

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 2 OCTOBER 2019

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



Peter Robinson
Executive Manager Development Assessment

Panel Members

Paul Vergotis	Chair
Marcus Sainsbury	Environmental Expert
Brian Kirk	Town Planner
Peter Cotton	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 2 October 2019
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1.00pm**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 18 September 2019	
3.0	DEVELOPMENT APPLICATIONS	5
3.1	DA2019/0263 - 53 & 53B Warriewood Road, Warriewood - 17 Lot Community title subdivision and associated infrastructure, including the extension of Lorikeet Grove	5
3.2	DA2018/2027 - 15 Addison Road, Manly - Alterations and additions to an existing dwelling house	63
4.0	REVIEW OF DETERMINATIONS.....	138
4.1	REV2019/0026 - 57 Smith Street, Manly - Review of Determination of Modification Application MOD2018/0703 in relation to alterations and additions to a semi-detached dwelling (DA0251/2017).....	138
4.2	REV2019/0032 - 16 Fairlight Crescent, Fairlight - Review of Determination of Application DA2018/1634 for construction of a dwelling house including a swimming pool.....	161

2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 18 SEPTEMBER 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 18 September 2019 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1 **DA2019/0263 - 53 & 53B WARRIEWOOD ROAD,
WARRIEWOOD - 17 LOT COMMUNITY TITLE SUBDIVISION
AND ASSOCIATED INFRASTRUCTURE, INCLUDING THE
EXTENSION OF LORIKEET GROVE**

AUTHORISING MANAGER **MATTHEW EDMONDS**

TRIM FILE REF **2019/548786**

ATTACHMENTS **1 [↓](#) Assessment Report**
 2 [↓](#) Subdivision Plans

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the land owner is the council.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0263 for 17 Lot Community title subdivision and associated infrastructure, including the extension of Lorikeet Grove at Lot 3 DP 942319 & Lot 3 DP 1115877, 53 & 53B Warriewood Road, and Lot 1 DP 270946, Pheasant Place, Warriewood subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0263
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 3 DP 1115877, 53 B Warriewood Road WARRIEWOOD NSW 2102 Lot 1 DP 270946, Pheasant Place WARRIEWOOD NSW 2102 Lot 3 DP 942319, 53 Warriewood Road WARRIEWOOD NSW 2102
Proposed Development:	17 Lot Community title subdivision and associated infrastructure, including the extension of Lorikeet Grove
Zoning:	R3 Medium Density Residential R3 Medium Density Residential R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Northern Beaches Council
Applicant:	Legendway Pty Ltd
Application Lodged:	19/03/2019
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	30/03/2019 to 29/04/2019
Advertised:	30/03/2019
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,124,702.15

EXECUTIVE SUMMARY

The application seeks consent for the subdivision of land within the Warriewood Valley Release Area. Part of the site (53 Warriewood Road) is owned by Northern Beaches Council, and as such, the application is referred to the Northern Beaches Local Planning Panel for determination with a recommendation of approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the Community Title subdivision of the site, including:

- 15 residential lots for future dwelling houses,
- 1 Community lot comprising the extension/widening of Pheasant Place and stormwater management infrastructure,
- The construction and dedication of Lorikeet Grove,
- The dedication of the 25m inner creekline corridor, and
- Half road reconstruction of Warriewood Road.

To facilitate the extension/widening of Pheasant Place, minor works are also proposed to be undertaken within the existing roadway of Pheasant Place (Lot 1 of DP 270946). The application also seeks consent for the intensification of the use of the right of carriageway over the existing roadway of Pheasant Place.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - C1.12 Waste and Recycling Facilities
Pittwater 21 Development Control Plan - C6.4 The Road System and Pedestrian and Cyclist Network
Pittwater 21 Development Control Plan - C6.7 Landscape Area (Sector, Buffer Area or Development Site)
Pittwater 21 Development Control Plan - C6.8 Residential Development Subdivision Principles

SITE DESCRIPTION

Property Description:	Lot 3 DP 1115877 , 53 B Warriewood Road WARRIEWOOD NSW 2102
-----------------------	--

	<p>Lot 1 DP 270946 , Pheasant Place WARRIEWOOD NSW 2102</p> <p>Lot 3 DP 942319 , 53 Warriewood Road WARRIEWOOD NSW 2102</p>
Detailed Site Description:	<p>The subject site encompasses two separate allotments; 53 Warriewood Road (Lot 3 DP 942319) and 53B Warriewood Road (Lot 3 DP 1115877). 53 Warriewood Road is a narrow strip of Council owned land containing stormwater infrastructure connecting Warriewood Road to Narrabeen Creek. 53B Warriewood Road is privately owned and contains a single dwelling house, multiple outbuildings and a swimming pool. With the two lots combined, the site will have a 34.68m wide frontage to Warriewood Road, a maximum depth of 247.9m, a 38.125m wide frontage to Narrabeen Creek at the rear, and a total area of 7,233m².</p> <p>The site experiences a fall of approximately 10.5m from the upper front boundary (north-east) down towards Narrabeen Creek (south-west), with a slope of approximately 4%. The site contains a number of significant canopy trees, however has largely been cleared of remnant creekline vegetation. The site is flood affected and bushfire prone, and is located within Buffer Area 1C and 1D of the Warriewood Valley Release Area.</p> <p>The application also proposes minor works within the existing roadway of Pheasant Place (Lot 1 DP 270946). Pheasant Place is a private road, owned by the Community Association of the adjacent dwellings to the south.</p> <p>The Warriewood Road public road reserve lacks any formalised kerb, guttering or footpaths, and is free of any street trees. The majority of the frontage is free of overhead powerlines, with a small portion of a single span adjacent to the northern corner of the site.</p> <p>The site is located within the Warriewood Valley Land Release Area Locality, that is transitioning from semi-rural landholdings and farming lots to medium density development. Warriewood Road acts as the boundary to the Warriewood Valley Release Area and the Warriewood Valley Release Area Locality, and development along the higher side of Warriewood Road is characterised by low density residential development. With the exception of land immediately to the north (53A Warriewood Road) and three sites to the south-west (43-49 Warriewood Road), the majority of land along the low side of Warriewood Road has now been developed for medium density development.</p>

Map:



SITE HISTORY

Site History

On 2 October 2014, Development Application N0350/14 was lodged with Council, seeking consent for the staged subdivision of land at 53, 53A and 53B Warriewood Road, Warriewood.

On 23 December 2014, Development Application N0477/14 was lodged with Council, seeking consent for the construction of 19 dwellings on a yet to be created lot, resulting from the subdivision proposed in Development Application N0350/14.

On 9 March 2016, Development Application N0350/14 was approved by the NSW Land and Environment Court in *Merrin Developments Pty Ltd v Northern Beaches Council [2016] NSWLEC 1080*.

On 1 September 2016, Development Application N0389/16 was lodged with Council, seeking consent for the construction of a residential flat building on a yet to be created lot, resulting from the subdivision approved pursuant to N0350/14.

On 18 November 2016, Development Application N0477/14 was approved by the NSW Land and Environment Court subject to deferred commencement conditions in *Merrin Developments Pty Ltd v Northern Beaches Council [2016] NSWLEC 1545*. This consent has since lapsed.

On 17 January 2017, 10 x separate Development Applications (N0023/17-N0032/17) were lodged with Council, seeking consent for dwelling houses on yet to be created lots, resulting from the subdivision approved pursuant to N0350/14.

On 22 February 2017, Development Application N0389/16 was approved by the NSW Land and Environment Court subject to deferred commencement conditions in *Merrin Developments Pty Ltd v Northern Beaches Council [2016] NSWLEC 1075*. However, the deferred commencement consent did not specify a period within which the matters must be satisfied. The deferred commencement conditions have not been satisfied at this time.

On 27 April 2017, Development Applications N0023/17-N0032/17 were approved by Council subject to deferred commencement conditions. These consents have since lapsed.

Application History

On 18 September 2018, a prelodgement meeting was held between Council and the applicant with regard to the subject proposal.

On 19 March 2019, the subject application was lodged with Council.

On 12 June 2019, correspondence was sent to the applicant identifying concerns with relation to:

- The size and configuration of the inner creekline corridor to be dedicated to Council,
- Flooding,
- Vegetation management within the creekline corridor,
- Water Management,
- Road layout and design,
- Waste management,
- Subdivision layout, and
- Owners consent (in relation to 53 Warriewood Road and Pheasant Place (Lot 1 DP 270946)).

On 26 June 2019, additional information was submitted to Council in response to the concerns raised.

On 29 August 2019, Council made a further formal request for owners consent in relation to the necessary works on Pheasant Place.

On 9 September 2019, owners consent was provided in relation to the works to Pheasant Place and the application was formally amended to include the works on this adjoining site.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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 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
	Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land and the proposed subdivision is integrated development, requiring General Terms of Approval and a bush fire safety authority from the NSW RFS under the provisions of s.100B of the *Rural Fires Act 1997*.

The application was referred to the NSW RFS who have issued a bush fire safety authority and General Terms of Approval, which are to be incorporated into any consent issued in relation to the proposal.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mr Sean Michael Joyce	10 Ibis Place WARRIEWOOD NSW 2102

One submission was received in response to the notification and advertisement of the application. The concern raised in the submission is considered as follows:

- Traffic**

Concern was raised regarding traffic along Lorikeet Grove. Lorikeet Grove has been designed in accordance with the Warriewood Roads Master Plan in anticipation of the density anticipated throughout the release area. The submission raises specific concern regarding kids that ride bikes along Lorikeet Grove, however in conjunction with the Lorikeet Grove extension, shared pathways are also being constructed along the creekline, to provide a safe riding zone off the roadway.

The proposed road extension was referred to Council's Traffic Engineer who raised no concerns in this regard, highlighting compliance with the Roads Masterplan.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	<p>Approval, with conditions.</p> <p><i>History of site use of market gardens and geography triggered a contamination report including Acid Sulphate Soils assessment. Phase 1 and 2 assessments revealed a need for further assessment prior to demolition/construction/earthworks to identify the extent of contamination of various hazards including "elevated cadmium and PAH concentrations and detection of friable asbestos and bonded asbestos containing material".</i></p> <p><i>Environmental Health recommends approval once the site has been remediated of hazardous contaminants. No issues in regards to Acid Sulfate Soils. Furthermore, noise conditions can be added to this referral to cover construction and demolition works.</i></p>
Landscape Officer	<p>Approval, with conditions.</p> <p><i>The subdivision proposal, including demolition, drainage, earthworks, creek rehabilitation works, and a new road, in terms of landscape outcome, is acceptable subject to the completion of landscaping.</i></p> <p><i>Council's Landscape section has assessed the proposal against the following Masterplans and Pittwater 21 DCP Controls:</i></p> <p><i>Warriewood Valley Landscape Masterplan and Design Guidelines (Public Domain), August 2018</i></p> <p><i>Warriewood Valley Roads Masterplan, August 2018</i></p>

Internal Referral Body	Comments
	<p><i>B4.22 Preservation of Trees and Bushland Vegetation</i> <i>C6.1 Integrated Water Cycle Management</i> <i>C6.2 Natural Environment and Landscaping Principles</i> <i>C6.4 The Road System and Pedestrian and Cyclist Network</i></p> <p><i>Landscape Plans are provided generally satisfying C6.1 and C6.2, subject to conditions. Coordinated Landscape Plans and Civil Plans satisfy C6.4.</i></p> <p><i>An updated Arboricultural Impact Assessment, prepared by About Trees, dated 25/06/19, recommends existing trees previously proposed for retention be removed due to the accumulative impacts of the proposed excavations for batters within the south-western side of the Tree Protection Zones and Structural Root Zone of tree No's 39, 40, 41 & 43, combined with an excavation for a 1.1m wide trench for the Stormwater Pipe along their south-eastern sides will significantly compromise their health and stability. The Arboricultural Impact Assessment recommendation is accepted as no realistic alternative option is available to retain the existing trees.</i></p> <p><i>Landscape Plans have been updated for development application, satisfying DA Lodgement Requirements.</i></p>
NECC (Bushland and Biodiversity)	<p>Approval, with conditions.</p> <p><i>The re-shaping of the riparian embankment and stormwater disposal works will now require removal of trees within the southern corner of the site. The trees are characteristic of species that are components of the endangered ecological community Swamp Sclerophyll Forest on Coastal Floodplains. The Eucalyptus robusta trees are located within the riparian zone, and have been assessed as having "poor condition with no realistic potential to improve" (About Trees Draft Arboricultural Impact Assessment @ 53B Warriewood Road Warriewood 25/06/19). The report states that the impact to the trees cannot be avoided.</i></p> <p><i>It is considered that the development, including the removal of the three trees, is unlikely to significantly affect threatened species as:-</i> <i>(a) the local occurrence is unlikely to be placed at risk of extinction, the area to be cleared is small, will not increase fragmentation and will not reduce the long-term survival of the community</i> <i>(b) the development does not exceed the biodiversity offsets scheme threshold, and</i> <i>(c) it is not carried out in a declared area of outstanding biodiversity value.</i></p> <p><i>Therefore an Biodiversity Development Assessment Report is not required.</i></p> <p><i>The applicant has submitted a Vegetation Management Plan to address the rehabilitation of the 25 metre wide riparian corridor. Additional mitigation measures have been suggested to be</i></p>

Internal Referral Body	Comments
	<p>incorporated into the VMP via an amending condition, with the required changes will be submitted prior to CC.</p> <p>The Landscape Plan is also to be amended to remove landscape works from the area covered by the VMP, and replace the proposed exotic grass area with native revegetation.</p>
NECC (Coast and Catchments)	<p>Approval, no conditions.</p> <p>SEPP (Coastal Management) 2019 to be assessed through biodiversity referral and catchment management referral. No significant impact on the coastal environment.</p>
NECC (Development Engineering)	<p>Approval, with conditions (deferred commencement).</p> <p>No objections subject to engineering conditions. The dogleg in the proposed upgraded Stormwater line is to be removed and the line from Warriewood Road to Creek outlet is to be adjacent to the eastern side boundary. This requirement and previous other drainage requirements have been included in a deferred commencement condition .</p> <p><u>Stormwater drainage comments reconstruction of Councils drainage line.</u></p> <ol style="list-style-type: none"> 1. The Lintel width of Pit 2-1 is to be increased in size to 3m . 2. The dogleg in the Council drainage line is to be removed between Pits 2-7 and Pit 2-9 and pipe realigned so the line and any future easement over the line is parallel to the side boundary. 3. An overland flow is to be provided above the Council stormwater line from Lorikeet Grove to the head wall in Narrabeen creek. This is to cater for any pit or pipe blockages. 4. The proposed butterfly pit in the existing Lorikeet Grove road pavement is to be removed and replaced with an offset inlet pit,. This pit is to be installed 1 m clear of the proposed Pheasant Place vehicle access. <p><u>General comments.</u></p> <ol style="list-style-type: none"> 1. The access driveway to the GPT is to be widened to allow a service vehicle to park adjacent to the GPT. 2. The proposed vehicle crossing to Lot 17 is to be removed and access to be via driveway No1. <p><u>Comments proposed road design - Pheasant Place</u> The latest version of the WVRMP requires an access road to be 7.5m wide which allows parking on both sides of the road, a 1.5m wide footpath, and a road reserve width of 12.5m. The road reserve width as detailed on the engineering plans is 11.2m.</p>

Internal Referral Body	Comments
	<p><u>Waste Vehicle Access</u> <i>The turning area in Pheasant Place must be designed to cater for safe movements by a waste collection vehicle minimum 9.7m in length, to accommodate the existing vehicle type for all turning movements. Turning path No 01 details the Pheasant Place kerb to kerb width of 7.2m which is not consistent with the Cross section B of the engineering plans . Parking restrictions are to be detailed on the plans within the affected Garbage Truck turn path area.</i></p> <p><u>Planner comment:</u> Development Engineering's preference for a deferred commencement is acknowledged. However, it is considered that the minor design amendments can be reasonably resolved in the detailed engineering plans required prior to the issuance of a construction certificate, as the intended outcome is sufficiently clear.</p>
NECC (Riparian Lands and Creeks)	<p>Approval, with conditions.</p> <p><i>This referral relates to Narrabeen Creek and the 25m creekline corridor to be dedicated to Council ONLY. The application has been assessed under: Pittwater LEP 2014 6.1 Warriewood Valley Release Area (Protection and rehabilitation of creekline corridors and riparian areas, including water quality and flows, and bank stability) Pittwater 21 DCP C6.1 Integrated Water Cycle Management (Use and rehabilitation of creekline corridors and riparian land) Pittwater 21 DCP C6.2 Natural Environment and Landscaping Principles (Integration and landscaping of the creekline corridor) Warriewood Valley Water Management Specification (2001) (Detailed guidance on the restoration of creekline corridors in Warriewood) SEPP (Coastal Management) 2018 - Coastal Wetlands Proximity Area (Protecting the hydrological integrity of the adjacent coastal wetland and no impact to quantity and quality of surface AND groundwater flows)</i></p> <p><i>General terms of approval and a controlled activity permit are required from the Natural Resources Access Regulator prior to any works in Narrabeen Creek and the creekline corridor.</i></p> <ul style="list-style-type: none"> <i>The sediment and erosion control plan has been satisfactorily amended.</i> <i>The silt curtain must be installed downstream of the boundary prior to any work on Warriewood Road, the drainage line or the creekline corridor and maintained until groundcover in these areas has been re-established (as the road drains directly to the creek). Note that the site will be monitored to ensure that sediment and erosion controls have been maintained and are not at risk of being overwhelmed. This has been conditioned.</i> <i>The revisions to the engineering plans in regard to the dissipation of flows from stormwater outlets to the creek are</i>

