roads.</p> <p>As it was raised in the Pre-DA meeting, the main concern is in relation to the accessibility to /from the site and its distance from a public bus stop. The approved Residential Care Facility development was approved with only a "private transport service" (community bus) on the basis that the residents of such a facility would not need to have a high level of access to nearby shops and facilities due to their lack of independence. This was considered reasonable in the circumstances of the case and the site was considered suitable for that specific type of seniors living. This approach was consistent with the requirements of the SEPP in relation to the provision of a community bus.</p> <p>The new proposal is for self-contained Seniors Housing (over 55 living) and the future residents of a serviced self-care housing development on the subject site will have a significantly higher need to access the local shops and facilities for that access to be provided for pedestrians than is the case with a Residential Care Facility. The access shall not be solely provided for in the form of private motor vehicles and the community bus. This will also increase the private car use dependency.</p> <p>In addition, connection to the facilities such as shopping, health care and other social infrastructure is required with multiple options for residents to access these services, through private vehicle, community bus and walking to public transport, which is crucial. An accessible path of travel needs to be formalised from the development to the bus services in Iris Street. This will need to be a minimum of 1.5 metre wide concrete footpath and any other works required to provide this connection, including but not limited to pedestrian refuges, widening of the existing footpath where required, and street lighting upgrades.</p>

Internal Referral Body	Recommendation/comments
	<i>Whilst the proposed primary access is from the formed section of Barnes Road, a secondary access and egress point is required from the development to connect with Oxford Falls Road (east). This connection should be constructed in line with Planning for Bushfire Protection requirements and include a 1.5 metre wide footpath to assist residents in connecting with the wider community and local area.</i>
Urban Design	<p>Approval Council's Urban Designer has provided the following comments:</p> <p><i>There are no urban design issues identified. The amount of site excavation has been increased due to the newly added basement car parking areas but they are located under the previously approved building footprints. As a result, the proposed built forms are similar to the previously approved building forms.</i></p>
Strategic and Place Planning	<p>Approval Council's Strategic and Place Planning Section has provided the following comments:</p> <p><i>A portion of the subject site (approximately half of the site) lies within the 'Area of Influence' identified for the purposes of developing the Hospital Precinct Structure Plan. As such, the DA has been referred to Strategic Planning for comment in relation to future strategic planning directions for the area.</i></p> <p><i>In August 2017, Northern Beaches Council adopted the Hospital Precinct Structure Plan. Work is currently underway to develop the required amendments to Warringah LEP 2011 and Warringah DCP 2011 to carry forward Stage 1 of the Structure Plan directions. The proposed LEP and DCP amendments are scheduled for public exhibition in the second half of 2019.</i></p> <p><i>The site is not subject to any proposed changes to the current planning provisions arising from the Hospital Precinct Structure Plan; nor will the proposed development have any impact in relation to the future operation of the Structure Plan and associated amended planning controls.</i></p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)

All, EPIs (State Environmental Planning Policies (SEPPs), Regional Environment Plans (REPs) and Local Environment Plans (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 EPIs (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the documents are not relevant or are enacting, definitions and operational provisions, which the proposal is considered 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)

Further consideration is required for the following State policies:

SEPP 55 - Remediation of Land

The SEPP establishes Statewide provisions to promote the remediation of contaminated land.

SEPP 55 states that land must not be developed, if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when

consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. The Managing Land Contamination: Planning Guidelines were prepared to assist councils and developers in determining when land has been at risk.

Clause 7 of the SEPP requires that a consent authority must not grant consent to a development if it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

Council's records indicate that the site has been used for residential purposes for a significant period. It is therefore considered that the site poses no risk of contamination and as such is suitable for the proposed seniors housing development. No further consideration is required under Clause 7(1) (b) and (c) of the *SEPP 55*.

SEPP (Infrastructure) 2007

Clause 45 – Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any DA (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 5m 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 5m of an overhead electricity power line.*

The application was referred to Ausgrid under clause 45(2) of SEPP Infrastructure.

To date, no response has been received and it is assumed that Ausgrid do not raise any objection nor impose any conditions.

Clause 102 - Roads and Maritime Service (RMS)

The development consists of 41 residential apartments, and the site does not have an access to a classified road or a road that connects to the classified road, therefore the requirement of clause 106 is not applicable to the subject application.

SEPP (Building Sustainability Index: BASIX) 2004

The application has been accompanied by a BASIX certificate for proposed development, that lists the sustainability commitments by the applicant as to the manner in which the development will be carried out. The requirements outlined in the BASIX certificate have been satisfied in the design of the proposed development. Nonetheless, a condition could be imposed, should the application be considered worthy of approval to ensure such commitments are fulfilled during the construction of the development and prior to occupation.

SEPP 44 – Koala Habitat Protection

The provisions of this policy apply as the site is greater than one hectare in size. The site does not represent potential or core koala habitat. Accordingly, no further consideration of the policy is required.

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

The DA is made pursuant to WLEP 2000, which permits development for the purposes of *housing for older people or people with disabilities* on land within Locality B2 Oxford Falls Valley. The DA is not made pursuant to SEPP (HSPD) 2004.

Notwithstanding, clause 12(1)(b) of WLEP 2000 states that before granting consent for development the consent authority must be satisfied that the development is consistent with any relevant State Environmental Planning Policy described in Schedule 5 (State policies). State policies pertaining to housing for older people or people with a disability are nominated in Schedule 5.

In addition to the above, the Land and Environment Court decision of Talbot J on 31 May 2004 in *Mete v Warringah Council [2004] NSWLEC 273*, states that if a DA is made pursuant to WLEP 2000, then only certain clauses of the *SEPP* are relevant to the assessment of the application. Specifically, clauses, which are prefaced with the words "development application made pursuant to this chapter", are not relevant to the application.

Taking the approach of the Court, an assessment of the proposal has taken into consideration the relevant provisions of the SEPP outlined as follows:

Chapter 1 – Preliminary

Aims of the Policy:

- (1) *This Policy aims to encourage the provision of housing (including residential care facilities) that will:*
 - (a) *increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
 - (b) *make efficient use of existing infrastructure and services, and*
 - (c) *be of good design.*

In relation to the first aim of the policy, whilst the proposed development would increase the supply and diversity of residences within the Northern Beaches Local Government Area, the location of the proposed development is considered to be such that it will not satisfactorily meet the needs of seniors or people with a disability given its non-compliant and difficult access to the required facilities and to public transport.

The proposed development is inconsistent with the second aim, which requires that development is to make efficient use of the existing infrastructure and services. The proposal fails to achieve this aim given the level of infrastructure that is needed to be constructed to cater for the development including internal roads and site facilities given that such facilities are not readily available to residents within the required 400m distance. This is evident as the applicant is proposing to provide a private bus service for the residents to commute to the nearby centres such as Forestway Shopping Centre, Dee Why Town Centre and Warringah Mall. Furthermore, the development is heavily reliant upon the use of the Barnes Road reserve to accommodate the required APZ.

When considering the development against the aim of achieving good design, the development must be considered in context with the other provisions of the SEPP. In this regard, it is acknowledged that the footprint of the proposed development is consistent with the already approved footprint under DA2017/0206 and Council's Urban Designer has raised no issues in relation to the design of the development.

Given the above, the proposed development has been found to be inconsistent with first two aims of the SEPP and this issue has been included as a reason for refusal.

Chapter 2 – Key concepts

The proposed development is consistent with the key concepts contained within SEPP. The proposed development comprises self-contained dwellings, which are to be occupied by seniors, people with a disability, or other persons permitted by the SEPP. Appropriate conditions can be placed on the development consent to restrict occupation of this building in accordance with the definitions outlined under the SEPP.

On this basis, it is considered that the proposed development is consistent with the provisions outlined under Chapter 2 of the SEPP.

Chapter 3 – Development for seniors housing

Chapter 3 of the SEPP contains a number of development standards that are applicable only to DAs made pursuant to the SEPP. As this DA was made pursuant to WLEP 2000, the specific provisions prefaced for their operation with the words “made pursuant to this chapter” of Chapter 3 do not apply. There are no relevant provisions of Chapter 3 applicable to this DA.

Chapter 4 – Miscellaneous

The site is not on “*environmentally sensitive land*” and is not affected by amendments to other SEPPs, and the special provisions do not apply to this land.

STATE REGIONAL ENVIRONMENTAL PLANS

There are no SREPs applicable to the site.

LOCAL ENVIRONMENTAL PLANS

Warringah Local Environment Plan 2000 (WLEP 2000)

WLEP 2000 applies to the subject land and the development application is made pursuant to this instrument. Under WLEP 2000, the subject site is within the B2 Oxford Falls Valley Locality and the proposed development, being development for the purposes of housing for older people or people with disabilities, is classified as a Category 2 Development.

The DFC statement for the B2 locality states:

B2 Oxford Falls Valley Locality

The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will

be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.

Each relevant element of the desired future character statement is discussed as follows

- ***The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows. Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses.***

(a) New detached style housing conforming with the housing density standards

In terms of the character of the area, the development is for seniors housing which is permissible use with consent on the subject site. It is of a similar scale and occupies a similar footprints and building envelopes to the approved RCF development under DA2017/0206. Therefore the proposed development is found to be consistent with this component of the DFC.