Internal Referral Body	Comments
	<p><i>satisfactory.</i></p> <p><i>Please refer to the referral and conditions from Biodiversity for additional conditions relating to vegetation in the creekline corridor and implementation of the Vegetation Management Plan.</i></p> <p><i>Other: It is noted that the conditions used for pre and post Manning's roughness on the creekline corridor are not clear. The creekline corridor is currently a grassed area with a small number of canopy trees and post-development will be heavily vegetated, which could have implications for flood storage, however potentially not significant given the narrow frontage of the property to the creek.</i></p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Approval, with conditions.</p> <p><i>The proposed DA generally complies with the flood controls in the LEP and DCP.</i></p> <p><i>The amended Civil Engineering Plans (Ref 076-18 Rev B) now show that all future residential lots (inc Lots 13, 14 & 15) will be set at least 0.5m above the 100 year ARI plus climate change flood level.</i></p> <p><i>The proposed DA has no adverse flood impacts on surrounding properties.</i></p> <p><i>The flood risk assessment shows no net decrease in floodplain volume.</i></p>
NECC (Water Management)	<p>Approval, with conditions.</p> <p><i>This referral relates to water quality management on the site. Conditions related to the creekline corridor and Narrabeen Creek are in a separate referral. The application has been assessed under:</i></p> <p><i>Pittwater LEP 2014 6.1 Warriewood Valley Release Area (Impacts to water quality of creeks)</i></p> <p><i>Pittwater 21 DCP C6.1 Integrated Water Cycle Management (Water Management Report, surface and groundwater quality management and monitoring)</i></p> <p><i>Pittwater 21 DCP C6.2 Natural Environment and Landscaping Principles (Location of water quality treatment measures)</i></p> <p><i>Warriewood Valley Water Management Specification (2001) (Detailed guidance on water quality monitoring and management)</i></p> <p><i>SEPP (Coastal Management) 2018 - Coastal Wetlands Proximity Area (Protecting the hydrological integrity of the adjacent coastal wetland and no impact to quantity and quality of surface AND groundwater flows)</i></p> <p><i>The applicant has satisfactorily addressed all relevant matters. There are no concerns. Conditions are provided.</i></p>

Internal Referral Body	Comments
Strategic and Place Planning (S94 Warriewood Valley)	<p>Approval, with conditions.</p> <p><i>The application proposes the consolidation of 53 and 53B Warriewood Rd and a Community Title subdivision to create 17 allotments comprising;</i></p> <ul style="list-style-type: none"> <i>15 residential allotments (Lots 2-15 and Lot 17),</i> <i>one allotment containing the inner creek line corridor (Lot 16) to be dedicated to Council, and</i> <i>one allotment split into several parts containing common infrastructure including the water management basin and the new private road (Lot 1).</i> <p><i>The application also creates a section of Lorikeet Grove, assumed to be dedicated to Council.</i></p> <p><i>The Warriewood Valley Contributions Plan Amendment 16 Revision 3 (the Contributions Plan) levies contributions for the provision of public infrastructure identified in the Plan. This includes dedication and rehabilitation/reconstruction of the inner 25m creek corridor. The application proposes the dedication of the inner 25m creek corridor, being 942sqm, identified as Lot 16 on the amended Plan of Subdivision titled 03 BEP, Reference 076-18, prepared by Craig & Rhodes. An offset to the total monetary contribution of \$57,351.89 has been calculated for Buffer 1c in accordance with the Contributions Plan.</i></p> <p><i>The submitted Statement of Environmental Effects advises that the development will also include the rehabilitation of the inner creek corridor which comprises landscaping and new top soil. Council's Acting Manager of Stormwater & Floodplain Engineering has advised that the proposed rehabilitation work will not accommodate the 1% AEP as is required by the Contributions Plan. No offset in contributions will be provided for works proposed in the inner creek corridor.</i></p> <p><i>The Applicant also proposes to construct a section of cycleway on part Lot 1 and Lot 16. This section of cycleway comprises part of the sharepath identified in the Contributions Plan as Item 2 in the Cycle Network Strategy. Subject to advice from Council's Natural Environment Team confirming no adverse environmental impacts and comments from Council's landscape architect confirming connectivity, the section of share path is to be relocated to be generally within the Lot 16, to be dedicated to Council. It is acknowledged that the transitions of the sharepath to the adjacent sites may remain partially within part Lot 1. The relocation of the section of the cycleway can be addressed with a condition of consent.</i></p> <p><i>The Contributions Plan identifies that this section of path on this site is 33m in length. The Contributions Plan has costed the delivery of this section of infrastructure at \$14,062. It is recommended that the Applicant propose to enter into a Works in Kind Agreement with</i></p>

Internal Referral Body	Comments
	<p><i>Council to deliver this section of the cycleway for a reduction in the cash contribution payable of up to \$14,064. Any works in kind agreement needs to be agreed and signed by Council prior to the payment of the monetary contribution.</i></p> <p><i>The contributions plan levies development that will create an additional demand for local infrastructure. There is an existing dwelling on the property which will be credited in the contribution calculation. A contribution will be levied for 14 additional dwellings and will be adjusted by the credit for the dedication of the inner 25m creek corridor land.</i></p>
Traffic Engineer	<p>Approval, with conditions.</p> <p><i>There are some outstanding areas of concern, however these can be addressed with conditions of consent:</i></p> <p><u>Warriewood Road</u></p> <ul style="list-style-type: none"> <i>Plans need to show a cross-section where the centreline of the road is located 5.1m from the existing kerb on the northern side. This is to ensure the correct location of the southern kerbline as the northern side of the road is different width to the southern side.</i> <i>A 3.7m traffic lane, and 2.1m indented parking bay has been provided but as the traffic lane is reduced from the required 4.2m for a sub-arterial road to 3.7m, the shared path needs to be increased to 2.5m and located directly adjacent to kerb and fully within the Public Road Reserve as required in the WVRMP.</i> <i>The proposed shared driveways do not maximise on-street parking within the indented parking bay and only provides 2 parallel parking spaces. The location of the driveway to Lot 17 can be retained and should allow 1 parking space to the east. The section between the driveway of Lot 17 and the shared driveway to Lot 2 and 3 will only allow 1 parking space. If the previous proposed location of the driveway to Lot 2 was retained and a shared driveway provided for Lot 3 and 17, and additional parking space can be provided. The transition for the kerb indent would need to be adjusted and shifted in front of the adjacent development to the west.</i> <p><u>Pheasant Place</u></p> <ul style="list-style-type: none"> <i>The WVRMP requires an access road to be 7.5m wide which allows parking on both sides of the road, a 1.5m wide footpath, and a road reserve width of 12.5m.</i> <i>The revised typical road cross-section plan (Drawing Ref. 076-18C-DA-0151 Rev B), shows an increase in the road reserve width from the previous proposal of 10m to 11.2m. Although the change will now enable the provision of a 1.5m wide</i>

Internal Referral Body	Comments
	<p><i>footpath, the revised road reserve width is still less than the 12.5m required under the WVRMP. The road cross-sections plan for Pheasant Place (Drawing Ref. 076-18C-DA-0302 Rev B), does not show the revised road reserve width and needs to be updated for each chainage cross section</i></p> <ul style="list-style-type: none"> <i>Shared driveways to maximise on-street parking, and should be considered for Lot 10 and 11.</i> <p><u>Waste Vehicle Access</u></p> <ul style="list-style-type: none"> <i>The swept paths provided demonstrates that a waste vehicle is able to turn around in Pheasant Place, however some on-street parking will need to be removed and parking restrictions provided on the approach to the turning area at least for garbage collection days.</i>
Waste Officer	<p>Refusal.</p> <p><i>The proposal is unacceptable and will not be supported by Waste Management.</i></p> <p><i>The proposal for the placement of a row/block of bins on Lorikeet Grove for collection is a type of collection arrangement that Waste Management is actively discouraging and will not approve.</i></p> <p><u>Waste Collection Options for Pheasant Place</u></p> <p><i>Waste Managements preferred option (1) is for the waste collection trucks to service the bins from the kerbside in front of each house in Pheasant Place.</i></p> <p><i>This will require the relevant legal requirements to be put in place (see below) and the road way constructed in accordance with Council Waste DCP requirements.</i></p> <p><i>Legal Access Issues - same as previous with additional comments in italics</i></p> <ul style="list-style-type: none"> <i>Positive covenant for waste collection required on Lot 1 of the proposed development (DA2019/0263). THIS IS STILL REQUIRED.</i> <i>Positive covenant for waste collection required on Lots 4, 5,6,7 & 14 of the proposed development (DA2019/0263) to allow waste collection vehicles to use the temporary accessway until such time as truck access is available via Lorikeet Grove. NOT REQUIRED AS NEW PROPOSAL DOES NOT INTEND TO USE THIS ACCESSWAY.</i> <i>Positive covenant for waste collection required on Lot 1 DP270946 (Pheasant Place, Warriewood). THIS IS STILL REQUIRED</i> <i>Positive covenant for waste collection required on Lot 1 DP1214859 & Lot 2 DP270946 to allow waste collection</i>

Internal Referral Body	Comments
	<p>vehicles to use the new temporary accessway until such time as truck access is available via Lorikeet Grove NEW REQUIREMENT FOR NEWLY PROPOSED TEMPORARY ACCESSWAY.</p> <p>Having spoken with owners from the existing Pheasant Place properties, they were quite keen to have their bins collected from in front of their houses. I would expect them to be co-operative with the implementation of the positive covenants.</p> <p>Waste Collection Option (2) - not preferred but acceptable. All properties within Pheasant Place be placed on a communal bin system. A bin enclosure designed and constructed to Council requirements be provided within the private property (community lot) at the corner of Lorikeet Grove and Pheasant Place. Communal bins would remain within this enclosure at all times. The waste collection service would empty the bins from this enclosure.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>Approval, no conditions.</p> <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>
Ausgrid: (Electricity Supply)	<p>Approval, no conditions.</p> <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>
Integrated Development – NSW Rural Fire Service (Subdivisions and Special Fire Protection Purposes under Section 100B of Rural Fires Act)	<p>Approval, with conditions.</p> <p>General Terms of Approval were issued by the NSW RFS on 26 April 2019 and are to be included in any consent issued for the property.</p>
Nominated Integrated Development – Department of Industry – Natural Resources Access Regulator (Controlled Activity Approval for works within 40m of watercourse)	<p>Approval, with conditions.</p> <p>General Terms of Approval were issued by the Natural Resources Access Regulator on 3 June 2019 and are to be included in any consent issued for the property.</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. The land has been previously used for agricultural purposes and is likely to contain sources of contamination.

The applicant has submitted an addendum letter from Geotechnique Pty Ltd, addressing the findings of previous Phase 1 and Phase 2 Contamination Assessment Reports prepared for the subject site. The addendum letter concludes that the site is suitable for residential development subject to implementation of a series of recommendations prior to site preparation and earthworks.

Clause 7(1)(b) stipulates that *"if the land is contaminated, it [Council] is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out"*.

Subject to conditions recommended from Council's Environmental Health Officer, Council can be satisfied that the land can be made suitable for the proposed residential subdivision.

Clause 7(1)(c) stipulates that *"if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose"*.

Subject to conditions recommended from Council's Environmental Health Officer, Council can be satisfied that the land can be made suitable for the proposed residential subdivision.

SEPP (Infrastructure) 2007

The proposal was referred to Ausgrid in accordance with clause 45 of this policy. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

The site is identified as "proximity area for coastal wetlands" on the Coastal Wetlands and Littoral Rainforests Area Map under the provisions of *State Environmental Planning Policy (Coastal Management) 2018 ('CM SEPP')*, and the proposal is subject to the provisions of clauses 11 and 15 of this policy. In this regard, Council can be satisfied of the following:

- the proposal is not likely to significantly impact upon the matters listed in clause 11(1) of the CM SEPP, and
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is considered to be consistent with the relevant provisions of the CM SEPP, including the matters prescribed by clauses 11 and 15 of this policy.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m - 10.5m	2.4m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
6.1 Warriewood Valley Release Area	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Landscaped area	35% (minimum)	physical works: 86.5% resultant development: 50.3%	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B3.13 Flood Hazard - Flood Emergency Response planning	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	N/A	N/A
C1.13 Pollution Control	Yes	Yes
C6.1 Integrated Water Cycle Management	Yes	Yes
C6.2 Natural Environment and Landscaping Principles	Yes	Yes
C6.3 Ecologically Sustainable Development, Safety and Social Inclusion	Yes	Yes
C6.4 The Road System and Pedestrian and Cyclist Network	No	Yes
C6.5 Utilities, Services and Infrastructure Provision	Yes	Yes
C6.7 Landscape Area (Sector, Buffer Area or Development Site)	Yes	Yes
C6.8 Residential Development Subdivision Principles	No	Yes
C6.9 Residential Land Subdivision Approval Requirements	Yes	Yes
C6.10 Additional Specifications for development of Buffer Area 1a to 1m	Yes	Yes
D16.11 Form of construction including retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

C1.12 Waste and Recycling Facilities

Clause C1.12 of P21 DCP prescribes that development is to be designed to be consistent with

Council's Waste Management Guidelines. Whilst these guidelines have been recently adopted by P21 DCP and this control is applicable within Warriewood Valley, the control does not apply in relation to the 'subdivision of a sector, buffer area or development site in a Release Area', being the definition of the works proposed. As such, there is no applicable development control to require application of these guidelines in relation to this proposal.

In accordance with the comments from Council's Waste Officer above, Council's Waste Management Team do not support the proposal due to inconsistency with these guidelines. In particular, the proposed development does not facilitate the imposition of a positive covenant for waste collection over Pheasant Place or the temporary access road. Whilst a condition could be imposed in relation to the temporary access road proposed, no such condition can be imposed in relation to Pheasant Place, as:

- the majority of the road has already been constructed and is separately owned,
- an on-site detention system has been incorporated into the existing pavement which may not be designed/constructed in accordance with the policy requirements, and
- the ROW restricts access to vehicles exceeding 2.5 tonnes in weight.

Without the imposition of a positive covenant across the whole of the roadway, Council's Waste Collection Contractors will not turn onto Pheasant Place to service the individual lots. Council's Waste Officer recommends that the application should be refused in this regard, as this outcome will result in the excessive accumulation of bins within the public road reserve on collection day.

As an alternate solution, Council's Waste Officer has proffered that a permanent communal bin store could be provided on private property at the corner of Lorikeet Grove and Pheasant Place. However, this would necessitate the construction of a enclosed storage area sized to store a minimum of 36 individual waste bins (4 bins for each of the 9 lots without a frontage to a public road), which would be a considerable imposition on the streetscape and the amenity of the adjoining residential lot.

Whilst the application of these guidelines would be beneficial to future residents of the proposed lots and residents of the dwellings on the opposite side of Pheasant Place, strict application of these guidelines or the requirement for a communal bin store is considered to be unreasonable in the circumstances, where the primary roadway has already been constructed and is in private/separate ownership. The accumulation of bins at the end of private roads and shared driveways on collection day is not uncommon within the Warriewood Valley locality or the wider former Pittwater area, and the temporary impact upon the streetscape can be reasonably addressed through the provisions of the Community Management Plan. Overall, non-compliance with the Waste Management Guidelines is not considered to warrant refusal of the subject application.

C6.4 The Road System and Pedestrian and Cyclist Network

Half Width Road Construction - Pheasant Place

Clause C6.2 of P21 DCP provides that due to the narrow width of some sites within Warriewood Valley, half width road construction is permitted along the boundary of two properties in certain circumstances. At the completion of subdivision works on both adjoining sites, the resultant road configuration is to be consistent with the relevant design requirements of the *Warriewood Valley Roads Masterplan*, as amended ('Roads Masterplan'). Based on the number of dwellings that Pheasant Place will ultimately serve, the roadway is required to meet the 'Access Street' requirements of the Roads Masterplan, which anticipates a total road reserve width of 12.5m.

The half road construction of Pheasant Place at the adjoining site to the south-east (formerly known as 53C Warriewood Road) was approved pursuant to N0330/14, with a 1.2m wide road verge, inconsistent with the 2.5m minimum road verge width requirements of the Roads Masterplan. As such, despite

compliance with the 2.5m minimum verge width on the subject site and compliance with the 7.5m minimum road pavement width prescribed, the resultant 11.2m width of the Pheasant Place road reserve will be inconsistent with the 12.5m total road reserve width prescribed. However, the area of non-compliance was assessed and approved by Council as part of N0330/14, and in such circumstances, requiring the applicant to exceed the standard 2.5m road verge to achieve technical compliance with the 12.5m total road reserve width is considered overly onerous and unreasonable.

Lorikeet Grove

The proposed design and location of Lorikeet Grove is consistent with the specifications of the Roads Masterplan and the provisions of this control.

Temporary Road

Clause C6.2 of P21 DCP provides for the construction of temporary roads to enable the development of isolated sites in advance of the development of surrounding sites. The application proposes to rely upon this provision, with a temporary access road to Warriewood Road to be removed once access along Lorikeet Grove becomes available. The proposed temporary road is to be located along the south-eastern side boundary, immediately adjacent to a temporary access road serving the adjoining site (formerly 53C Warriewood Road). Whilst the duplication of temporary roads is not ideal or preferred, it is appreciated that the applicant has made reasonable efforts to obtain access over the adjoining temporary road, to no avail. Despite the resultant duplication, the design of the temporary road is consistent with the provisions of this clause.

C6.7 Landscape Area (Sector, Buffer Area or Development Site)

The physical works (roadways, driveways, footpaths and the on-site detention basin) proposed as part of this application cover an area of approximately 695m² or 13.5% of the total site, resulting in a landscaped area of 86.5%, well in excess of the 35% minimum prescribed by this control. Furthermore, even with all proposed residential lots developed to the maximum individual site coverage calculations, the resultant landscaped area will be 50%, still in excess of the minimum prescribed.

C6.8 Residential Development Subdivision Principles

and C6.10 Additional Specifications for development of Buffer Area 1a to 1m

Amalgamation

Clause C6.8 of P21 DCP, in addition to clause C6.10 of P21 DCP, identifies a preference for individual sectors with a lot width of less than 60m to be amalgamated with adjoining sites. Whilst the proposal includes the amalgamation of two separate lots, the width of the resultant development site will be 34.68m, far less than the 60m minimum preference prescribed. Furthermore, with a width of approximately 45m, the undeveloped site to the north at 53A Warriewood Road is also less than the minimum identified.

Ideally, in consideration of these development controls, all three adjoining sites should be developed together, as anticipated in an earlier approval issued for the sites pursuant to N0350/14. However, in the time since the earlier consent was issued, the land has been sold to separate owners, and despite attempts from the applicant, the adjoining owner at 53A Warriewood Road is not seeking to develop their land at this time.

Whilst inconsistent with the preferred lot width prescribed, the applicant has satisfactorily demonstrated that the subject site can be developed without further amalgamation with adjoining lots. Furthermore, noting that 53A Warriewood Road is wider/larger than the subject site and in consideration of the subdivision pattern approved pursuant to N0350/14, it is also considered that 53A Warriewood can be developed in isolation in the future. As such, the proposed subdivision is considered acceptable despite

inconsistency with the 60m minimum lot width prescribed.

Lot shape

A number of the proposed lots are irregular in shape, inconsistent with the provisions of clause C6.8 of P21 DCP which prescribes that residential lots should be rectangular. However, as evident on the Building Envelope Plan, each lot is able to accommodate a dwelling house of a scale commensurate with surrounding dwellings, in a manner that is consistent with the built form controls prescribed by P21 DCP.

As the site is a 'buffer area' as identified by PLEP 2014, complying development under the provisions of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* cannot be undertaken on the site. All future dwellings will require development consent from Council, and will be subject to the provisions of PLEP 2014 and P21 DCP. With this in mind, it is not considered necessary to restrict the siting of future dwellings in the manner depicted on the Building Envelope Plan provided.

It is noted that the building footprint shown in relation Lot 15 will no longer be feasible as a result of the necessary alterations to the drainage alignment recommended by Council's Engineer, with a greater setback (and easement) required along the southern side boundary. Nonetheless, the 286.8m² lot provides sufficient space to accommodate a future dwelling house designed in accordance with Council's controls.

Location of Lorikeet Grove

Clauses C6.8 and C6.10 of P21 DCP prescribe that where it is not possible to align Lorikeet Grove with the creekline corridor, residential flat buildings or multi dwelling housing products should adjoin these areas to maximise casual surveillance of the creekline. In relation to the subject site, the alignment of Lorikeet Grove has been dictated by the existing road connections to both the north and the south, and the resultant area of land (Lot 15) between the roadway and the outer creekline corridor is limited to 286.8m². Whilst the size and dimensions of this lot are insufficient for either a residential flat building or a multi dwelling housing product, the lot can accommodate a dwelling house, which is considered to provide adequate casual surveillance of the creekline.

Orientation of lots

Clause C6.8 of P21 DCP prescribes that lots are to be oriented to maximise solar access for dwellings and areas of private open space. The Building Envelope Plan demonstrates that the majority of lots are oriented such that the rear of the dwelling will receive northern sunlight, maximising solar access for future land owners/residents.

Titling arrangements

The application seeks consent for a Community Title subdivision. Conditions of consent are recommended in the draft determination attached to ensure that all communal infrastructure and landscaping will be maintained by the Community over the life of the development.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

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

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

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

The proposed subdivision is considered to be an appropriate design response in consideration of the context of the site, particularly in response to the subdivision of land to the south.

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 DA2019/0263 for 17 Lot Community title subdivision and associated infrastructure, including the extension of Lorikeet Grove on land at Lot 3 DP 1115877, 53 B Warriewood Road, WARRIEWOOD, Lot 1 DP 270946, Pheasant Place, WARRIEWOOD, Lot 3 DP 942319, 53 Warriewood Road, WARRIEWOOD, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Subdivision Plan - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Subdivision Plan 03 BEP, Amendment No.9	24 June 2019	Craig & Rhodes
Civil Plans - Endorsed with Council's stamp		
Key Plan 076-18C-DA-0003, revision B	'DRAFT'	Craig & Rhodes
Demolition Plan 076-18C-DA-0021, revision B	'DRAFT'	Craig & Rhodes
Bulk Earthworks Plan 076-18C-DA-0051, revision B	'DRAFT'	Craig & Rhodes
Road and Drainage Plan Sheet 1 of 2 076-18C-DA-0101, revision B	'DRAFT'	Craig & Rhodes
Road and Drainage Plan Sheet 2 of 2 076-18C-DA-0102, revision B	'DRAFT'	Craig & Rhodes
Typical Road Cross Sections 076-18C-DA-0151, revision B	'DRAFT'	Craig & Rhodes
Road Longitudinal Section Sheet 1 of 2 076-18C-DA-0201, revision B	'DRAFT'	Craig & Rhodes
Road Longitudinal Section Sheet 2 of 2 076-18C-DA-0202, revision B	'DRAFT'	Craig & Rhodes
Road Cross Sections Sheet 1 of 2 076-18C-DA-0301, revision B	'DRAFT'	Craig & Rhodes
Road Cross Sections Sheet 2 of 2 076-18C-DA-0302, revision B	'DRAFT'	Craig & Rhodes
External Catchment Plan 076-18C-DA-0701, revision B	'DRAFT'	Craig & Rhodes
Internal Catchment Plan 076-18C-DA-0702, revision B	'DRAFT'	Craig & Rhodes
Stormwater Drainage Longitudinal Section Sheet 1 of 2 076-18C-DA-0711, revision B	'DRAFT'	Craig & Rhodes

Stormwater Drainage Longitudinal Section Sheet 2 of 2 076-18C-DA-0712, revision B	'DRAFT'	Craig & Rhodes
Overland Flow Path Road Cross Sections 076-18C-DA-0721, revision B	'DRAFT'	Craig & Rhodes
Basin Plan 076-18C-DA-0751, revision B	'DRAFT'	Craig & Rhodes
Basin Sections 076-18C-DA-0752, revision B	'DRAFT'	Craig & Rhodes
Basin Details 076-18C-DA-0753, revision B	'DRAFT'	Craig & Rhodes
Retaining Wall Plan 076-18C-DA-0801, revision B	'DRAFT'	Craig & Rhodes
Retaining Wall Details 076-18C-DA-0802, revision B	'DRAFT'	Craig & Rhodes
Sediment and Erosion Plan 076-18C-DA-0901, revision B	'DRAFT'	Craig & Rhodes
Sediment and Erosion Control Details 076-18C-DA-0902, revision B	'DRAFT'	Craig & Rhodes
Landscape Plans - Endorsed with Council's stamp		
Coversheet, Imagery & Plant Schedule CRA01-DA-100, revision D	26 June 2019	Sym Studio
Landscape Plan of Subdivision - Overall CRA01-DA-101, revision D	26 June 2019	Sym Studio
Landscape Plan of Subdivision - 1 of 2 CRA01-DA-102, revision D	26 June 2019	Sym Studio
Landscape Plan of Subdivision - 2 of 2 CRA01-DA-103, revision D	26 June 2019	Sym Studio
Creepline Plans - Endorsed with Council's stamp		
Key Plan, Typical Cross Section and Longitudinal Section 076-18C-DA-1001, revision B	26 June 2019	Craig & Rhodes
General Arrangement Plan 076-18C-DA-1101, revision B	26 June 2019	Craig & Rhodes
Typical Details 076-18C-DA-1201, revision B	26 June 2019	Craig & Rhodes
Narrabeen Creek Cross Sections Sheet 1 of 2 076-18C-DA-1301, revision B	26 June 2019	Craig & Rhodes
Narrabeen Creek Cross Sections Sheet 2 of 2 076-18C-DA-1302, revision B	26 June 2019	Craig & Rhodes
Sediment and Erosion Control Plan and Details 076-18C-DA-1901, revision B	26 June 2019	Craig & Rhodes
Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Water Management Report, reference 076-18C-DA-WMR-B, revision B	26 June 2019	Craig & Rhodes

Vegetation Management Plan, reference 13089, revision 2	26 June 2019	Eco Logical Australia Pty Ltd
Arboricultural Impact Assessment Report	25 June 2019	About Trees
Flora and Fauna Assessment Report, reference 11707, revision 1	21 January 2019	Eco Logical Australia Pty Ltd
Contamination Assessment Report, reference 17496/2-AA	19 March 2019	Geotechnique Pty Ltd
Geotechnical Risk Management Report, reference 14396/1-AA	12 March 2019	Geotechnique Pty Ltd

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

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

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

2. **Compliance with General Terms of Approval issued by NSW Rural Fire Service**

The development must be carried out in accordance with the following General Terms of Approval issued by the NSW Rural Fire Service in their correspondence dated 26 April 2019:

- a. At the issue of subdivision certificate and in perpetuity the entire property, other than the proposed Public Reserve (proposed lot 16), shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
- b. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

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

3. **Compliance with General Terms of Approval issued by Natural Resources Access Regulator**

Compliance with General Terms of Approval issued by the Natural Resources Access Regulator in their correspondence dated 3 June 2019:

Design of works and structures

- a. Before commencing any proposed controlled activity on waterfront land, an application must be submitted to Natural Resources Access Regulator, and obtained, for a controlled activity approval under the Water Management Act 2000.

Erosion and sediment controls

- b. The following plan(s): - Erosion and Sediment Controls Plan must be: A. prepared in accordance with Managing Urban Stormwater: Soils and Construction, Volume 1 (Landcom, 2004), as amended or replaced from time to time, and B. submitted with an application for a controlled activity approval.

The proposed erosion and sediment control works must be inspected and maintained throughout the construction or operation period of the controlled activity and must not be removed until the site is fully stabilised.

Plans, standards and guidelines

- c. A. This General Terms of Approval (GTA) only applies to the proposed activity described in the plans and associated documents found in Schedule One, relating to Development Application 2019 provided by Council to Natural Resources Access Regulator. B. Any amendments or modifications to the proposed activity may render the GTA invalid. If the proposed controlled activity is amended or modified, Natural Resources Access Regulator, Parramatta Office, must be notified in writing to determine if any variations to the GTA will be required.
- d. The application for a controlled activity approval must include the following document(s): - outlet structures; Erosion and Sediment Control Plan; Soil and Water Management Plan; Vegetation Management Plan.
- e. A. A security deposit must be provided, if required by Natural Resources Access Regulator. B. The deposit must be: i. a bank guarantee, cash deposit or equivalent, and ii. equal to the amount required by Natural Resources Access Regulator for that controlled activity approval.
- f. All documents submitted to Natural Resources Access Regulator as part of an application for a controlled activity approval must be prepared by a suitably qualified person.
- g. Any proposed controlled activity must be carried out in accordance with plans submitted as part of a controlled activity approval application, and approved by Natural Resources Access Regulator.
- h. The application for a controlled activity approval must include plans prepared in accordance with Natural Resources Access Regulator's guidelines located on the website <https://www.industry.nsw.gov.au/water/licensingtrade/approvals/controlled-activities>.

Rehabilitation and maintenance

- i. When the proposed controlled activity is completed, and the rehabilitation plan has been implemented, maintenance of the site must be carried out for a period of 2 years in accordance with that rehabilitation plan submitted as part of the controlled activity approval, and approved by Natural Resources Access Regulator.

Reporting requirements

- j. The consent holder must inform Natural Resources Access Regulator in writing when the proposed construction of the controlled activity has been completed.

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of the Natural Resources Access Regulator.

4. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (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

5. 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.

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

FEES / CHARGES / CONTRIBUTIONS

6. **Security Bond**

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

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

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

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

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

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

A bond of \$250,000 as security against any damage or failure to complete the construction of road pavement/shoulder/footpath construction works and stormwater drainage works in Warriewood Road and Lorikeet Place is required as part of this consent.

Reason: Protection of Council's Infrastructure.

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

A bond of \$300,000 as security against any damage or failure to complete the construction of stormwater drainage line and associated pits from the northern kerb side of Warriewood Road works to the proposed headwall outlet near the creek is required as part of this consent.

Reason: Protection of Council's Infrastructure.

9. **Construction, Excavation and Associated Works Bond (Bio-retention basin)**

A bond of \$80,000 for the completion of the bio-retention basin, including installation of pipes, filter media and plantings is required as part of this consent. Completion of the bio-retention basin as described must not occur until 90 percent of the house lots have been completed, or two years has passed since the issue of the subdivision certificate, whichever milestone occurs first. The basin may be used as a sediment basin until it is converted to a bio-retention basin. The bond will only be refunded if work has been completed in accordance with the approved plans and to the satisfaction of Council.

Reason: Protection and completion of community title infrastructure.

10. **Maintenance Bond**

A bond of \$150,000 for maintenance associated with the construction of roads and stormwater

drainage works is required as part of this consent. The maintenance bond will only be refunded on completion of the six month maintenance period, if work has been completed and maintained in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing practical completion and may be exchanged for the works bond.

Reason: To ensure adequate protection of Council infrastructure.

11. **Development Contributions - Creekline corridor on the property**

The following is to be made for the provision of local infrastructure and services pursuant to section 7.11 of the Environmental Planning and Assessment Act 1979 and the Warriewood Valley Development Contributions Plan (as amended):

- A monetary contribution of \$894,189.89 (subject to (a) below) is payable to Northern Beaches Council, and
- Dedication of 942sqm of creekline corridor land in accordance with (c) below.
 - a. Written evidence (receipt/s) from Council for the payment of the monetary contribution is to be provided to the Certifying Authority prior to issue of the 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 cash contribution (total or in part) remains unpaid after the financial quarter in which the development consent is issued, the amount unpaid (whether it be the full monetary contribution amount or a part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index.
 - b. The Applicant shall dedicate to Northern Beaches Council a total of 942sqm of land for the provision of multi-functional creekline corridor in lieu of a monetary contribution amount calculated in accordance with Table 4 of the Contributions Plan attributed to the creekline corridor to the value of \$57,351.89. The area to be dedicated is to be subject to a final Plan of Subdivision. The required dedication is to take place by way of subdivision.
 - c. The Applicant may negotiate with Council for the direct provision of other facilities and services, and/or the dedication of land (other than land identified in (c) above) in lieu of the monetary contribution above (or any portion of that monetary contribution) or the deferral of payments through a Material Public Benefit Agreement between Council and the Applicant in accordance with the Warriewood Valley Development Contributions Plan (as amended). The agreement for Material Public Benefit Agreement between the Applicant and Council must be finalised, formally signed and in place prior to the payment of the monetary contribution.

The Warriewood Valley Development Contributions Plan (as amended) may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or on Council's website at <https://www.northernbeaches.nsw.gov.au/planning-and-development/building-and-renovations/development-contributions>.

Reason: To provide for contributions in accordance with the Contribution Plan that enables the provision of public infrastructure and services commensurate with the increased demand resulting from development in the Warriewood Valley Release Area.

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

12. **Amended Landscape Plans**

The approved Landscape Plans referenced in Condition 1 of this consent are to be amended, as follows:

- a. Street tree planting along Warriewood Road in accordance with specification guidelines and materials schedule contained in S-1 of the Warriewood Valley Landscape Masterplan and Design Guidelines (Public Domain), including:
 - i. all street trees to be *Lophostemon confertus*, minimum 400 litre stock for S-1 (large canopy trees), and subject to final approval by Council,
 - ii. all street trees shall be subject to pre-order of plant material to ensure delivery at the required size,
 - iii. all street trees shall be 4m overall height, with a 1.8m clear trunk, and minimum 60mm trunk caliper, and subject to final approval by Council,
 - iv. all trees to be grown by recognised nursery under Natspec growing guidelines,
 - v. alternative street tree container sizes and specifications may be considered only when existing or installed services or road infrastructure limit the available soil volume where a large rootball will not be possible, subject to Council approval,
 - vi. garden bed planting under the street tree shall be installed in accordance with S-1 guidelines.
- b. Street tree planting along Lorikeet Grove in accordance with specification guidelines and materials schedule contained in S-3 of the Warriewood Valley Landscape Masterplan and Design Guidelines (Public Domain), including:
 - i. all street trees to be *Tristania laurina*, minimum 400 litre stock for S-3 (medium canopy trees), and subject to final approval by Council,
 - ii. all street trees shall be subject to pre-order of plant material to ensure delivery at the required size,
 - iii. all street trees shall be 4m overall height, with a 1.8m clear trunk, and minimum 60mm trunk caliper, and subject to final approval by Council,
 - iv. all trees to be grown by recognised nursery under Natspec growing guidelines,
 - v. alternative street tree container sizes and specifications may be considered only when existing or installed services or road infrastructure limit the available soil volume where a large rootball will not be possible, subject to Council approval,
 - vi. garden bed planting under the street tree to one side only shall be installed in accordance with S-3 guidelines.
- c. The 2.1m wide shared path along Warriewood Road is to be located in accordance with the approved Civil Plans referenced in Condition 1 of this consent, and is to align with adjoining built paths.
- d. The 1.5m wide shared path along Lorikeet Grove is to be located in accordance with the approved Civil Plans referenced in Condition 1 of this consent, and is to align with adjoining built paths.
- e. The landscaping proposed within the setback between the bioretention basin and Lot 15 is to be enhanced with locally native shrubs, with a minimum maturity height of 2.0m and a minimum pot size of 45 litres, planted at 2m intervals.
- f. The location of underground services is to be consistent with the approved Civil Plans referenced in Condition 1 of the consent, as amended by any conditions of consent.
- g. Adoption of the recommendations of the approved Vegetation Management Plan referenced in Condition 1 of this consent (as amended by any other conditions) for all vegetation and rehabilitation within the inner 25m creekline corridor.
- h. Removal of Buffalo Lawn from within the 50m riparian zone and replacement with native vegetation.

- i. All road verge turf shall be Wintergreen Couch, and shall be in accordance with the Warriewood Valley Landscape Masterplan and Design Guidelines (Public Domain) S-1 and S-3, including soil preparation.
- j. All tree planting within the riparian corridor shall be a minimum 45 litre container size, to include stakes for support, and mulch mounding for water retention.

The amended landscape plans shall be issued to the Certifying Authority prior to the issuance of the construction certificate.

Reason: To enable the long term establishment of the desired streetscape character and creekline corridor.

13. **Stormwater Drainage Design**

The approved Civil Plans, referenced in Condition 1 of this consent, are to be amended, as follows:

- a. The dog leg in the stormwater drainage line between Pit 2-7 and Pit 2-9 is to be deleted and replaced with a stormwater drainage line that runs immediately adjacent to the southern side boundary.
- b. The lintel width of Pit 2-1 is to be increased in size to 3m.
- c. An overland flow path is to be provided above the stormwater drainage line from Lorikeet Grove to the head wall in Narrabeen Creek, to cater for any pit or pipe blockages.
- d. The proposed butterfly pit in the existing Lorikeet Grove road pavement is to be removed and replaced with an offset inlet pit. The pit is to be installed 1m clear of the proposed Pheasant Place vehicular access.
- e. The access driveway to the Gross Pollutant Trap (GPT) is to be widened to allow a service vehicle to park adjacent to the GPT.

The amended plans are to be prepared by a suitably qualified engineer and are to be submitted to the certifying authority prior to the issuance of a construction certificate.

Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner that protects adjoining properties and also is in accordance with Council's Auspec design specification.

14. **Geotechnical Report Recommendations**

The recommendations of the risk assessment required to manage the hazards as identified in the approved Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the subdivision construction plans. Prior to issue of the construction certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

15. **Detailed Design of Stormwater Quality System**

A suitably qualified civil engineer is to provide certification to confirm that the bioretention basin and GPT have been designed in accordance with the Warriewood Valley Water Management Specification (2001), the approved Civil Plans (as amended by any conditions of consent) and

the approved Water Management Report referenced in Condition 1 of this consent.

The certificate shall be submitted to the Certifying Authority prior to the release of the construction certificate.

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

16. **Sydney Water (Fire Hydrant System)**

Subdivisions involving the creation of private roads are to be serviced with fire hydrant systems to ensure that coverage of no less than 90 metres is maintained to all areas of the development.