(b) Low intensity, low impact uses

The terms “low intensity” and “low impact” are not defined in *WLEP 2000*. However, in the matter of *Vigor Master P/L v Warringah Council [2008] NSWLEC 1128*, the Commissioner gave weight to the evidence of the Council Planner who sought to give meaning and understanding to the terms “intensity” and “impact”. In this regard, the following characterisation was given:

“Intensity: is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore, “low intensity” would constitute a development which has a low level of activities associated with it.”

“Impact - is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore ‘low impact’ would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality”.

It is commonly accepted that the term ‘intensity’ in the context of development assessment relates to the general extent and degree of the activities associated with a proposal while the

term 'impact' relates to height, bulk and scale and the relationship of a proposal with its site and surroundings. To achieve consistency with the DFC statement in the B2 Locality under WLEP 2000, a development is also required to be of a low intensity and low impact.

An assessment of the intensity and impact of the proposed development is as follows:

Is the proposed development a "low intensity" use?

The activities associated with the proposed development are traffic and noise associated with the operation of the use and the activities of its occupants. The proposal is considered to satisfy the low intensity test. In particular, the Traffic and Parking Assessment undertaken in relation to this proposal confirms that the proposed development will have no unacceptable traffic implications in terms of road network capacity.

However, it is noted that the Traffic Report does not consider the additional number of daily delivery movements which will be required in the provision of specific external services to residents of the development (as required under Clause 40 of WLEP 2000).

Therefore, in the absence of that additional traffic assessment, the proposed development cannot conclusively be defined as a low intensity form of development.

Is the proposed development a "low impact" use?

The impact of the proposal in its current form is found to be unsatisfactory, as there are certain elements of the current design that are unsatisfactory as it relates to impact on natural landforms, vegetation and rock outcrops. Specifically, this relates to the excavation and tree loss for the proposed swimming pool and gym, which is situated between Building 4 and Buildings 6 and 7 and the significant amount of additional excavation for the 40 surplus car parking spaces to be provided onsite.

The surplus parking is based on what is being provided above the parking rate referred to in Clause 29 of WLEP 2000 (deemed to be the minimum parking requirement for seniors housing). In this regard, insufficient justification has been provided as why such a significant amount of additional spaces are required, which results in an additional impact on the landforms and vegetation of the site.

Therefore, the proposed development is not considered to be low impact for reasons that the excavation is not minimised.

- ***There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.***

The DFC indicates that there should be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The development will not disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway and is therefore consistent with this aspect of the DFC.

- ***The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services.***

The property currently accommodates significant areas of cleared bushland within the northern half of the site and a mix of bushland, landscaped lawn areas and the main buildings within the southern half of the site. This layout effectively forms an interface between the adjacent semi-rural areas to the north, east and south and the more urbanised residential areas to the west.

The proposed development will result in a significant impact upon the site including its native vegetation through the removal and or modification of greater than 0.5 ha of remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species as a result of the proposed development within site, provision of APZs within the site as well as over the adjoining public land, and emergency egress/access over the adjoining public land.

The proposal includes approximately 16,823m³ of excavation for basement car parking (which includes 40 surplus parking spaces) and storage areas as well as the provision of the gym and pool area across the upper slopes of the site resulting in permanent alteration of natural topography, removal of rock outcrops and boulders and removal of mature native trees and other vegetation.

The proposed development is therefore not consistent with the DFC statement of the locality relating to the requirement of protecting natural landscape and landform.

- ***Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.***

The proposal incorporates external finishes with natural textures and neutral colours to ensure the development is visually compatible with the natural landscape in which it is situated. A schedule of colours and finishes is included with the architectural plan set submitted with the application. The proposal is consistent with this component of the DFC.

- ***A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.***

This part of the DFC statement is not applicable as the site is not located on or near to Forest Way or Wakehurst Parkway.

- ***Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.***

As noted in the comments by the Riparian Section of Council's Natural Environment Unit, the application proposes works, which are located within the 40m buffer zone to a waterway. In this respect, the impact of the proposed development is found to be satisfactory. The proposal is consistent with this component of the DFC

Conclusions on consistency with the DFC Statement

Based upon the above considerations, the development is found to be inconsistent with the DFC statement for the B2 Oxford Falls Valley locality. It is found not to involve a low intensity and low impact on the site in terms of the form, scale and siting of the development, particularly in relation to the unacceptable impacts on the natural landforms and native vegetation through excessive excavation and placement of certain building elements.