(Note: The fire hydrants are to be installed in accordance with all relevant Australian Standards and the requirements of the Sydney Water Authority and the NSW Fire Brigades.)

Details demonstrating compliance are to be submitted to the certifying authority prior to the issue of the construction certificate.

Reason: NSW Fire Brigades requirement.

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

An application for Infrastructure Works on Council Roadway is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993 in relation to the works to Warriewood Road and Lorikeet Grove. The application is to include four (4) copies of civil engineering plans prepared by a suitably qualified civil/structural engineer for the design of all works within the road reserve/s, designed in accordance with the approved Civil Plans (as amended by any condition of consent) and Council's specification for engineering works - AUS-SPEC #1, Austroads, The Warriewood Valley Roads Masterplan, Pittwater 21 DCP and Council's standard engineering details.

The engineering plans and specifications for works to the full length of the Warriewood Road frontage of the development site are to include the following:

- a. Road shoulder and road pavement construction, including pavement design and treatments up to the road centre line (2 x 106 ESA pavement design criteria);
- b. Kerb and Guttering (vertical faced kerb only will be permitted). The face of the kerb is to be located 10.9m from the face of the existing kerb on the northern side of the roadway. Plans are to show a cross-section with the centreline of the road located 5.1m from the northern kerb, proposed 3.7m wide traffic lane and 2.1m wide indented parking bay;
- c. Indented parking bays in accordance with the requirements of the Warriewood Valley Roads Masterplan;
- d. Associated road and drainage for Warriewood Road;
- e. Footpath/cycleways 2.5m wide on Warriewood Road;
- f. Street lighting and street sign posting;
- g. Landscaping;
- h. Undergrounding of all existing and proposed overhead infrastructure.

The reconstruction of the existing road pavement of Warriewood Road for the full width of the site (out to the centerline of the road) will be deemed to have been satisfied if a suitably qualified geotechnical engineer provides certification to Council that the existing road pavement satisfies

the requirement of the WVRMP for the pavement to meet the ESA pavement design criteria of 2×10^6 .

The engineering plans and specifications for works to the full length of Lorikeet Grove within the development site are to include the following:

- a. Road shoulder and road pavement construction, with a road carriageway width of 7.5m and a 16m wide road reserve;
- b. Kerb and Guttering (vertical faced kerb only will be permitted);
- c. Lorikeet Grove drainage system (public system) which will require to be piped to Narrabeen Creek with an associated outlet headwall;
- d. Pedestrian facilities;
- e. Street lighting and street name sign posting;
- f. Landscaping and driveways;
- g. Footpath 1.5m wide;

The plans must achieve a road design and landscaped effect consistent with the Warriewood Valley Landscape Masterplan and Design Guidelines (Public Domain). The engineering design and plans for road and drainage works must be certified as meeting the requirements outlined above by a suitably qualified and experienced Civil Engineer who is NPER accredited by the Institution of Engineers (Australia) prior to submission to Council.

The Section 138 Roads Act approval is to be issued by Council prior to the issue of the construction certificate. A fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

Reason: To provide public and private safety.

18. **Utilities Services**

Prior to the issuance of the construction certificate, the applicant is to supply the certifying authority with confirmation from service providers to confirm that all essential services will be made available to each lot and that satisfactory arrangements are in place for their provision.

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

19. **Retaining walls**

Prior to the issuance of the construction certificate, detailed structural designs and certification shall be prepared by an qualified Structural Engineer and submitted to the certifying authority with regard to all reinforced concrete, structural steel support construction, sub-soil drainage lines and any proposed retaining walls.

Reason: Public and private safety.

20. **Pre-Construction Dilapidation Report**

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

The pre-construction / demolition dilapidation report must be submitted to Council and the Certifying Authority prior to the issue of the construction certificate.

Reason: Protection of Council's Infrastructure.

21. **Stormwater Quality Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure proposed stormwater quality system remain effective.

The Plan must contain the following:

- a. Maintenance schedule of all stormwater quality treatment devices
- b. Identification of maintenance and management responsibilities
- c. Maintenance requirements for establishment period
- d. Routine maintenance requirements
- e. Inspection and maintenance record and reporting (to be made available to Council upon request)
- f. Funding arrangements for the maintenance of all stormwater quality treatment devices
- g. Vegetation species list associated with each type of vegetated stormwater treatment device
- h. Waste management and disposal
- i. Traffic control measures (if required)
- j. Maintenance and emergency contact information
- k. Renewal, decommissioning and replacement timelines and activities of all stormwater quality treatment devices
- l. Work Health and Safety requirements

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the issuance of the construction certificate.

Reason: Protection of the receiving environment.

22. **Updated Water Management and Water Quality Monitoring Report and Checklist**

The applicant must provide an updated Water Management Report (that includes an updated Water Quality Monitoring Report). The reports must address all the requirements of the Warriewood Valley Water Management Specification 2001 - Checklist - Construction Certificate. The checklist is to be completed by a suitably qualified water/environmental/civil engineer who has membership of Engineers Australia and appears on the National Engineering Register (NER).

The signed checklist and the updated Water Management Report must be provided to the Certifying Authority prior to issue of the construction certificate.

Reason: To ensure water is appropriately managed and in accordance with the Warriewood Valley Water Management Specification and Pittwater 21 DCP.

23. **Noise of Earthworks, Demolition and Construction**

Prior to the issue of the construction certificate, a Noise Management Plan is to be prepared for the site to the satisfaction of the Certifying Authority. The Noise Management Plan can be part of an overarching construction plan and shall include hours of operation and detail ways to manage potential noise nuisances caused by the proposed demolition and construction works.

Reason: Protect public amenity.

24. **Contaminated Land Requirements**

Prior to the issue of the construction certificate, a Contamination Management Plan is to be prepared by an appropriately qualified Environmental Consultant to the satisfaction of Council's Environmental Health Approvals Team. The plan shall detail:

- a. How all the requirements and/or recommendations contained within the approved Contamination Assessment Report referenced in Condition 1 of this consent are to be implemented;
- b. A Remedial Action Plan (RAP) prepared by a suitably qualified Environmental Consultant in accordance with State Environmental Planning Policy No. 55 - Remediation of Land, and with any contaminated land planning guidelines under the Contaminated Land Management Act 1997;
- c. Stipulate reporting and processes associated with discovery of any new contamination that is revealed during excavation, demolition or development works. This process shall include the ability to contact NSW Fire and Rescue for pollution incidents, have on call (during work times), a suitably qualified Environmental Consultant to undertake immediate investigations and provide recommendations for containment and rectification of contaminants or toxins and a process for notification to Northern Beaches Council and the Principal Certifying Authority;
- d. A requirement to complete ongoing water and soils testing during excavation, demolition and development works as follows:
 - i. During construction in order to monitor water and soil quality the following is to be implemented:
 - Water testing is to be completed in accordance with Section 3 of the NSW RTA's (now Roads and Maritime Services) Guideline for Construction Water Quality Monitoring;
 - Soil Testing in order to detect contaminants is to occur weekly with two (2) samples in accordance with the NSW EPA Contaminated Site Sampling Design Guidelines.
 - ii. The requirements of (i) above are to be implemented from the commencement of works as follows:
 - Fortnightly during excavation works
 - Monthly during building works
- e. To ensure water quality is maintained runoff must be drained to an adequately bunded central collection sump and treated, to meet NSW Department of Environment, Climate Change and Water (formerly Environment Protection Authority) discharge criteria.

Note 1: Other options for the disposal of excavation pump-out water include disposal to sewer with prior approval from Sydney Water, or off-site disposal by a liquid waste transported for treatment/disposal to an appropriate waste treatment/processing facility.
- f. All stockpiles of potentially contaminated soil must be stored in a secure area on the site (no greater than 48 hours) so as not to cause pollution or public health risk until disposed of at a waste facility.
- g. All contaminated soil removed from the site must be disposed of at a waste facility that can lawfully receive that waste and must be done in accordance with all relevant Acts, Regulations and Guidelines. Copies of all test results and disposal dockets must be retained for at least 3 years and be made available to authorised Council officers on request.

- h. Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Environment Protection Authority and the provisions of all relevant Acts, Regulations and Guidelines.
- i. Stipulate protocols for the importation of any landfill material onto the site the protocols shall include:
 - i. 'Chain of Custody' documentation shall be kept and submitted for the transport of the validated fill material from the site, to the subject premises.
 - ii. Requirement that any landfill material being brought to the site shall be free of contaminants or toxins and shall suitable for the use on the land.
 - iii. Any landfill material being brought to the site shall have a validation report prepared to the satisfaction of the Principal Certifying Authority (prepared in accordance with the Department of Environment, Climate Change and Water guidelines).

The final Contamination Management Plan and confirmation of Council's satisfaction of the Contamination Management Plan is to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: Protection of the environment, SEPP 55 compliance.

25. **Narrabeen Creek Rehabilitation Works Detailed Design**

Detailed plans for the Narrabeen Creek rehabilitation works are to be prepared and certified by a suitably qualified water/environmental/civil engineer who has membership of Engineers Australia and the National Engineering Register (NER), and in accordance with the approved Creekline Plans referenced in Condition 1 of this consent.

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

Reason: To ensure creek works are completed in accordance with the consent approval.

26. **Project Ecologist**

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

The Project Ecologist will provide certification that conditions relating to the Vegetation Management Plan are carried out. The Project Ecologist will ensure that all conditions relating to the biodiversity management of the property are fully implemented.

The Project Ecologist must have one of the following memberships/accreditation:

- o Practising member of the NSW Ecological Consultants Association, OR
- o Biodiversity Assessment Method assessor accreditation under the NSW Biodiversity Conservation Act 2016.

Reason: To ensure bushland management.

27. **Amended Vegetation Management Plan**

The approved Vegetation Management Plan referenced in Condition 1 of this consent is to be amended to include:

- a. Soil preparation as part of civil works, with reference to engineering designs, including top soil stripping, control of weed regrowth, cultivation and soil additives.
- b. Recommendations from section 6 of the approved Flora & Fauna Report referenced in

Condition 1 of this consent.

- c. Increase plant densities for Zone 1 to trees 1/20m², shrubs 2/10m² and groundcovers 5/m².
- d. Provide revegetation treatment for creek channel and stormwater headwall zone.
- e. Decrease weed cover percentage in all years (Table 6) based on site preparation civil works.

The amended Vegetation Management Plan is to be provided to the certifying authority, prior to the issuance of the construction certificate.

Reason: To protect native vegetation, wildlife and habitats in accordance with relevant Natural Environment LEP/DCP controls.

28. **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.

29. **Location of Shared Pathway**

All approved plans referenced in Condition 1 of this consent are to be amended, as follows:

- a. With the exception of any transition required to connect to an existing shared pathway, the proposed shared pathway (and any necessary easements) is to be located within Lot 16.

Reason: To ensure public access along the shared pathway.

30. **Construction Traffic Management Plan**

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

The CTMP must address following:

- a. The proposed phases of construction works on the site, and the expected duration of each construction phase;
- b. The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- c. Make provision for all construction materials to be stored on site, at all times;
- d. The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- e. The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- f. The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;

- g. Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- h. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- i. Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- j. The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- k. Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- l. Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- m. The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- n. Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- o. The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- p. Proposed protection for Council and adjoining properties;
- q. The location and operation of any on site crane; and
- r. The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

31. 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.

32. **Tree Removal**

The following existing trees/vegetation are granted approval for removal, based on the recommendations of the approved Arboricultural Impact Assessment Report referenced in Condition 1 of this consent:

- Trees 1, 2, 3, 9, 16A and 16B - Palms (exempt)
- Trees 4, 5, 8, and 17 - Fig Trees (exempt)
- Tree 6 - Fruit Tree (exempt)
- Trees 7A to 7E, 15 A to 15C, and 20, - Hibiscus
- Trees 10 to 14, 19, 21, and 22 - Willow Bottlebrush
- Tree 18 - Leighton Green (exempt)
- Trees 23 to 25 - Mexican Mock Orange (exempt)
- Trees 26 to 37 - Swamp She-oak
- Tree 38 to 41 - Swamp Mahogany
- Tree 42 - Coral Tree (exempt)

Reason: To confirm the extent of tree removal authorised by this consent.

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

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times and cleaned regularly to remove any collected sediment and prevent controls being overwhelmed, particularly after periods of rain. The controls shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

A silt curtain is to be installed downstream of the boundary in Narrabeen Creek prior to any disturbance of soil near Warriewood Road, along the drainage pipeline draining Warriewood Road, or in the creekline corridor (as these areas may either enter the pipeline or drain directly to the creek). The silt curtain can be removed once work on the Warriewood Road drainage line and in the creekline corridor has been completed and groundcover re-established (or appropriate matting installed that secures the ground surface).

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

34. **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.

35. **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.

36. **Progress Certification (Road & Subdivision)**

Written compliance certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Principal Certifying Authority for the following stages of works:

- a. Silt and sediment control facilities
- b. Laying of stormwater pipes and construction of pits
- c. Proof Roll - Subgrade, Subbase, Base, in accordance with AUSPEC Standard
- d. Sub-grade trimmed and compacted **
- e. Base-course laid and compacted **
- f. Kerb and gutter construction
- g. Pavement (Asphalt Concrete roads and concrete footpaths)
- h. Landscaping and vegetation
- i. Clean-up of site, and of adjoining Council roadway and drainage system. (**To be tested by a recognised N.A.T.A. approved laboratory certifying compaction is in accordance with the approved road pavement design). Details demonstrating compliance are to be submitted to the Principal Certifying Authority
- j. All layers of the road formation are to be proof rolled to Council's satisfaction

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

37. **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 /sub base/ basecourse level (proof roll to be conducted by minimum size 8-10 tonne smooth drum roller)
- 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.

38. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual 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.

39. **Safety Fencing of Excavation and/or demolition**

The site must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

Reason: To ensure private and public safety

40. **Waste Disposal**

All waste dockets and receipts regarding demolition, excavation and construction waste are to be retained on site to confirm which facility received the material for recycling or disposal.

Reason: To ensure waste disposal complies with NSW legislation.

41. **Site Entry Access way**

An all-weather access way at the front of the property consisting of 50-75mm aggregate or similar material at a minimum thickness of 200mm and 15metres long laid over geotechnical fabric is to be constructed prior to commencement of works and maintenance over the works period.

Reason: To reduce sediment being taken offsite

42. **Cleaning of Vehicles Leaving Site**

Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.

Reason: To reduce sediment being taken offsite

43. **Noise and Vibration**

The construction of the development and preparation of the site, including operation of vehicles, must be conducted in accordance with the Noise Management Plan required by this consent, so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations

Reason: To ensure the amenity of the surrounding area for residents.

44. **Protection of Adjoining Property - Excavation**

Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the

building from damage and, if necessary, underpin and support the adjoining building in an approved manner.

Reason: To ensure private and public safety

45. **Site Management Sign**

A clearly legible Site Management Sign is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:

- The builder's name, builder's telephone contact number both during work hours and after hours
- That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
- That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections.
- During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
- That no skip bins or materials are to be stored on Council's Road Reserve.
- That the contact number for Northern Beaches Council for permits is 9970 1111.

Reason: To ensure that contractors on site are aware of council permits that need to be obtained and contact for the builder/foreman.

46. **Site filling - Virgin Excavated Natural Material (VENM)**

Where site fill material is necessary, fill materials must:

- a. Be Virgin Excavated Natural Material (VENM) only, as defined in: The Protection of the Environment Operations Act 1997
- b. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.
- c. Certification is to be provided to the Principal Certifying Authority by a N.A.T.A. approved laboratory.

Reason: To ensure protection of the natural environment.

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

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

Reason: To protect human health and the environment.

48. **Compliance with the Contamination Management Plan**

The requirements of the Contamination Management Plan required by this consent are to be fully implemented from commencement of any excavation, demolition or development works until the issue of the occupation certificate.

Reason: Protection of the environment, SEPP 55 compliance.

49. **Dust**

Measures shall be documented and be undertaken to minimise any dust created as a result of excavation, vehicle movements and construction so as not to impact on neighbouring premises or create air pollution at any time.

Reason: To prevent air pollution from dust and comply with legislation.

50. **Acid Sulfate Soil Management**

Any new information which comes to light during remediation, excavation or construction works which has the potential to alter previous conclusions about the uncovering of acid sulfate soils must be notified to the certifier as soon as reasonably practicable. This will also require the production of an Acid Sulfate Soil Management Plan, including disposal of affected soil to an approved facility, to be submitted to the certifier, before work continues.

Reason: To ensure potential acid sulfate soil is appropriately managed.

51. **Tree and vegetation protection**

- a. Existing trees and vegetation shall be retained and protected as follows:
 - i. all trees and vegetation located on adjoining properties,
 - ii. all road reserve trees and vegetation,
- b. Tree protection shall be generally undertaken as follows:
 - i. all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites,
 - ii. removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
 - iii. existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,
 - iv. any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
 - v. to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - vi. no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 Project Arborist on site,
 - vii. all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
 - viii. excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, including advice on root protection measures,
 - ix. should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

- x. any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
- xi. tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

Reason: to retain and protect significant planting on development and adjoining sites.

52. **Fauna and Tree Hollow relocation**

During any vegetation clearance for construction works the Project Ecologist is to be present to relocate any displaced fauna that may be disturbed during this activity.

Tree hollows are to be salvaged from trees within the development area and placed within the retained vegetation / Conservation Areas within the Lots. This is to be done by a qualified and experienced Arborist, under the direction of the Project Ecologist.

Details prepared by the project ecologist in writing demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure bushland management in accordance with Local Habitat Strategy 2007.

53. **Compliance with Ecologist's Recommendations**

All biodiversity-related measures are to be implemented during construction, as specified in the approved Vegetation Management Plan referenced in Condition 1 of this consent, as amended by any other condition of consent. Compliance with these measures is to be certified by the project ecologist prior to issue of the occupation certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

54. **Implementation of Construction Traffic Management Plan**

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

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

55. **Groundwater monitoring**

Groundwater levels must be maintained as close as possible to the pre-development conditions during construction (allowances for rainfall made).

Once excavation of the site begins, groundwater levels must be monitored quarterly at sites BH1, BH3, BH4, and BH7 used for the study conducted by Geotechnique Pty Ltd in the approved Geotechnical Risk Management Report referenced in Condition 1 of this consent, until excavation ceases and ground surfaces are stabilised.

A monitoring report from a suitably qualified engineer who has membership of Engineers Australia and appears on the National Engineering Register (NER) must be provided following each quarterly monitoring event to the Principal Certifying Authority, and a groundwater management plan prepared where groundwater levels are lowered by greater than 0.2 metres (allowances for rainfall made).