Built Form Controls for Locality B2 Oxford Falls Valley

The following table outlines compliance with the Built Form Controls of the above locality statement:

Built Form Standard	Required	Proposed	Compliance
Housing Density	WLEP 2000 states that on land that adjoins a locality primarily used for urban purposes and which a dwelling house is permissible, there is no maximum housing density, if the development is for the purposes of housing for older people or people with a disability and the development complies with the minimum standards set out in Clause 29.	The development being housing for older people or people with a disability is consistent with the floor space ratio provisions of Clause 29 and therefore the housing density is not applicable for this development. (refer to Clause 29 table of this report)	Not Applicable
Building Height	8.5m	The development has a maximum height of 8.5m	Yes
Front Building Setback	20.0m (Barnes Road)	20.0m	Yes
Rear Building Setback	10.0m	In excess of 10.0m	Yes
Side boundary setback	10.0m	Approximately 10.0m from the proposed building	Yes
Landscaped Open Space (LOS)	30% of the site area.	Approximately 70% of the site will remain as LOS	Yes

Clause 29 - On what grounds can applications for housing for older people or people with a disability not be refused?

Clause 29 provides controls to establish on what grounds an application for housing for older people or people with disabilities cannot be refused.

The following table details whether the development meets the requirements and whether it can be refused:

Development Standard	Required	Proposed	Can application be refused?
(a) Building Height (to ceiling)	8.0m	8.0m	No
(b) Density and Scale	0.5:1 or less (site area – 33,853m ²)	0.2:1 (6,446m ²)	No
(c) Landscaped Area	Min 35m ² per dwelling. Total required = 1,435m ² (based on 41 units).	Approximately 23,379m ² of Landscape area provided	No
(d) Parking	0.5 car space for each bedroom 32 x 2 bedroom = 64 bedroom 9 x 3 bedroom = 27 Total parking space required = 45.5 (46 spaces)	82 spaces	No (36 spaces surplus)
(e) Visitor Parking	1 space per 5 dwellings = 8.2 (9 spaces)	13 spaces	No (4 spaces surplus)

(f) Deep Soil Area	(a) Site width (W) = 199.9m (b) Site length (L) = 263m (when measured from western boundary) (c) W x 15% of L Total required = 7,886.1m ²	Approximately 23,379m ² of Landscape area provided	No
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General Principles of Development Control

Clause 12(1)(a) of WLEP 2000 states that prior to granting consent, Council must be satisfied that the proposal is consistent with the relevant general principles of development control contained in Part 4 of WLEP 2000.

The following General Principles of Development Control as contained in Part 4 of WLEP 2000 are applicable to the proposed development:

General Principle	Applies	Comments	Complies
Clause 38 Glare & Reflections	Yes	A standard condition may be included in the consent, should this application be approved, to ensure that the reflectivity index of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20%. Subject to addressing the imposed conditions, the application is considered capable of satisfying the provisions of this General Principle.	Yes (subject to condition)
Clause 39 Local Retail Centres	No	The site is not located within a Local Retail Centre.	Not Applicable

Clause 40 - Housing for Older People or People with Disabilities

Comment:

The following table details compliance of the development against the access provisions of Clause 40 under the WLEP 2000:

Control	Required	Proposed	Compliance
Support Services	The site within 400m of a shopping centre or bus stop; or The development is serviced by a transport service that is located not more than 400m from the site and is available both to and from the development during daylight hours at least once per day from Monday to Friday (inclusive).	The site is not located within 400 metres of essential facilities and services and is further than 400 metres from a public transport service (bus). The proposal does not meet the specific requirements of clause 40, which should apply to the proposed development to ensure a reasonable and good level/standard of access is afforded to the future occupants of the development. Furthermore, the application is not accompanied by any justification to vary the 400m requirement and does not involve the construction of a footpath which would connect	No

Control	Required	Proposed	Compliance
		<p>the site to the bus stops and hence provide a safe and comfortable means of walking to and from the bus stop.</p> <p>The reliance upon a privately operated mini-bus as part of the development, is not a suitable substitute (as the sole means of accessing local services and facilities), for not meeting the pedestrian access requirements to a public bus stop.</p> <p>Accordingly, the issue of non-compliance with clause 40 has been included as a reason for refusal.</p>	
	Reasonable access to home delivered meals, personal care and home nursing and assistance with housework.	<p>Clause 40 requires that the consent authority must not consent to development for the purpose of housing for older people or people with disabilities on land that adjoins land in a locality used primarily for urban purposes unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have reasonable access to:</p> <ul style="list-style-type: none"> • home delivered meals, and • personal care and home nursing, and • assistance with housework. <p>The applicant has not demonstrated by satisfactory written evidence that residents of the proposed development will have reasonable access to home delivered meals, personal care and home nursing, and assistance with housework, as required by clause 40 of WLEP 2000.</p> <p>Therefore, this issue is included as reason for refusal.</p>	No
Wheelchair access	<p><u>(a) Site Gradient</u></p> <p>(i) if the whole of the site has a gradient of less than 1:10, 100% of the hostel or residential care facility beds and 100% of the dwellings must have wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining public road or an internal road or a driveway that is</p>	<p>Internally, the development has a series of interlinking walkways and pedestrian tracks between the buildings and around the site. The access driveway to the individual residences has a separate pedestrian pathway, to provide adequate sightlines to enhance visibility for motorists and pedestrians.</p>	Yes