Reason: Protection of groundwater dependent endangered ecological community.

56. **Maintenance of Sediment and Erosion Control**

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

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

57. **Dewatering - Water Quality**

Discharge must achieve the following water quality targets in addition to any conditions/documentation of this consent, any requirements of the General Terms of Approval/Controlled Activity permit issued by DPI Water, and legislation including Protection of The Environment Operations Act 1997 and Contaminated Lands Act 1997.

Parameter	Criterion	Method	Time Prior to Discharge
Oil and grease	No visible	Visual inspection	<1 hour
pH	6.5- 8.5	Probe/meter	<1 hour
Total Suspended Solids (TSS)	<50mg/L	Meter/grab sample measures as NTU	<1 hour

NOTE: The correlation between NTU and TSS must be established by a NATA accredited laboratory prior to the commencement of dewatering activities.

All records of water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Tailwater must be discharged to the nearest stormwater pit in accordance with Council's Auspec1 Design Manual and must not spread over any road, footpath and the like. Discharge to the kerb and gutter will not be accepted.

Reason: Protection of the receiving environment.

58. **Dewatering Management**

If groundwater (greater than seepage) is encountered during excavations of greater than one metre depth from the existing ground surface level and dewatering is required to continue work, work must cease until the applicant has made an application for a dewatering permit to the Natural Resource Access Regulator (NRAR), and a dewatering management plan has been prepared.

The dewatering management plan must be certified by a suitably qualified civil engineer who has membership of Engineers Australia and appears on the National Engineering Register (NER), and the plan(s) provided to the Principal Certifying Authority. Council must issue a permit based on the plan and general terms of approval from the NRAR prior to dewatering

commencing.

Reason: Protection of the adjacent groundwater dependent endangered ecological community.

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

59. **Landscape Maintenance**

In addition to the recommendations of the approved Vegetation Management Plan referenced in Condition 1 of this consent, as amended, a 12 month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

Reason: To maintain local environmental amenity.

60. **Maintenance of Stormwater Quality System**

The stormwater quality system must be maintained at all times in accordance with the Stormwater Quality Operation and Maintenance Plan (required by this consent), manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Reason: Protection of the receiving environment.

61. **Control of Weeds**

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website. All environmental weeds are to be removed and controlled.

Reason: Weed management.

62. **Compliance with Vegetation Management Plan**

All biodiversity-related measures are to be implemented at the appropriate stage of development and for the full five year maintenance period, as specified in the approved Vegetation Management Plan referenced in Condition 1 of this consent, as amended by any other condition.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

63. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website.

Reason: Weed management.

64. **Works to Cease if Item Found**

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.

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

65. Positive Covenant for Stormwater Infrastructure and Drainage Structures

A positive covenant (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and accompanying 88B instrument, requiring the proprietor of the land to maintain the water quality management and on site detention system including GPTs in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the subdivision certificate.

Reason: To ensure ongoing maintenance of the water quality and on-site stormwater detention system

66. 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 the subdivision certificate.

Reason: To create encumbrances on the land.

67. Right of Carriageway

A right of carriageway (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and accompanying 88B instrument to include all vehicular access, pedestrian access and manoeuvring areas. The right of carriageway over the proposed extension of Pheasant Place is to benefit the properties of the adjoining Community Management Association that also gain access across Pheasant Place. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the subdivision certificate.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

68. Restriction as to User (Stormwater Infrastructure and Drainage Structures)

A restriction as to user shall be created on the title over the on site detention and water quality management systems, restricting any alteration to the system and infrastructure. The terms of such restriction, (available from Northern Beaches Council), are to be prepared by a registered surveyor to Northern Beaches Council's standard requirements at the applicant's expense. Northern Beaches Council shall be nominated as a party to release, vary or modify such restriction. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the subdivision certificate.

Reason: To ensure no modification of the on site detention and water quality management systems without Council's approval.

69. Community Management Statement

A Community Management Statement is to be prepared and submitted to Council, and is to

incorporate the following:

- a. That each of the residential lots is to have a share of the responsibility and costs associated with the ongoing operation and maintenance of all water management infrastructure, roadways and landscaping.
- b. Specific details of all ongoing operating and maintenance requirements associated with the water management infrastructure, as outlined in the Operations and Maintenance Manual required by this consent.
- c. Replication of all 'on-going conditions that must be complied with at all times'.
- d. Replication of the restriction as to user relating to stormwater infrastructure and drainage structures required by this consent.
- e. The prohibition of front fences.
- f. Management of waste collection practises to ensure that all bins are efficiently moved to and from the public road reserve to minimise impact upon the streetscape. Bins to be collected from Lorikeet Grove should be neatly arranged and evenly distributed to both sides of the street.

Details demonstrating compliance are to be submitted to the Council prior to the issue of the subdivision certificate.

Reason: To ensure compliance with water management strategy for the subdivision.

70. **Certification of Stormwater Infrastructure and Drainage Structures**

Prior to the issuance of the subdivision certificate, a Compliance Certificate is to be submitted by a qualified experienced practising Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field confirming to the satisfaction of the Principal Certifying Authority that the stormwater infrastructure and drainage structures have been constructed in accordance with the approved Civil Plans referenced in Condition 1 of this consent, as modified by any other condition of consent. The Compliance Certificate is to be accompanied by works as executed drawings certified by a registered surveyor and overdrawn in red of the approved Civil Plans.

Reason: To ensure the stormwater infrastructure and drainage structures has been built to the appropriate standard.

71. **Stormwater Drainage and Utility Services Plan**

A plan of subdivision identifying the location of water, gas, telephone, electricity and stormwater drainage in relation to boundaries and/or relevant easements, prepared by a registered surveyor is to be submitted to Council. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the subdivision certificate.

Reason: To ensure that services have been provided with appropriate easements as required by the Conveyancing Act 1919.

72. **Survey Plan - Construction Identification**

A declaration by a registered surveyor shall be provided to Council as evidence that all construction has been effected within the appropriate property, easement boundaries and rights of carriageway. This shall be in the form of a copy of the final subdivision or easement plan, with the distances from the boundaries to the edges of these structures endorsed in red thereon and signed by the registered surveyor.

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

Reason: To ensure accurate location of buildings, access and services.

73. **Sydney Water Compliance Certification**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation. Application must be made through an authorised Water Servicing Coordinator. 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 Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

74. **Certification of Utility Services**

The provision of all utilities/services and/or street lighting are to be certified by the relevant authority(s) and/or authorised contractor. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the subdivision certificate.

Reason: To ensure services have been provided in accordance with the relevant authorities requirements.

75. **Easement for Drainage**

An easement for drainage (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision the accompanying 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s). Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the subdivision certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

76. **Easement to Drain Water - Council Stormwater Drainage Line**

A 3m wide easement to drain water shall be created in favour of Council over the proposed upgraded Council drainage line which runs from Warriewood Road to the creek outlet. The easement is to be detailed on the final plan of subdivision and contain wording in the 88B instrument for maintenance in accordance with Councils requirements. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the subdivision certificate.

Reason: To identify flood affected areas on the property title.

77. **Easement for Services**

An easement for services (under the provisions of Section 88B of the Conveyancing Act) is to be created on the final plan of subdivision and the accompanying 88B instrument to ensure all utility services are located within the appropriate easement(s). Details demonstrating

compliance are to be submitted to the Principal Certifying Authority prior to the issue of the subdivision certificate

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

78. **Natural Watercourse**

Natural watercourses are to be accurately shown on all copies of the subdivision plan by the surveyor as "natural watercourses of variable widths", for lodgement with the Department of Lands.

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

Reason: To determine the location of natural drainage systems.

79. **Adjustment and Construction of All Public Utilities**

The adjustment and construction of all public utilities, services and drainage systems, and the creation of appropriate easements are to be at the full cost of the developer, including:

- a. Electrical and telecommunications for the proposed lots, which are to be provided underground. The location of any trenching and if required, pad mounted substation(s), is to take into account and future/proposed landscaping in the public domain.
- b. Street lighting facilities on Lorikeet Grove, the existing public road reserve frontage on Warriewood Road and internally which are to be provided in accordance with the requirements of Ausgrid.
- c. All utility services including overhead power supply and communication cables located in the adjacent Public Road reserve verge of Warriewood Road which are to be placed and/or relocated underground for the full length of the public road reserve frontages of the development site at the full cost to the developer.

Certification that the above requirements have been completed is to be submitted to Council prior to the issue of the subdivision certificate.

Reason: To ensure provision of utility services meets Council and the service authorities standards and specifications.

80. **Subdivision Certificate Application**

Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Nine copies of the final plan of subdivision are to be submitted. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

The application should be accompanied by a checklist, demonstrating that each relevant condition has been satisfied, with a reference to the relevant documentation relied upon in relation to each condition.

Reason: Statutory requirement of the Conveyancing Act 1919.

81. **Updated Water Management and Water Quality Monitoring Report and Checklist - Subdivision Certificate**

The applicant must provide a further updated Water Management Report (that includes an

updated Water Quality Monitoring Report). The report must address all the requirements of the Warriewood Valley Water Management Specification 2001 - Checklist - Subdivision Certificate. The checklist is to be completed by a suitably qualified water/environmental/civil engineer who has membership of Engineers Australia and appears on the National Engineering Register (NER).

The signed checklist and the updated Water Management Report must be provided to the Principal Certifying Authority prior to issue of the subdivision certificate.

Reason: To ensure water is appropriately managed and in accordance with the Warriewood Valley Water Management Specification and Pittwater 21 DCP.

82. **Assets to be Dedicated to Council.**

Works as executed plans for all works and structures which will be dedicated to Council or which are located within drainage easements or which will require ongoing maintenance by Council. The plans are to be in paper and electronic format (dwg or dxf file) in accordance with Councils standard specifications and comprise at least the following:

- a. Kerb and gutter, road pavement, footpaths, traffic devices, retaining walls;
- b. Signage (including type and wording), line marking;
- c. Easements, survey numbers and marks, reduced levels and co-ordinates;
- d. Stormwater drainage locations, pipe sizes and types, pit sizes and types, subsoil drains;
- e. Water quality devices;
- f. Canopy trees;
- g. Creekline works;

Please note that asset IDs need to be obtained from Council prior to the applicants CCTV review of the new Council stormwater drainage line. The works as executed plans are to be submitted to Council prior to the issuance of the subdivision certificate.

Reason: To comply with Councils policies and specifications.

83. **Certification of Consistency with Vegetation Management Plan**

The Project Ecologist or Ecological Consultant is to certify that:

- a. Native plant selection and planting as per the approved Vegetation Management Plan referenced in Condition 1 of this consent, as amended by any other condition, has been completed;
- b. All actions prescribed in the approved Vegetation Management Plan (as amended) have been undertaken fully and where relevant completed and that an appropriate program of regeneration and maintenance has been entered into to comply with requirements of the Plan;
- c. That areas/features requiring protection have been adequately protected and are in an acceptable condition.

Documented evidence is to be provided to the certifying authority prior to the issuance of the subdivision certificate.

Reason: Bushland management.

84. **Post Construction Dilapidation Report**

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council prior to the issue of the subdivision for public infrastructure and private property owners .

Additionally photographic evidence of the condition of the street trees and road reserve area adjoining the site after the completion of all construction, must be submitted showing that no damage has been done and if damage has been done that it has been fully remediated. The photographs shall be accompanied by a statement that no damage has been done (or where damage has been remediated that Council has approved that work). In this regard, Councils written agreement that all restorations have been completed satisfactorily must be obtained prior to the issue of any subdivision certificate.

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

85. **Compliance with Contamination Management Plan**

Prior to the issue of the subdivision certificate, certification from an appropriately qualified environmental consultant is to be provided stipulating that the requirements of the Contamination Management Plan have been complied with throughout excavation, demolition and development work stages. The certification shall also include:

- a. A validation and site monitoring report prepared in accordance with relevant guidelines issued under the Contaminated Land Management Act 1997 must be submitted to the Council within one month from completion of the remediation work.
- b. A detailed survey of all sites used for landfill disposal must be prepared within one month from completion of the remediation work, and submitted to Council.
- c. Identification of the extent and depth of all fill material in relation to existing roadways and buildings. The survey must also include a detailed survey of all sites used as landfill disposal pits, identifying boundaries and depth of disposal pits in relation to existing roadways and buildings.

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

Reason: Protection of the environment, SEPP 55 compliance.

86. **Geotechnical Certification**

Prior to issue of the subdivision certificate, Form 3 of the Geotechnical Risk Management Policy is to be completed and submitted to the Principal Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

87. **Landscaping Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plans referenced in Condition 1 of this consent, as modified by any other condition of consent.

Prior to the issue of the subdivision certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to Council, certifying that the landscape works have been completed in accordance with any conditions of consent.

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

88. **Narrabeen Creek Rehabilitation Works**

The applicant must submit certification from a suitably qualified water/environmental/civil engineer who has membership of Engineers Australia and the National Engineering Register (NER) that the Narrabeen Creek rehabilitation works have been constructed in accordance with the approved Creekline Plans referenced in Condition 1 of this consent and the detailed design plans submitted to satisfy the requirements of the construction certificate.

Details demonstrating compliance must be submitted to the Principal Certifying Authority prior to issue of the subdivision certificate.

Reason: To ensure creek works are completed in accordance with the consent approval.

89. **Certification of Planting, Biodiversity Management and ongoing work**

The Project Ecologist or Ecological Consultant is to certify that:

- a) Native plant selection and planting as per Vegetation Management Plan has been completed;
- b) All actions prescribed in the approved Vegetation Management Plan have been undertaken fully and where relevant completed and that an appropriate program of regeneration and maintenance has been entered into to comply with requirements of the Plan;
- c) That areas/features requiring protection have been adequately protected and are in an acceptable condition.

Reason: Bushland Management.

90. **Certification of Compliance with General Terms of Approval Issued by the NSW Rural Fire Service**

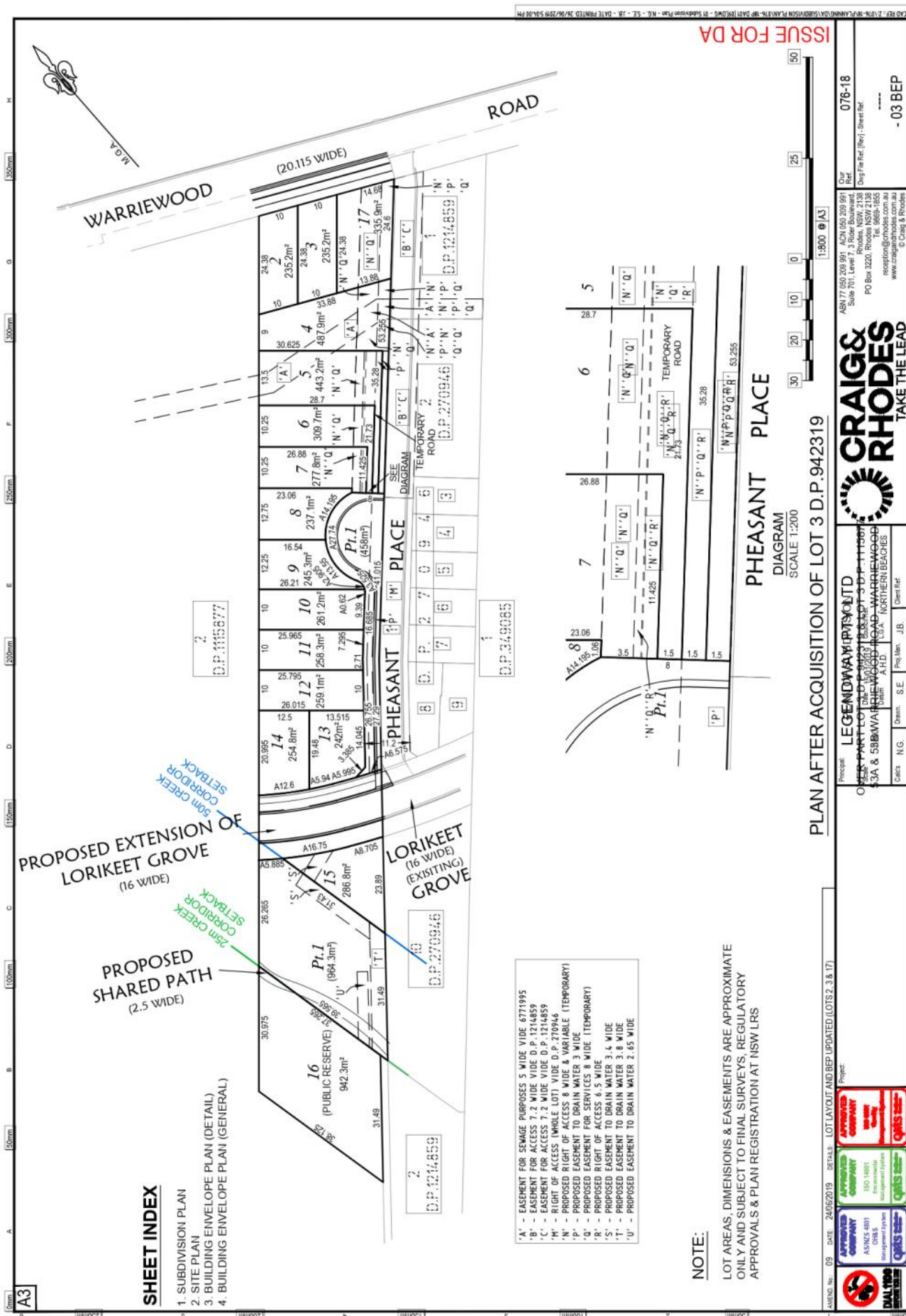
Prior to the issuance of the subdivision certificate, certification is to be provided to Council from a suitably qualified bushfire consultant to confirm that the as-built works are consistent with the General Terms of Approval issued by the NSW Rural Fire Service, as referenced in Condition 2 of this consent.