Control	Required	Proposed	Compliance
	<p>accessible to all residents, or</p> <p>(ii) if the whole of the site does not have a gradient of less than 1:10, a percentage (which is not less than the proportion of the site that has a gradient of less than 1:10, or 50%, whichever is the greater, and which in this subparagraph is called <i>the specified minimum percentage</i>) of any hostel or residential care facility beds and the specified minimum percentage of any dwellings must have wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining public road or an internal road or a driveway that is accessible to all residents.</p>		
	<p><u>(b) Road Access</u> At least 10% of any hostel or residential care facility beds and at least 10% of any dwellings which meet the requirements of paragraph (a) must have wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining public road.</p>	The development provides for a continuous path of travel for wheelchair bound residents of the facility to the driveway and adjoining public road.	Yes
	<p><u>(c) Common Areas</u> Access must be provided so that a person using a wheelchair can use common areas and common facilities associated with the development.</p>	The Access Report notes that the development will achieve compliance with the requirement of this Clause.	Yes
	<p><u>(d) Adaptability</u> 10% of any hostel or residential care facility beds and 10% of any dwellings which meet the requirements of paragraph (a) must also have, or be capable of being modified so that they have, wheelchair access by a continuous path of travel (within the meaning of AS 1428) to all essential areas and facilities inside the hostel, residential care facility or dwellings, including a toilet, bathroom, bedroom and a living area.</p>	The Access Report notes that the development will achieve compliance with the requirement of this Clause.	Yes

Control	Required	Proposed	Compliance
Clause 42 Construction Sites	Yes	<p>The potential exists for the future demolition, excavation and construction to have an adverse impact upon surrounding locality to the west in terms of traffic, noise, dust, parking, accessibility and sediment.</p> <p>Therefore, comprehensive conditions of consent will be required to be imposed for Construction Management Plan to be submitted, should this application be approved. Issues to be addressed include stormwater and wastewater disposal, waste management, air quality, noise management and truck movement, frequency and parking.</p> <p>Subject to addressing the imposed conditions, the application is considered capable of satisfying the provisions of this General Principle.</p>	Yes (Subject to conditions)
Clause 43 Noise	Yes	The nature of the proposed use is unlikely to generate significant noise emissions associated with the occupation of the development, with the exception of air conditioning systems. A suitable condition could be imposed if the application was worthy of approval in relation to A/C systems.	Yes (subject to conditions)
Clause 44 Pollutants	No	No further assessment required	Not Applicable
Clause 47 Flood Affected Land	No	The site is not located within, or near to, any identified flood affected land.	Not Applicable
Clause 48 Potentially Contaminated Land	Yes	<p>Council records indicate that the subject site has been used for residential purposes for a significant period, with no prior conflicting land uses.</p> <p>In this regard, it is considered that the site poses no risk of contamination, the land is considered suitable for continued residential land use and therefore, no further consideration is required in this regard.</p>	Yes
Clause 49 Remediation of Contaminated Land	No	Refer to assessment under SEPP 55 and Clause 48.	Not Applicable
Clause 49a Acid Sulphate Soils	No	The site is not located within, or near to, any land categorised as containing acid sulphate soil.	Not Applicable
Clause 50 Safety & Security	Yes	The nature of the proposed use and the design of the proposed development will provide an enhanced level of passive surveillance to the adjoining roadway.	Yes
Clause 51 Front Fences and Walls	No	The plan submitted with the application does not show any front fencing.	Not Applicable
Clause 52 Development Near Parks, Bushland Reserves & other public Open Spaces	Yes	With exception to the road reserves, which abut the site, the site is a privately owned property, which is surrounded by private properties (except for Barnes Road reserve to the south). A notable exception is the proximity of the Garigal National Park, which is located approximately 1.2km to the north.	Yes