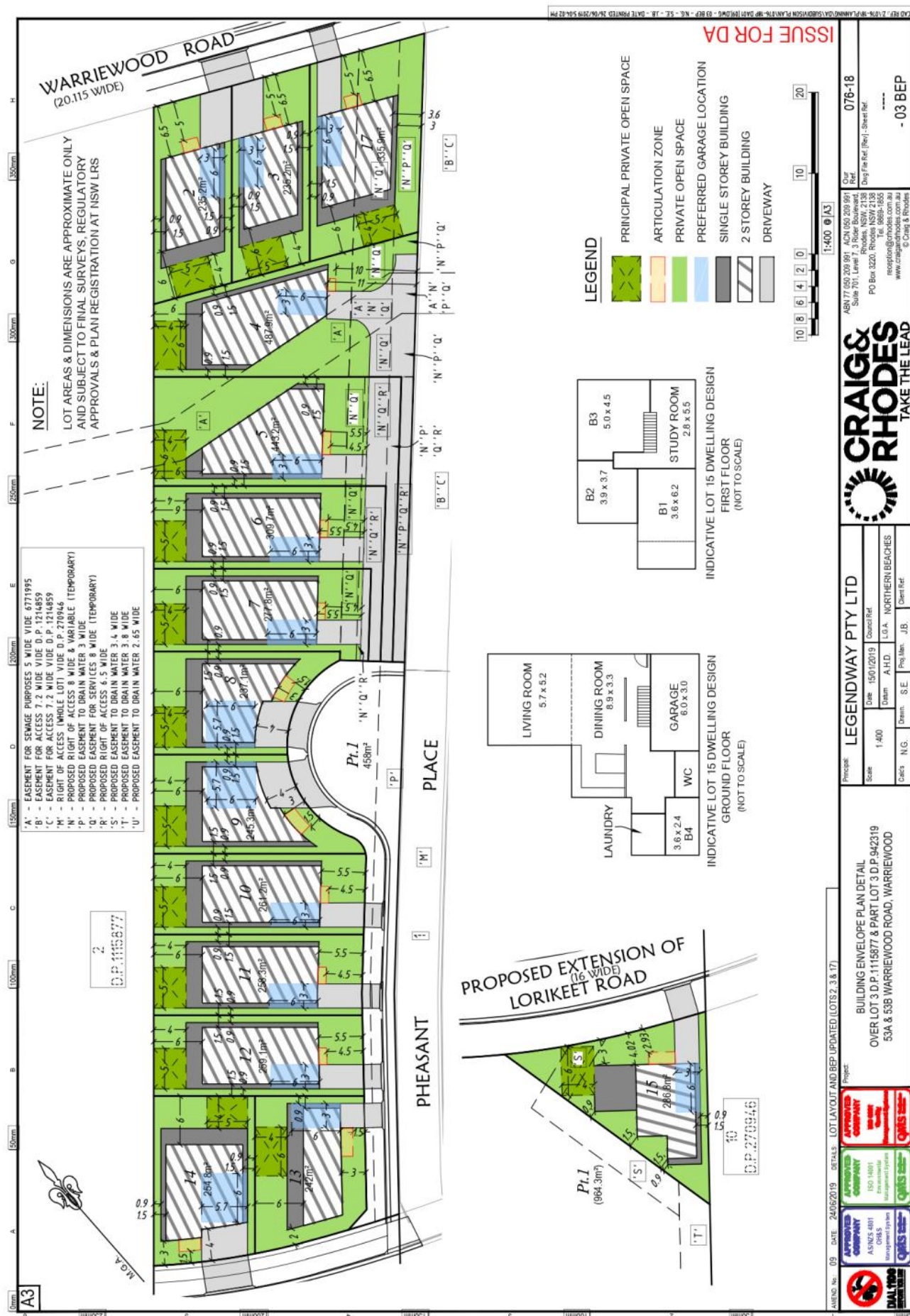
Reason: To ensure the as-built works have been carried out in accordance with the determination and statutory requirements of the NSW Rural Fire Service.

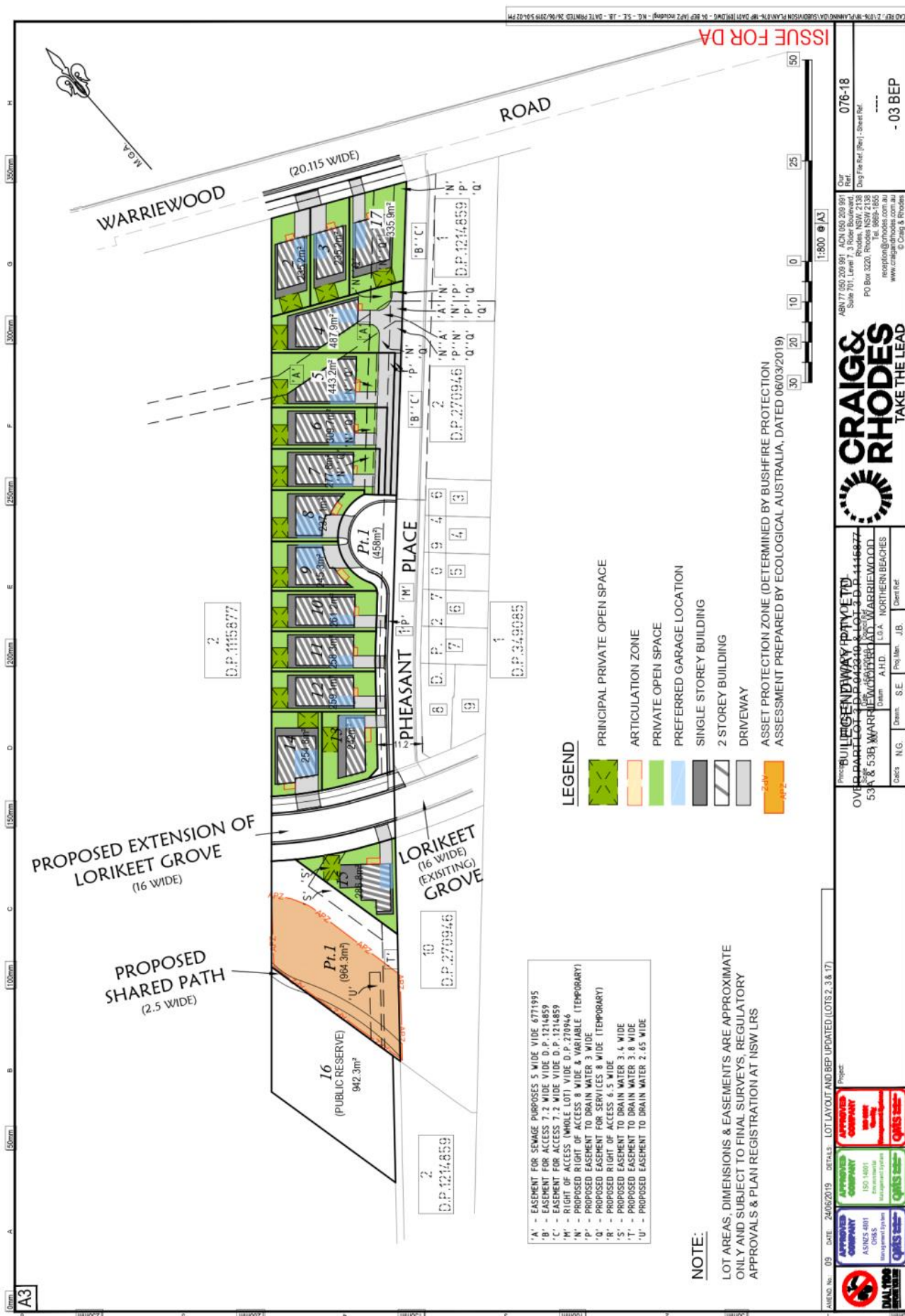
91. **Certification of Compliance with General Terms of Approval Issued by the Natural Resources Access Regulator**

Prior to the issuance of the subdivision certificate, certification is to be provided to Council from a suitably qualified professional to confirm that the as-built works are consistent with the General Terms of Approval issued by the Natural Resources Access Regulator, as referenced in Condition 3 of this consent.

Reason: To ensure that the as-built works have been undertaken and completed in accordance with the determination and the statutory requirements of the Natural Resources Access Regulator.







ITEM 3.2	DA2018/2027 - 15 ADDISON ROAD, MANLY - ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE
AUTHORISING MANAGER	ANNA WILLIAMS
TRIM FILE REF	2019/548918
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

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

This application was deferred by the Northern Beaches Local Planning Panel at the meeting of 26 June 2019.

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. DA2018/2027 for Alterations and Additions to an existing dwelling house at Lot C DP 316879, 15 Addison Road, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/2027
Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot C DP 316879, 15 Addison Road MANLY NSW 2095
Proposed Development:	Alterations and Additions to an existing dwelling house
Zoning:	Manly LEP2013 - Land zoned E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Michael Jeffrey Hunter Susanne Hunter
Applicant:	Hess Hoen
Application Lodged:	20/12/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	27/04/2019 to 26/05/2019
Advertised:	27/04/2019
Submissions Received:	15
Clause 4.6 Variation:	4.3 Height of buildings: 47%
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,511,300.00

EXECUTIVE SUMMARY

The application is for alterations and additions to an existing dwelling house and includes a variation to the height of buildings development standard of 47%. Despite the numerical extent of the non-compliance, the breach occurs for only a small portion of the balcony and dwelling that extends over an existing cliff face on the site, and does not result in any significant building bulk.

The subject site is mapped as an "Area of outstanding biodiversity value" (AOBV) under the *NSW Biodiversity Conservation Act 2016*. As such, the application is classed as "threatened species development" and requires advertising for a period of 28 days under Clause 89 of the *EPA Regulation 2000*.

Fifteen (15) submissions were received by way of objection in response to the notification/advertising of the application. The submissions generally relate to the impact of the development on the Little Penguin population of Manly, particularly in relation to the new proposed stone wall and the works to the existing boat shed. The application was referred to Council's Biodiversity Officer for comment, who concluded that the proposed works would not result in "significant or serious and irreversible impacts to threatened entities", subject to the recommended conditions of consent. Notwithstanding this initial assessment (7 May 2019), new information in relation to declining penguin population numbers and a shift in nest use patterns has since been made available to Council, as discussed in the most recent Biodiversity comment (18 September 2019). Given this new information and the application of the precautionary principle, the proposed elevator and stone wall works are considered to present an unacceptable level of risk to threatened species and are not supported by Council. Suitable conditions requiring the deletion of these works have been included.

It is also noted that some works proposed to the existing boat shed have been completed illegally and are conditioned to be specifically excluded from this consent.

The application was previously referred to the Local Planning Panel on 26 June 2019. The Panel deferred the application on that date in order to seek further information from the applicant and Council, and to distribute the Biodiversity Development Assessment Report (BDAR) to objecting members of the public. These issues have now been dealt with and the application is referred back to the Panel for determination.

This report is a composite of the original assessment and the additional information requested by the panel. The proposal is recommended for approval, subject to the deletion of the new elevator and stone wall, and conditions of consent.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes alterations and additions to the existing dwelling resulting in:

Harbour/yard level:

- Repairs/refurbishment works to the existing boatshed structure
- New sandstone wall with elevator/lift behind
- New staircase adjacent to boatshed

Lower level:

- Bar/wine room
- Bedrooms 3 with ensuite/steam and robe
- Bedroom 4 with ensuite
- Laundry and WC
- Extended harbour deck

Ground level:

- Kitchen/dining and living room
- Library
- Bedroom 1
- Bedroom 2 with ensuite
- Bathroom
- Extended harbour deck

Attic/roof level:

- Bedroom 5 with ensuite
- Store
- Balcony
- New roof and minor changes to roof form

Garage level:

- New roof and parapet
- New garage door
- New car stacker

Note: Some works proposed to the existing boat shed have been completed illegally and therefore these works are specifically excluded from this consent.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
Manly Development Control Plan - 3.2 Heritage Considerations
Manly Development Control Plan - 3.3.1 Landscaping Design
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.2 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)
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area
 Manly Development Control Plan - 5.4.2 Threatened Species and Critical Habitat Lands

SITE DESCRIPTION

Property Description:	Lot C DP 316879 , 15 Addison Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern-western side of Addison Road.</p> <p>The site is a battle axe lot with an access handle 22.645m long from Addison Road. The site has a frontage of 5.18m along Addison Road and a depth of approximately 28m beyond the access handle. The site has a surveyed area of 518.5m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates an existing dwelling house.</p> <p>The site slopes 13m from front (southeast) to rear (northwest).</p> <p>The site contains a variety of small trees and planted vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwellings, dual occupancies and residential flat buildings.</p>

Map:



SITE HISTORY

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

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

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 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</p>

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

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 15 submission/s from:

Name:	Address:
Mr Robert Thomas Tagg	28 / 11 Addison Road MANLY NSW 2095
Josie Hertner	115 / 637 - 641 Pittwater Road DEE WHY NSW 2099
Kathryn Elizabeth Ridge	16 Quinlan Parade MANLY VALE NSW 2093
Mr Hugh Burns	45 Bower Street MANLY NSW 2095
Mrs Antoinette Stevenson	2 / 21 Woods Parade FAIRLIGHT NSW 2094
Antony James Garman	9 Calder Street NORTH CURL CURL NSW 2099
Mrs Carole Elizabeth Rollings	3 / 6 Addison Road MANLY NSW 2095
Larry Shepherd	30 Aitken Avenue QUEENSCLIFF NSW 2096
Colleen Williams	17 / 24 Fairlight Street FAIRLIGHT NSW 2094
Mrs Beverley Jill Prior	64 Greycliffe Street QUEENSCLIFF NSW 2096
Mrs Sue Matthews	14 Cohen Street FAIRLIGHT NSW 2094
Mrs Judith Ann Reizes	154 Woodland Street BALGOWLAH NSW 2093
Jennie Minifie	46 Jeanette Street EAST RYDE NSW 2113
Mr Charles Murray Sharp	1 / 205 Woodland Street BALGOWLAH NSW 2093
Mrs Judith Anne Lambert	179 Sydney Road FAIRLIGHT NSW 2094

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

- Little Penguin Critical Habitat / Area of Outstanding Biodiversity Value
- Intensity of use of harbour level
- New sandstone wall/heritage Item I1 - Harbour Foreshores
- Works to existing boat shed
- Consistency with E4 zone objectives
- Serious and irreversible impacts
- Additional submissions

The matters raised within the submissions are addressed as follows:

- **Little Penguin Critical Habitat / Area of Outstanding Biodiversity Value**

Comment:

The proposal was referred to the relevant Council referral bodies and is assessed as resulting in no unreasonable ("serious and irreversible") impacts on the Little Penguin population or biodiversity values of the site, subject to the inclusion of recommended conditions of consent. Council's Biodiversity Officer completed further referral comments directly in response to concerns raised following the Advertisement of the application. Notwithstanding this assessment, the application of the precautionary principle with regard to the development means that the proposed elevator and stone wall works are considered to present an unacceptable level of risk to threatened species and are not supported by Council. Suitable conditions requiring the deletion of these works have been included.

- **Intensity of use of harbour level**

Comment:

While there is sufficient access to the foreshore area via the existing staircase on the site, the proposed elevator would provide additional access in closer proximity to the active nest site south of the property. It is considered that the potential increase in human activity associated with elevator operation may disrupt penguin activity at this site and as such, the elevator may pose an unacceptable risk and is not supported.

- **New sandstone wall/heritage Item I1 - Harbour Foreshores**

Comment:

It is acknowledged that the proposed wall and elevator would result in some level of visual impact, but that issue alone would not warrant refusal of the application. Notwithstanding this, the wall and elevator are not supported due to potential impact on threatened species.

- **Works to existing boat shed**

Comment:

Some of the proposed works to the existing boat shed have been undertaken illegally on the site and are recommended to be excluded from any consent granted.

- **Consistency with E4 zone objectives**

Comment:

The proposal is for alterations and additions to an existing dwelling within the E4 zone. The objectives of the E4 zone are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water*

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

The assessment of the proposed development has included referral to several internal Council teams for comment and taken into consideration the relevant provisions of all applicable LEPs, DCPs and SEPPs. Based on the referral comments received, assessment undertaken and recommended conditions of consent, the proposal is considered to be consistent with the objectives of the zone and to result in no unreasonable environmental impacts. In particular, restriction of works on the foreshore has been conditioned to ensure the ecological values of the area are maintained.

- **Serious and irreversible impacts**

Comment:

A number of submissions identify the endangered little penguin population as a potential 'Serious and Irreversible Impacts' (SAIL) entity. The potential impact of the proposal in relation to the Little Penguin population is discussed in the Biodiversity Officer comments and the development. The proposal is conditioned to mitigate the risk associated with the works.