Control	Required	Proposed	Compliance
		The proposal will provide adequate separation of the site from the surrounding public open space. The proposal is therefore considered to satisfy the requirements of Clause 52.	
Clause 53 Signs	No	No signs are proposed as part of this application.	Not Applicable
Clause 54 Provision and Location of Utility Services	Yes	Appropriate conditions may be imposed, should this application be approved, to ensure that the development is connected to required utilities.	Yes (subject to conditions)
Clause 56 Retaining Unique Environmental Features on Site	Yes	<p>The distinctive environmental features of the site are assessed by Council's Landscape and Natural Environment sections, whom have advised that the application cannot be supported for the reasons provided in the referrals section of this report. In summary, it relates to impact on native trees and excessive excavation.</p> <p>Based on the above, the application is not considered to be consistent with the requirements of Clauses 56 and 58 and this issue has been included as a reason for refusal.</p>	No
Clause 57 Development on Sloping Land	Yes	<p>Clause 57 requires that the geotechnical stability of sloping land to support development is to be demonstrated.</p> <p>The site generally slopes downwards from the south-western corner to the north-eastern corner by 27m over a distance of 280m. This represents a slope of 9.6%, which is considered gradual.</p> <p>The proposed development has been stepped to respond to the topography of the land.</p>	Yes
Clause 58 Protection of Existing Flora	Yes	Refer to assessment provided under Clause 56.	No
Clause 59 Koala Habitat Protection	Yes	<p>Clause 59 defines potential Koala habitat as consisting of areas of native vegetation where the trees of the types listed in Schedule 11 constitute at least 15% of the total number of Trees in the upper or lower strata of the tree component.</p> <p>The assessment by Council's Natural Environment section has raised no objection in relation to Koalas on site.</p>	Yes
Clause 60 Watercourses & Aquatic Habitats	Yes	The application was referred to the Riparian Section of Council's Natural Environment Unit who advises (see 'Internal Referrals' in this report) that no objection is raised to the development. This was based upon the fact that the development has not been designed to maintain and enhance natural watercourses and aquatic habitat.	Yes
Clause 61 Views	Yes	Due to the topography and location of the site, it is unlikely that the proposed development will affect any significant views, which will warrant the refusal of the application.	Yes

Control	Required	Proposed	Compliance
Clause 62 Access to sunlight	Yes	The shadow diagrams submitted with the application indicates that the proposed development will achieve compliance with the requirement of this Clause.	Yes
Clause 63 Landscaped Open Space	Yes	The application was referred to the Landscape Officer who advises (see 'Internal Referrals' in this report) that the application is not supported in relation to the landscape issues of the site, particularly in relation to excessive excavation and tree removals proposed for the proposed development.	No
Clause 63A Rear Building Setback	Yes	The proposed development is found to be consistent with the requirement of this Clause.	Yes
Clause 64 Private open space	No	In accordance with Clause 62 Private open space of WLEP 2000, private open space is not to be located within the street setback area unless the site is a corner allotment or the applicable Locality Statement provides otherwise. The private open space provided for each apartments is satisfactory in addressing the requirements of this Clause.	Not Applicable
Clause 65 Privacy	Yes	The development is located a sufficient distance from other residential properties such that it will not result in any unreasonable direct overlooking into habitable rooms and principal private open spaces. No additional architectural privacy treatments are considered required.	Yes
Clause 66 Building bulk	Yes	Clause 66 requires buildings to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land. The proposed development complies with the building height and floor space ratio controls which apply to development for seniors or people with a disability. Council's Urban Designer has reviewed the proposed development and has raised no objection to the design of the development in relation to building bulk.	Yes
Clause 67 Roofs	Yes	The proposed roof form is considered satisfactory and is integral to the style of the buildings.	Yes
Clause 68 Conservation of Energy and Water	Yes	BASIX Certificates have been submitted with the application. The development achieves the target for water, thermal comfort and energy use. Conditions should be included in the consent if the application is approved to ensure the commitments identified on the BASIX certificate are implemented.	Yes (subject to condition)
Clause 69 Accessibility – Public and Semi-Public Buildings	Yes	The proposed development is required to comply with all the relevant accessibility provisions of Clause 40	Not Applicable
Clause 70 Site Facilities	Yes	The development provides for all required site facilities, which may be situated such that they	Yes

Control	Required	Proposed	Compliance
		are convenient to the needs of users and have minimal visual impact from public places. The DA does not include any details with regards to waste management. However, this could be appropriately addressed through the imposition of an appropriate condition should this DA be approved.	(subject to condition)
Clause 71 Parking Facilities (visual impact)	Yes	The proposed open and basement car parking area does not dominate or detract from the streetscape given its relative concealment by the proposed landscaped works along the western side boundary and along the eastern edge of the internal driveway.	Yes
Clause 72 Traffic Access & Safety	Yes	The site is accessed via a variable width driveway (between 4.0m and 5.5m in width) which connects via a single crossover to the sealed section of Barnes Road at the south-western edge of the site. The Traffic study submitted with the application does not include any details in relation to the service deliveries that will be required as part of satisfying Clause 40 for this type of development. Therefore, the impact on traffic cannot be accurately determined based on the information submitted.	No (Insufficient Information)
Clause 73 On-site Loading and Unloading	Yes	All loading and unloading will occur within the boundaries of the subject site and therefore considered to be satisfactory in relation to this Clause.	Yes
Clause 74 Provision of Car Parking	Yes	The development includes a provision for the on-site parking which exceeds the requirements of Clause 29 under WLEP 2000.	Yes
Clause 75 Design of Car Parking Areas	Yes	The car parking layout and internal access arrangements are capable comply with the relevant design requirements in 'AS/NZS 2890.1:2004' and 'AS/NZS 2890.6:2009'.	Yes
Clause 76 Management of Stormwater	Yes	Council's Development Engineer has reviewed the proposal and raised no objection to the proposed development subject to conditions of consent. Should the application be approved, the conditions as recommended by Council's Development Engineers can be included in the consent.	Yes (subject to conditions)
Clause 78 Erosion & Sedimentation	Yes	Appropriate conditions associated with management of erosion and sedimentation can be included on the consent should this Development Application be approved.	Yes (Subject to Condition)
Clause 79 Heritage Control	No	No further assessment required.	Not Applicable
Clause 80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	Yes	The Aboriginal Heritage office has assessed the proposed development and has advised that a preliminary inspection ('due diligence' under the <i>National Parks and Wildlife Act 1974</i>) by a qualified Aboriginal heritage professional is required. The assessment would provide information on what potential Aboriginal heritage issues exist on the land and	No (Insufficient Information)