- **Additional submissions**

Comment:

In relation to the further submissions received following the Local Planning Panel meeting on 26 June 2019, and the previous submissions, it is considered that all relevant objections have been sufficiently addressed in detail both in this section of the report and via expert comments relating to biodiversity. Council has also included conditions of consent to resolve concerns relating to potential biodiversity impacts.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>No landscape objection is raised for the proposed alterations and additions to the dwelling house, garage and boat shed, subject to the protection of existing trees and vegetation.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p>
NECC (Bushland and Biodiversity)	<p>Final Biodiversity Comment (18 September 2019)</p> <p>Council's Biodiversity and Planning Section recommend approval of the application subject to conditions including deletion of the proposed elevator and enclosing wall.</p> <p>The following additional information has been considered in preparation of this referral response:</p>

Internal Referral Body	Comments
	<p>- Preliminary 2019/20 penguin breeding season monitoring (DoPIE, 18 September 2019)</p> <p>- Manly Little Penguin Recovery Program 2018/19 Monitoring Report (OEH, received 31 May 2019)</p> <p>- Public submissions received following LPP meeting 26 June 2019.</p> <p>OEH/DoPIE monitoring results for the 2018/19 and early 2019/20 Little Penguin breeding seasons has indicated a recent shift in penguin nest use patterns within the foreshore of the subject site and nearby properties. Specifically, surveys indicate that a nest site to the south of 15 Addison Road recently started supporting breeding activity for the first time since 2013. Conversely, the nest site directly under the boatshed/staircase of 15 Addison Road is not currently occupied and did not support successful breeding activity in the 2018/19 season.</p> <p>Given that the proposed elevator would move foreshore access closer to the active nest site south of the property, it is considered that the potential increase in human activity associated with elevator operation may disrupt penguin activity at this site. Based on application of the precautionary principle, the proposed elevator may therefore pose an unacceptable risk and is not supported.</p> <p>It is further recognised that 2018/19 penguin monitoring revealed a significant decline in breeding pair numbers at nest sites across the entirety of the declared population area. Given the recent shift in penguin nest use patterns on the subject site and nearby properties, and the current level of uncertainty regarding the status of the population, it is recommended that the proposed elevator and enclosing wall be deleted from the application by way of consent conditions.</p> <p>Subject to this amendment and recommended conditions of consent, it is considered that the proposal would be unlikely to impact upon the endangered population of Little Penguins including nearby nesting sites.</p> <p>Second Biodiversity Comment (28 May 2019) This Biodiversity assessment addresses matters arising from Threatened Species Development public exhibition. The assessment addresses relevant Biodiversity provisions and does not address visual impact, aesthetic considerations, compliance with SHREP or</p>

Internal Referral Body	Comments
	<p>Waterways controls. Relevant Biodiversity provisions are:</p> <ul style="list-style-type: none"> - NSW <i>Biodiversity Conservation Act 2016</i> (BC Act) - Manly LEP Clause 6.5 (Terrestrial Biodiversity) - Manly DCP Section 5.4.2 (Threatened Species and Critical Habitat Lands) - Manly DCP Section 3.3.1.a)iv) <p>The assessment does not relate to boat shed repair works, which are to be deleted from the DA.</p> <p>The following documents and plans have been considered in the preparation of this and the initial Biodiversity assessment:</p> <ul style="list-style-type: none"> - Biodiversity Development Assessment Report (Total Earth Care, December 2018) - Architectural Plans (Hess Hoen, 6 December 2018) - Statement of Environmental Effects (Mod Urban, December 2018) <p>Relevant Biodiversity matters identified during the public exhibition stage include:</p> <p>Matter: Loss of potential penguin habitat associated with rock wall construction. Response: A lack of suitable breeding habitat is not considered to be a limiting factor for the population; rather, potential breeding habitat is currently under-utilised as the North Harbour penguin population is well below carrying capacity. It is therefore considered that this component is unlikely to impact the population through loss of potential breeding habitat.</p> <p>Matter: Increased human occupation of the foreshore associated with lift installation. Response: Access to the foreshore is historically and currently serviced by the existing stairs adjoining the boatshed. It is considered that the new lift will largely replace use of the existing stairs and will direct human movement to a location that is further away (>10m) from known breeding habitat. It is therefore considered that installation of the lift will serve to reduce disturbance to any penguins utilising the known nest site. It is also noted that pecuniary penalties for interference with penguins and/or their habitat (i.e. approaching within 5m) continue to apply at the site, in accordance with Division 3.2 of the NSW Biodiversity Conservation Regulation 2017.</p> <p>Matter: Impact of boatshed works to known penguin nest site. Response: These works are to be deleted from this consent.</p> <p>Matter: Variability in penguins' patterns of nest use and behaviour and potential discrepancies with declared non-breeding season period. Response: The history of penguin utilisation of known breeding habitat at the site indicates that penguins at this site are unlikely to occupy the nest during the declared non-breeding season. Penguins are seabirds and only occupy nests during the non-breeding season in rare cases. Proposed conditions of consent will ensure works do not occur within the breeding and moulting season, when penguins are most</p>

Internal Referral Body	Comments
	<p>vulnerable to disturbance.</p> <p>It is considered that, subject to conditions of consent including timing restrictions identified in the submitted BDAR, the proposal can be undertaken without significant or serious and irreversible impacts to threatened entities.</p> <p>Initial Biodiversity Comment (7 May 2019) The proposed development has been assessed against the following provisions:</p> <ul style="list-style-type: none"> - NSW <i>Biodiversity Conservation Act 2016</i> (BC Act) - Manly LEP Clause 6.5 (Terrestrial Biodiversity) - Manly DCP Section 5.4.2 (Threatened Species and Critical Habitat Lands) - Manly DCP Section 3.3.1.a)iv) <p>The subject site is identified as an Area of Outstanding Biodiversity Value (AOBV; formerly Little Penguin Critical Habitat) under the NSW BC Act. Accordingly, the development triggers the requirement for a Biodiversity Development Assessment Report (BDAR). A BDAR has been prepared in accordance with Section 6.7 of the BC Act and submitted with the DA.</p> <p>The following proposed works have the potential to impact upon the AOBV and endangered population of Little Penguins:</p> <ul style="list-style-type: none"> - Installation of elevator between harbour level and the formed backyard; - Construction of a new staircase adjacent the boatshed; - Construction of a new stone wall along the cliff face. <p>This referral response does not apply to the boatshed repair works, which have already been undertaken.</p> <p>The BDAR identifies a number of potential prescribed impacts as defined under Section 6.7 of the BC Act. Most of these relate to indirect construction-related impacts which have the potential to prevent penguin occupation and natural use of nest sites at the subject site and on adjoining properties. The BDAR identifies measures to avoid and minimise impacts on the biodiversity values of the site, particularly of known penguin and bandicoot habitat. Proposed measures generally focus around timing restrictions to limit high-risk construction activity to outside of the penguin breeding season.</p> <p>An assessment of potential noise associated with operation of the new elevator indicated that levels will not be substantially greater than background noise.</p> <p>In order to prevent disturbance to nesting penguins, the following activities are to be restricted to outside of the penguin breeding season:</p>

Internal Referral Body	Comments
	<p>- installation and removal of scaffolding; - elevator construction (particularly footing/base installation); - construction of the new staircase adjacent the boatshed.</p> <p>It is considered that, subject to conditions of consent including timing restrictions identified in the submitted BDAR, the proposal can be undertaken without significant or serious and irreversible impacts to threatened entities.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>12 Development on land within the coastal vulnerability area</p> <p><i>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:</i></p> <p>(a) <i>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</i></p> <p>(b) <i>the proposed development:</i></p> <p>(i) <i>is not likely to alter coastal processes to the detriment of the natural environment or other land, and</i></p> <p>(ii) <i>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</i></p> <p>(iii) <i>incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and</i></p> <p>(c) <i>measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.</i></p> <p><u>Comment:</u></p> <p>The proposed development meets Clauses 12 and 15 of the Coastal Management SEPP (13 and 14 do not apply). As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>The proposed development also meets the requirements of the Sydney Harbour REP and DCP, and relevant clauses of the Manly</p>

Internal Referral Body	Comments
	<p>LEP and DCP.</p> <p>However, the subject property is identified under Manly Coastal Risk Planning map showing current and future hazard and inundation lines, hence, proposed development are designed, constructed in such a way to minimize the associated risks.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of the available documents,</p> <p>The site of proposed development is not a listed heritage item in its own right, however, it is located in the coastal protection area and in vicinity of heritage items, including stone kerbs in Addison Road.</p> <p>Given the nature of the proposal and the separation between sites, and given the favourable topography, 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>
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)

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 21 (relating to biodiversity, ecology and environment protection) Clause 25 (relating to foreshore and waterways scenic quality) and Clause 26 (relating to maintenance, protection and enhancement of views) 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.

2 Aims of plan

- (1) *This plan has the following aims with respect to the Sydney Harbour Catchment:*
- (a) *to ensure that the catchment, foreshores, waterways and islands of Sydney Harbour*
 - (i) *as an outstanding natural asset, and*
 - (ii) *as a public asset of national and heritage significance, for existing and future generations,*
 - (b) *to ensure a healthy, sustainable environment on land and water,*
 - (c) *to achieve a high quality and ecologically sustainable urban environment,*
 - (d) *to ensure a prosperous working harbour and an effective transport corridor,*
 - (e) *to encourage a culturally rich and vibrant place for people,*
 - (f) *to ensure accessibility to and along Sydney Harbour and its foreshores,*
 - (g) *to ensure the protection, maintenance and rehabilitation of watercourses, wetland*
 - (h) *to provide a consolidated, simplified and updated legislative framework for future*

Comment:

The proposed development will not unreasonably detract from the cultural, ecological or commercial values of Sydney Harbour. The proposal has been referred to all relevant internal Council departments for comment with no objections received, subject to the recommended conditions of consent. Further assessment of any impacts is undertaken throughout this report.

14 Foreshores and Waterways Area

- The planning principles for land within the Foreshores and Waterways Area are as follows:*
- (a) *development should protect, maintain and enhance the natural assets and unique environment*
 - (b) *public access to and along the foreshore should be increased, maintained and improved,*
 - (c) *access to and from the waterways should be increased, maintained and improved for public*
 - (d) *development along the foreshore and waterways should maintain, protect and enhance the*
 - (e) *adequate provision should be made for the retention of foreshore land to meet existing and*
 - (f) *public access along foreshore land should be provided on land used for industrial or commercial*
 - (g) *the use of foreshore land adjacent to land used for industrial or commercial maritime purposes*
 - (h) *water-based public transport (such as ferries) should be encouraged to link with land-based*
 - (i) *the provision and use of public boating facilities along the waterfront should be encouraged*

Comment:

The proposal will not alter any existing public access to or along the harbour foreshore for recreational or commercial use. The proposed works will obscure part of the existing natural cliff on the property, however, the design of the new sandstone wall is such that the visual impact from the foreshore/harbour is minimised.

21 Biodiversity, ecology and environment protection

- The matters to be taken into consideration in relation to biodiversity, ecology and environment*
- (a) *development should have a neutral or beneficial effect on the quality of water entering the*

- (b) development should protect and enhance terrestrial and aquatic species, populations and
- (c) development should promote ecological connectivity between neighbouring areas of aquatic
- (d) development should avoid indirect impacts on aquatic vegetation (such as changes to flow
- (e) development should protect and reinstate natural intertidal foreshore areas, natural landform
- (f) development should retain, rehabilitate and restore riparian land,
- (g) development on land adjoining wetlands should maintain and enhance the ecological integrity
- (h) the cumulative environmental impact of development,
- (i) whether sediments in the waterway adjacent to the development are contaminated, and whether

Comment:

The proposed works are set back from the high water mark and the proposal will result in minimal additional impervious area and associated runoff. Conditions are imposed to manage the construction process such that impacts on water quality are avoided and/or minimised. No aquatic vegetation will be impacted as a result of the development. The protection and enhancement of the penguin population and its habitat is maintained as a result of the development as outlined under the comments and conditions relating to biodiversity/threatened species. Whilst the proposal includes a new sandstone wall partially obscuring the natural landform, the wall provides visual improvement to the existing/proposed undercroft and lift structures. Based on the potential impact to threatened species as a result of these works, the proposed elevator and stone wall are not supported and are conditioned to be deleted.

25 Foreshore and waterways scenic quality

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of scenic quality are:

- (a) the scale, form, design and siting of any building should be based on an analysis of:
 - (i) the land on which it is to be erected, and
 - (ii) the adjoining land, and
 - (iii) the likely future character of the locality,
- (b) development should maintain, protect and enhance the unique visual qualities of Sydney
- (c) the cumulative impact of water-based development should not detract from the character of the area

Comment:

The proposal is not considered to substantially alter the appearance of the foreshore area in the vicinity of the site. The proposed works to the dwelling are relatively minor additions/changes to the roof form, facade and associated balconies. The proposed stone wall retains the scale of the existing cliff behind and is designed to minimise the change to the existing appearance through the re-use of sandstone excavated from the site and planting of a climbing fig. However, as discussed above these works are not supported.

26 Maintenance, protection and enhancement of views

The matters to be taken into consideration in relation to the maintenance, protection and enhancement of views are:

- (a) development should maintain, protect and enhance views (including night views) to and from the site
- (b) development should minimise any adverse impacts on views and vistas to and from public places
- (c) the cumulative impact of development on views should be minimised.

Comment:

The proposal will not unreasonably impact any views or vistas to and from Sydney Harbour or other public places.

Sydney Harbour Foreshores and Waterways Area - Development Control Plan

The Sydney Harbour Foreshores and Waterways Area DCP is also applicable to the site. An

assessment of the proposal against the relevant provisions of Parts 2, 3 and 5 has been undertaken.

2. Ecological Assessment

The subject site is located within the *"Mixed Rock Intertidal and Sand"* Ecological Community.

<u>Statement of Intent</u>	<u>Comment</u>
Vegetation Protection <i>To conserve and enhance vegetation communities of high conservation importance.</i>	No native or high importance vegetation is proposed to be impacted or removed.
Weed Control <i>To reduce the effects of weed invasion.</i>	The site contains a variety of exotic species, however proposal will not result in the introduction of weeds onto the site.
Reduce Predation Pressure <i>To minimise the risk of predation on native fauna species by domestic pets.</i>	The provision of further fencing on the site is not considered appropriate.
Soil Conservation <i>To minimise impacts associated with soil erosion and water siltation.</i>	The proposed excavation is contained within the existing building footprint and suitable sediment control conditions are included.
Pollution Control <i>To reduce impacts associated with pollution.</i>	Sediment controls are required to be implemented during construction and the development will not result in increased pollutants entering the Harbour.

3. Landscape Assessment

The subject site is located within the area Landscape Character Type 8. Any development within this landscape is to satisfy the following criteria:

- *vegetation is integrated with land-based development to minimise the contrast between natur*

Comment:

Vegetation is integrated into the proposed stone wall to minimise the contrast in the appearance of the natural rock and the adjoining constructed wall.

- *design and mitigation measures are provided to minimise noise and amenity impacts betwee*

Comment:

The residential use is existing and remains consistent with the surrounding area.

- *the maritime uses on the Harbour are preserved. Pressure for these uses to relocate is minim*

Comment:

The existing use and proposed works will not unreasonably impact the uses of the Harbour.

- *remaining natural features that are significant along the foreshore are preserved and views o*

Comment:

The proposed works are designed to retain the appearance of the existing sandstone cliff face as closely as possible. However, these works are conditioned to be deleted from the proposal.

5. Design Guidelines for Land-Based Developments

5.2 Foreshore Access

There is currently no public access through the subject site to the foreshore.

5.3 Siting of Buildings and Structures

In addition to these foreshore building lines, the following criteria should be observed when siting buildings and structures:

- *where there is existing native vegetation, buildings should be set back from this vegetation to*
- *buildings should address the waterway;*
- *buildings should not obstruct views and vistas from public places to the waterway;*
- *buildings should not obstruct views of landmarks and features identified on the maps accompanying the assessment;*
- *where there are cliffs or steep slopes, buildings should be sited on the top of the cliff or rise*

Comment:

The proposed works will not impact native vegetation on the site. The existing dwelling is built on top of the cliff and addresses the Harbour. The proposal retains and enhances this existing orientation without unreasonably impacting any views or vistas from public places.

5.4 Built Form

The following guidelines are designed to reinforce the local requirements:

- *where buildings would be of a contrasting scale or design to existing buildings, care will be taken to ensure they are sympathetic to the surrounding built form;*
- *where undeveloped ridgelines occur, buildings should not break these unless they have a bona fide need to do so;*
- *while no shapes are intrinsically unacceptable, rectangular boxy shapes with flat or skillion roofs are generally considered less desirable;*
- *walls and fences should be kept low enough to allow views of private gardens from the water;*
- *bright lighting and especially floodlighting which reflects on the water, can cause problems with glare and should be avoided;*
- *use of reflective materials is minimised and the relevant provisions of the Building Code of Australia are followed;*
- *colours should be sympathetic with their surrounds and consistent with the colour criteria, where applicable.*

Comment:

The surrounding area contains development of varying scales/designs ranging from single dwellings to multi-storey residential flat buildings. The proposal generally retains the style/appearance of the existing dwelling. No walls or fences that obscure garden views are proposed and conditions are included to prohibit the use of bright artificial lighting and reflective materials. The proposed external finishes are generally limited to sandstone and white and black paint.

5.6 Planting

The proposed new/relocated garden bed adjacent to the lift is required to be planted with species listed in the Manly DCP and / or locally native species.

Note: No assessment of the proposed boat shed works has been completed as these works are specifically excluded from the consent.

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

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 includes minimal works within the areas specified on the Manly Coastal Risk Planning map. Council's Coastal Officer included a condition of consent requiring all works to be suitably designed and constructed with regard to coastal risk.

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

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

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

Comment:

Council's Coastal Officer has assessed the application as satisfactory against the relevant provisions of SEPP (Coastal Management), the Sydney Harbour REP & DCP, and the Manly LEP and DCP.

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:	8.5m	Dwelling: 8m Balcony: 5.9m - 12.5m	47%	No
Floor Space Ratio	0.6:1 311.1m ²	0.59:1 310.6m ²	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	12.5m
Percentage variation to requirement:	47%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

within cl 4.6(3) and these are addressed as follows:

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

The applicant's written request argues, in part:

- *"The proposed building is consistent with the prevailing building height. Furthermore, the element of the proposal that represents its highest point is the ground floor living area and balcony structure with new roof which is a small structure which currently exists on site. The majority of the building has a lesser height. The portion of the building that exceeds the maximum height standard is set atop a cliff face which contributes to the numerical non-compliance.*
- *The proposed building envelope is consistent with the existing building envelope and other similar development.*
- *The bulk and scale of the proposal is consistent with this style of residential building which is common for residential areas.*
- *The proposed building provides an appropriate height, bulk and scale to the site and is largely compliant with MLEP 2013 height provisions.*
- *The proposal will not have any impact on the existing streetscape or the foreshore character and appearance.*
- *The proposal will add to delivering a mix of well-designed housing that meets the needs of Sydney's growing population unique family dwellings to meet the changing population needs."*

Comment:

The proposed height non-compliance largely relates to the extension of the existing balcony and new glass lift. The extent of the proposed works that are non-compliant are indicated on drawing DA7.1 Building Height Plane / 3D Views. The existing balcony is splayed and the minor extension of this structure and associated lift serve to increase the amenity of the dwelling while resulting in minimal additional building bulk. The existing dwelling and proposed attic addition remain compliant with the height of buildings and floor space ratio development standards. Notwithstanding the non-compliant elements at the rear of the dwelling, the proposal is considered to maintain a consistent height and appearance with surrounding development.

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The non-compliance is generally limited to the unenclosed south-western balcony and glass lift, in addition to a small portion of the roof over the library. The majority of the dwelling remains significantly below the maximum building height and ensures that the development is consistent with the topography, prevailing building height and desired streetscape.

b) to control the bulk and scale of buildings,

Comment:

As discussed above, the height non-compliance generally relates to an open balcony and transparent lift structure, and therefore does not result in excessive bulk or scale.

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 non-compliance does not result in any unreasonable disruption to views to, from or between residential development and public spaces. An assessment of view loss from surrounding properties is completed under Part 3 General Principles of Development.

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:

Notwithstanding the proposed height non-compliance, the development maintains adequate sunlight access to the subject site and adjacent properties/dwellings.

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 overall building height non-compliance occurs for only a small proportion of the

dwelling, and will not unreasonably impact existing vegetation or surrounding land uses.

Zone objectives

The underlying objectives of the E4 Environmental Living zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

The proposed works, as conditioned, are considered to be low impact and suitable within the E4 zone.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

The proposed development will not adversely impact the ecological, scientific and aesthetic values of the site.

- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*

Comment:

The proposal is for works to a single dwelling house and will not impact tree canopies or dominate the natural scenic qualities of the foreshore.

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

Comment:

The proposed non-compliance will not unreasonably impact on nearby foreshores, geological features or bushland.

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

Comment:

The proposed works on the foreshore result in minor loss of landscaped area, however the majority of vegetation at harbour level in the rear yard is to be retained.