Control	Required	Proposed	Compliance
		recommendations for any further action if required. Accordingly, there is insufficient information submitted with the application to demonstrate compliance with the requirement of this Clause.	
Clause 82 Development in the Vicinity of Heritage Items	No	No further assessment required.	Not Applicable
Clause 83 Development of Known or Potential Archaeological Sites	No	No further assessment required.	No

Other relevant WLEP 2000 Clauses

Clause 13 - 'To what extent should neighbouring Locality Statements be considered?'

Clause 13 requires that, before granting consent for development within a locality, the consent authority must consider the provisions of a Locality Statement applying to a neighbouring locality, if the extent to which they should be considered is specifically described in the Locality Statement for the locality in which the development is proposed.

The DFC statement of the B2 Oxford Falls Valley locality does not specifically describe the extent to which a neighbouring Locality Statement should be considered. Therefore, no further assessment against the provisions of Clause 13 is required.

SCHEDULES

Schedule 5 - State Policies

In accordance with Clause 12(1) (b) of *WLEP 2000*, before granting consent for development, the consent authority must be satisfied that the development is consistent with any relevant SEPP described in Schedule 5. Schedule 5 outlines the *SEPP (HSPD) 2004*. The proposal has been assessed in detail against the provisions of *SEPP (HSPD) 2004* elsewhere in this report. The proposal has not been found to be consistent with the Aims of *SEPP (HSPD) 2004* and therefore the application has been recommended for refusal.

Schedule 8 - Site analysis

Clause 22(2) (a) of *WLEP 2000* requires that the consent authority must consider a Site Analysis prepared in accordance with the criteria listed in Schedule 8.

It is considered that the submitted Site Analysis, in conjunction with the Statement of Environmental Effects adequately addresses how the development responds to its surrounds and the locality.

Schedule 16 - Principles and Standards for Housing for Older People or People with Disabilities

Schedule 16 prescribes various standards concerning accessibility and useability having regard to relevant Australian Standards specifically designed for housing for seniors and people with disability. The applicant has submitted a report prepared by an accredited access

consultant verifying that the proposal will comply with the relevant standards. These standards may be reinforced via suitable conditions of consent, if the application was worthy of approval.

Schedule 17 – Car parking Provision

The provision of car parking is addressed under Clause 29 of the *WLEP 2000*. The development, as proposed, complies with the car parking requirement under Clause 29 and Schedule 17 of the *WLEP 2000*, providing 40 spaces in excess of what is deemed to be the minimum requirement.

POLICY CONTROLS

Northern Beaches Council Contributions Plan 2018

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

A monetary contribution of \$228,701 is required, if the application is approved, for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$22,870,089.

CONCLUSION

The application has been assessed in accordance with the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP 55, SEPP (HSPD) 2004, SEPP Infrastructure, WLEP 2011 and the relevant codes and policies of Council, including the relevant provisions of the WDCP 2011.

Council has consistently raised concerns in relation to the suitability and appropriateness of the site for higher density residential development such as seniors housing, given its isolation from local services and facilities and the lack of pedestrian connectivity of the site with local public transport services.

The distance of the subject site from key services and facilities that residents will need to access on a daily basis, is highlighted by the applicants reliance upon a privately operated shuttle bus that will provide a restricted level of access and exacerbate the sense of isolation that residents will feel, especially when ageing in place and circumstances change from being more mobile to less mobile. In fact, some residents will be less mobile (do not drive) from initial occupation of the development and will need to depend on the infrequent mini-bus timetable as they will not have the choice of walking to the local bus stop via a safe and comfortable pedestrian footpath.

The assessment of this application has found that the application is not consistent with DFC statement for the B2 Oxford Falls Valley Locality and the application is deficient in addressing the environmental impacts associated within the subject site, as described in the relevant expert assessment comments.

The notification of the development resulted in 43 individual submissions, which were all in opposition to the proposal. The majority of the submissions raised concerns with regards to:

- Increased traffic congestion in the area,
- Impact on the surrounding road network, including on street parking,
- The impact on the character and amenity of the locality in general,
- Limited access for the future residents of the development;

- Environmental Impacts,
- Bushfire risk, and
- Suitability of the site for a senior's housing development.

The issues raised in the submissions are generally concurred with and justify the recommendation for refusal of the application. They are addressed in the "Public Notification Section" of this report.

As a direct result of the consideration of the matters detailed within this report, it is recommended that the Northern Beaches Local Planning Panel, as the consent authority, refuse this application for the reasons detailed within the "Recommendation" section of this report.

RECOMMENDATION (REFUSAL)

That the Northern Beaches Local Planning Panel, as the consent authority, pursuant to Clause 4.16 (1) (a) of the EP&A Act 1979 (as amended), REFUSE Development Consent to Development Application No DA2019/0409 for demolition works and construction of a seniors housing development comprising 41 serviced self-care units, swimming pool and gym, with associated basement carparking, internal roads and site landscaping at Por 1113/752038, Oxford Falls Road, Frenchs Forest subject to the reasons outlined as follows:

1. The proposed development is unsatisfactory in respect to Section 4.15 of the EPA Act, as the application is found to be inconsistent with the provisions of Aims of SEPP (HSPD) 2004 in relation to the isolation of the site.
2. Pursuant to Section 4.15 (1) (a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(3) (b) of Warringah Local Environment Plan 2000 (as amended), the proposed development is inconsistent with the Desired Future Character statement for the B2 Oxford Falls Valley Locality.
3. Pursuant to Section 4.15 (1) (a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(3) (b) of Warringah Local Environment Plan 2000 (as amended), the proposed development is inconsistent with the requirement of Clause 40 for the following reasons:
 - The proposal fails to comply with the requirement of clause 40 in that site is not located within 400 metres of essential facilities and services and is substantially further than 400 metres from the public transport service (bus).
 - The site is not considered suitable for the development given its location for housing for seniors or people with a disability, given the excessive distance and steep grades to the closest public transport services.
 - Insufficient details have been provided to demonstrate that residents of the serviced self-care housing component of the proposed development will have reasonable access to home delivered meals, personal care and home nursing, and assistance with housework.
4. Pursuant to Section 4.15(1)(a) of the Environmental Planning and Assessment Act, 1979 and Clause 12(1)(a) of Warringah Local Environment Plan 2000, the development is inconsistent with the following General Principles of Development Control as follows:

- Clause 56 Retaining Unique Environmental Features
- Clause 58 Protection of Existing Flora
- Clause 72 – Traffic Access & Safety
- Clause 63 – Landscape Open Space
- Clause 80 - Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service


[illegible]



Note:
The landscape shown on the drawing is indicative only.
For landscape design please refer to landscape architect
drawings and documentation.

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Note:
The landscape shown on the drawing is indicative only.
For landscape design please refer to landscape architect drawings and documentation.

<p>IMPORTANT NOTES: This set of drawings is for the purpose of providing a visual representation of the proposed development. It is not to be used for any other purpose without the written consent of the architect. All dimensions are in millimetres unless otherwise stated. The architect is not responsible for any errors or omissions in the drawings or for any consequences arising from the use of the drawings for any purpose other than that for which they were prepared. The drawings are the property of the architect and shall remain the property of the architect. No part of the drawings may be reproduced without the written consent of the architect.</p> <p>FOR APPROVAL NOT FOR CONSTRUCTION</p>	<p>REVISIONS:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td>1</td> <td>20/03/2019</td> <td>ISSUED FOR APPROVAL</td> </tr> <tr> <td>2</td> <td>20/03/2019</td> <td>FOR APPROVAL</td> </tr> </table>	NO.	DATE	DESCRIPTION	1	20/03/2019	ISSUED FOR APPROVAL	2	20/03/2019	FOR APPROVAL	<p>CLIENT: DuKor 24 Pty Ltd Frenchs Forest Barnes Road</p> <p>PROJECT: Oxford Falls - Self Contained Dwellings</p>	<p>DRAWING TITLE: NORTH EAST ELEVATION</p> <p>SCALE: 1:500 @ A3</p> <p>DATE: 20/03/2019</p> <p>JOB: 18161</p> <p>DESIGNER: DA3.03</p> <p>CHECKED: PE</p> <p>REVISION: L</p>
NO.	DATE	DESCRIPTION										
1	20/03/2019	ISSUED FOR APPROVAL										
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