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

Comment:

Taking into the consideration the context and constraints of the site, the proposed development is not unreasonable in height or bulk in relation to existing vegetation, topography or

surrounding land uses.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument where the variation is not greater than 10%. Following the release of PS-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for a period of 30 months from 24 May 2019, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary a development standard by more than 10%.

Despite the ability of Council's Development Determination Panel to assume the concurrence of the Secretary for variations to development standards greater than 10%, the application is referred to the Local Planning Panel due to the number of submissions received by way of objection.

5.10 Heritage conservation

The proposed works are not considered to result in any unreasonable impact to the heritage value of the harbour foreshore or surrounding area. Council's Heritage Officer raised no objection to the proposed development.

6.2 Earthworks

The Geotechnical Report submitted with the application concludes that the proposed excavation works are acceptable, subject to compliance with the recommendations.

The existing cliff face is largely obscured by existing vegetation. The new stone wall is proposed to be constructed of excavated site material and planted with the same climbing vegetation. The proposed finishes are intended to match the existing cliff as closely as possible and minimise the visual alteration of the site as viewed from the harbour. Despite this assessment, the proposed wall is not supported due to potential impact to the Little Penguin population including known nearby nesting sites.

6.5 Terrestrial biodiversity

Council's Biodiversity Officer concluded that the proposal can be undertaken without significant or serious and irreversible impacts to threatened entities, subject to recommended conditions of consent.

6.9 Foreshore scenic protection area

The proposed new stone wall is designed to match the existing cliff face as closely as possible. The wall is to be constructed of materials excavated from the site and will be planted with the same climbing fig as the existing. The remaining proposed works are relatively minor alterations and maintain consistency with the existing dwelling as viewed from the harbour frontage. As such, the proposal is not

considered to result in unreasonable impact in relation to visual aesthetic amenity or views to and from Sydney Harbour. Notwithstanding this, the proposed wall is not supported due to potential impact to the Little Penguin population including known nearby nesting sites.

6.10 Limited development on foreshore area

(1) The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.

(2) Development consent must not be granted to development on land in the foreshore area except for the following purposes:

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore*
- (b) the erection of a building in the foreshore area, if the levels, depth or other exceptional feat*
- (c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimmi*

Comment:

The proposed development is for the purpose of extension/alterations to an existing building located partly within the foreshore area and therefore is permitted under *Clause 6.10(2)*.

(3) Development consent must not be granted under this clause unless the consent authority is satisfied that:

(a) the development will contribute to achieving the objectives for the zone in which the land is located, and

Comment:

The proposal is consistent with the objectives of the E4 Environmental Living zone.

(b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and

Comment:

The proposal is for works to the existing dwelling and maintains a consistent appearance with the surrounding area.

(c) the development will not cause environmental harm such as:

- (i) pollution or siltation of the waterway, or*
- (ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora hab*
- (iii) an adverse effect on drainage patterns, and*

Comment:

The proposal complies subject to the included conditions of consent.

(d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and

Comment:

The proposed works are sufficiently separated from the immediate foreshore area and waterway and

will not result in any congestion or conflict in the foreshore area or waterway.

(e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and

Comment:

The proposed works will not compromise continuous access along the foreshore area or to the waterway.

(f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and

Comment:

The proposed development will not unreasonable impact any of the above values present on the site.

(g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and

Comment:

The proposed works are generally consistent with the existing dwelling and surrounding area, and are not considered to unreasonably alter or impact the amenity or aesthetic appearance of the foreshore.

(h) sea level rise or change of flooding patterns as a result of climate change has been considered.

Comment:

The nature and siting of the works is assessed as acceptable considering future climate impacts.

Conclusion:

Given the above Council is satisfied that the proposal is consistent with the relevant provisions of LEP Clause 6.10.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 518.5m ²	Requirement	Proposed	Complies
4.1.2.1 Wall Height	NE: 6.5m	3.5m	Yes
	SW: 8m	Balustrade: 9.6m	No
		Dwelling: 5.7m	Yes
4.1.2.2 Number of Storeys	2	2 + habitable attic addition	No
4.1.2.3 Roof Height	Height: 2.5m	3.6m	No
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Garage: 0m	Existing
4.1.4.2 Side Setbacks and	NE: 1.17m	1.2m	Yes

Secondary Street Frontages	SW (Balustrade): 3.2m	0.9m	No
	SW (Dwelling): 1.9m	0.9m	No
4.1.4.4 Rear Setbacks	8m	9m	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area 285.2m ²	51.7% 268.1m ²	No
	Open space above ground 25% of total open space 67m ²	24.6% 66m ²	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space 93.8m ²	36.1% 96.8m ²	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	> 18m ²	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	3 spaces	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	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)	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.2 Heritage Considerations

Council's Heritage Officer raised no objection to the proposed development.

3.3.1 Landscaping Design

Council's Landscape Officer raised no objection to the proposal, subject to recommended conditions of consent.

3.4.1 Sunlight Access and Overshadowing

Compliance with controls:

The proposal will retain the minimum sunlight access requirements to the open spaces and living areas of adjoining properties in accordance with this Clause.

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:

The proposal results in only minor additional overshadowing of the harbour frontage area of No. 11 Addison Road at 9am and 10am. There will also be minor overshadowing of the subject site throughout the day.

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 allows adequate sunlight access to be retained to the subject site and adjoining 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 proposal results in minimal additional building bulk and is sufficiently modulated to maximise mid-winter sunlight access.

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.

3.4.2 Privacy and Security

Compliance with controls:

The proposed new glazing and balcony works to the northwestern elevation are orientated towards the available harbour views. The proposed attic ensuite window WD-04 is obscured and windows WD-05.1 and WD-05.2 are to a staircase. The proposed new windows to the side elevations are replacements of existing windows only. As such, the proposal complies with the controls of the Clause.

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 is appropriately designed to mitigate any unreasonable privacy or direct viewing impacts between the subject site and adjoining properties. .

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 proposed development provides sufficient privacy and sunlight access to the subject site and adjoining properties.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

Opportunities for passive surveillance remain unchanged.

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.

3.4.3 Maintenance of Views

Merit consideration:

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

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

Comment:

The proposal will provide for reasonable view sharing between existing and proposed developments. The applicant conducted a detailed assessment of view loss from adjoining properties prior to submission of the application.

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

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

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

Comment:

Views over the subject site are currently available from No. 13 and No. 17 Addison Road. The views are water views of Sydney Harbour and include land-water interface at Dobroyd Head, Balgowlah Heights and Fairlight. Some of the available views are partial views and some are whole views. The views from No. 13 Addison Road and views from some areas of No. 17 are obscured by the roof of the existing dwelling and are considered to be partial views. Despite this, significant water and land-water interface views are visible from these properties.

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

Comment:

The views from No. 13 Addison Road are obtained from the ground floor dining room/balcony and first floor sitting room/balcony, across a rear boundary. Views from No. 17 Addison Road are gained from the upper floor study, master bedroom balcony and bedroom 3, across a side boundary.



Figure 1. View from No. 13 Addison Road ground floor. The roof visible on the right hand side of the frame is that of the existing subject dwelling.



Figure 2. View from No. 13 Addison Road first floor over the subject site.



Figure 3. View from No. 17 Addison Road master bedroom balcony.



Figure 4. View from No. 17 Addison Road study.



Figure 5. View from No. 17 Addison Road bedroom 3.

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

Comment:

The proposed new roof does not change significantly in form or scale from that of the existing dwelling, as viewed from the adjoining properties with access to views. The extent of the impact on views from No. 13 and No 17 Addison Road varies depending on the location within the properties, but is generally limited to a minor loss of water views. The impact on views from the ground floor of No. 13 Addison Road is negligible, while a minor loss of water views will occur at the ridge of the proposed new roof from the first floor. From No. 17 Addison Road, the proposed north-western attic dormer/balcony will cause a minor loss of water views towards Dobroyd Head. Based on the inspections completed and the view loss analysis submitted, it is concluded that the existing water views available from both No. 13 and No. 17 Addison Road are generally retained and it is unlikely that there will be any impact on land-

water interface.

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 non-compliant in relation to building height, wall height, number of storeys, roof height, side setback and total open space. Regardless of these non-compliances, the view loss impact associated with the proposal results largely from the proposed attic dormer/balcony. This building element is compliant and is not excessive in bulk or scale, and provides significant amenity to the internal space within the attic addition. Taking into consideration the extent of views to be lost across a side boundary and the extent of views to be retained, the proposed view loss is considered to be minor and is acceptable.

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

Comment:

The proposal, as conditioned, is considered to be reasonable in relation to view loss and all other relevant provisions of the Manly DCP.

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.

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

Description of non-compliance

The south-western elevation to the proposed deck extension is non-compliant.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the LEP objectives for Clause 4.3 Height of Buildings:

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

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

Comment:

The proposed non-compliant wall height relates only to the extension of the existing upper floor deck,

which extends over the natural cliff face located under the rear dwelling facade. Notwithstanding this non-compliance, the proposed building height is generally consistent with the surrounding building heights and roof forms.

b) to control the bulk and scale of buildings,

Comment:

The wall height non-compliance to the open rear deck does not contribute excessive or unreasonable bulk to the development.

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 non-compliance does not result in any disruption to views to, from or between residential development and public spaces.

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 proposal maintains adequate sunlight access to the subject site and adjacent properties/dwellings.

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 overall building height non-compliance occurs for only a small proportion of the development, and will not unreasonably impact existing vegetation or surrounding land uses.

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 proposed south-western balcony side-setback is non-compliant. The location/setbacks of the existing dwelling and garage are maintained.

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 works proposed to the dwelling are not visible within the streetscape and those to the garage maintain the siting and general appearance of the existing structure.

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 proposed development will result in no unreasonable impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions.

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

Comment:

The proposed extension of the balcony will result in no unreasonable visual or 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:

The proposed non-compliance occurs above ground level and does not impact landscaped area or vegetation on the site.

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

Comment:

N/A

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.

4.1.5 Open Space and Landscaping

The proposal results in a minor reduction to the existing total open space and landscaped area at ground level. However the landscaped area remains compliant and the reduction to total open space is largely offset by the proposed balcony extension.

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

The proposed works to the existing garage are limited to aesthetic changes to the roof parapet and a minor height increase and to provide additional clearance to accommodate the car stacker. The proposal retains the setbacks to the existing garage structure.

The garage also maintains the existing tandem car parking configuration, but also includes the provision of a car stacker to allow for an additional third car space. It is noted that the proposal complies with the minimum required number of spaces for a dwelling house regardless of the proposed stacker, and the internal dimensions of the structure are existing.

4.4.5 Earthworks (Excavation and Filling)

The Geotechnical Report submitted with the application confirms that the proposed excavation works are acceptable, subject to compliance with the recommendations.

The existing cliff face is largely obscured by existing vegetation. The new stone wall is proposed to be constructed of excavated site material and planted with the same climbing vegetation. The proposed finishes are intended to match the existing cliff as closely as possible and minimise the visual alteration of the site as viewed from the harbour. Despite this assessment, the proposed wall is not supported due to potential impact to the Little Penguin population including known nearby nesting sites.

5.4.1 Foreshore Scenic Protection Area

The proposed new stone wall is designed to match the existing cliff face as closely as possible. The wall is to be constructed of materials excavated from the site and will be planted with the same climbing fig as the existing. The remaining proposed works are relatively minor alterations and maintain consistency with the existing dwelling as viewed from the harbour frontage. As such, the proposal is not considered to result in unreasonable impact in relation to visual aesthetic amenity or views to and from Sydney Harbour. Notwithstanding this, the proposed wall is not supported due to potential impact to the Little Penguin population including known nearby nesting sites.

5.4.2 Threatened Species and Critical Habitat Lands

The subject site is identified as an Area of Outstanding Biodiversity Value (AOBV; formerly Little Penguin Critical Habitat) under the NSW BC Act.

The application is classified as *threatened species development* and has been advertised for a 28 day period in accordance with Clause 89(3)(a) of the EPA Regulation 2000.

The application was also referred to Council's Biodiversity Officer to complete an assessment of the proposed works and the BDAR submitted by the applicant. The Officer indicated that the proposal could

be undertaken without significant or serious and irreversible impacts to threatened entities, subject to compliance with the recommended conditions of consent and the BDAR.

However, based on this new the new Little Penguin population and nest use information and the application of the precautionary principle, the proposed elevator and stone wall works are considered to present an unacceptable level of risk to threatened species and are not supported by Council. Suitable conditions requiring the deletion of these works have been included.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

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 \$25,113 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,511,300.

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2018/2027 for Alterations and Additions to an existing dwelling house on land at Lot C DP 316879, 15 Addison Road, 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
DA00 Site Plan	6 December 2018	Hess Hoen
DA121 Roof Plan	6 December 2018	Hess Hoen
DA122 Attic Level Plan	6 December 2018	Hess Hoen
DA123 Ground Level Plan	6 December 2018	Hess Hoen
DA124 Lower Level Plan	6 December 2018	Hess Hoen
DA125 Harbour Level Plan	6 December 2018	Hess Hoen
DA131 Garage Plan	6 December 2018	Hess Hoen
DA200 Section 01	6 December 2018	Hess Hoen
DA300 Northwest Elevation	6 December 2018	Hess Hoen
DA301 Southwest Elevation	6 December 2018	Hess Hoen
DA302 Southeast / Northeast Elevation	6 December 2018	Hess Hoen

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A323633	4 October 2018	Hess Hoen
Biodiversity Development Assessment Report	December 2018	Total Earth Care
Geotechnical Assessment Report	15 April 2018	Jack Hodgson Consultants

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

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

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

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 (Demolition):

- (a) 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 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
 - (ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement (DACPLB09)

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 (Demolition):

(a) Unless authorised by Council:

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 a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. 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) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(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.

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

5. 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

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$25,113.00 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 \$2,511,300.00.

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.

7. Security Bond

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

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

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

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

8. Proposed sandstone wall and elevator/lift

The proposed construction of the sandstone wall and elevator/lift are to be deleted.

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

Reason: To minimise the risk/impact of the development on the endangered Little Penguin population.

9. Project Ecologist

A project ecologist is to be employed for the duration of works located below the cliff line to ensure compliance with Biodiversity Conservation conditions. The project ecologist must have one of the following memberships/accreditations:

- Practicing member of the NSW Ecological Consultants Association OR
- Biodiversity Assessment Method assessor accreditation under the NSW Biodiversity

Conservation Act 2016.

The details of the Project Ecologist engaged for the development are to be provided to the Principal Certifying Authority prior to the issue of a Construction Certificate.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

10. Preparation of CEMC

A Construction Environmental Management Checklist (CEMC) is to be prepared and is to incorporate all measures for the protection of native vegetation, wildlife and habitats during the construction phase. Protection measures specified in the checklist must include all requirements of conditions of this consent addressing construction-related impacts on biodiversity. The Project Ecologist is also to identify critical stages during construction where they are required to conduct interim inspections of the site/works. The checklist is to be certified by the Project Ecologist as complying with this condition and provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

11. Access Spaces – Bandicoot Habitat

Any new gates or fences are to be designed to include gaps appropriate to maintain bandicoot access through and within the site. Gaps are to be at least 150mm high and 300mm wide. This condition does not apply to pool fencing.

Plans are to be amended accordingly prior to issue of the Construction Certificate.

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

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

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification).

A certification prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Council for approval prior to the issue of the Occupation Certification.

Reason: Protection of Council's infrastructure

13. On-site Stormwater Detention Compliance

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003 and the concept drawing by NY Civil Engineering, drawing number E180087 dated 15/11/2018. 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.

14. Structural Adequacy and Excavation Work

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

(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

15. Pre-Construction Stormwater Assets Dilapidation Report

Survey a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2>.

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure

16. Low Level Coastal Inundation Risk Design

All development must be designed and constructed to achieve a low risk of damage and instability due to coastal inundation, wave impact and foreshore erosion hazards.

17. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is 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)

18. Proposed boat shed works

All works to the existing boat shed, including refurbishment/remediation, are excluded from this consent.

All references to these works are to be deleted from the plans prior to the issue of a Construction Certificate.

Reason: To ensure no consent is granted for works undertaken illegally on the site.

19. Building Certificate

A Building Certificate is to be obtained for all as-built works to the existing boatshed. The Building Certificate is to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure that all illegal works completed on the site are resolved prior to the commencement of further construction works.

20. Landscaping / Planting

The proposed new / relocated triangular garden bed is to be planted with species listed under Manly DCP Clause 3.3.1(a) and / or locally native species.

Reason: To promote native planting back onto the site and provide suitable shelter/habitat for threatened species present.

21. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- ❑ Site Boundaries and contours
- ❑ Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- ❑ Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- ❑ Existing and proposed drainage patterns with stormwater discharge points
- ❑ Locations and methods of all erosion and sediment controls;
- ❑ North point and scale.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

22. Ecologist to Induct Site Manager – Penguin and Bandicoot Habitat

Prior to commencement of construction works, the project ecologist is to meet with the site manager to:

- a) advise of conditions to be implemented for protection of relevant threatened species and endangered ecological communities;
- b) ensure that all workers are appropriately briefed on required protective measures; and
- c) inspect protective measures to confirm their adequacy and advise the proponent and site manager of the inspection results and their implications.

The project ecologist is to certify compliance with this condition in writing and provide this evidence to the Principal Certifying Authority at the commencement of works.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

23. Site Induction Required – Penguin and Bandicoot Habitat

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species and endangered ecological communities through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site manager.

Evidence of the site induction is to be documented and available on site at all times for Council to inspect. This evidence is then to be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016

24. Protect AOBV – Penguin Habitat

The Area of Outstanding Biodiversity Value (formerly Little Penguin Critical Habitat), including rocky cliff and intertidal areas below the formed backyard, are to be fully protected for the duration of the works. There shall be no machinery use, storage of construction materials/waste, dumping, or clearing of vegetation, soil, rock or rubble within these areas.

The Project Ecologist is to certify compliance with this condition in writing and provide this evidence to the Principal Certifying Authority at the commencement of works.

Reason: To prevent impacts to Little Penguins and the adjoining Area of Outstanding Biodiversity Value.

25. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

26. Construction Hours – Manly LEP Clause 6.5

Construction hours are to be adhered to, with no construction vehicles or heavy machinery used outside the hours of 8:00am and 5:00pm. Written certification of compliance with this condition is to be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

27. CEMC to be Implemented

Construction is to be undertaken in accordance with the Constructional Environmental Management Checklist. Compliance is to be certified by the project ecologist and provided to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect native vegetation, wildlife and habitats in accordance with relevant Natural Environment LEP/DCP controls.

28. Fauna inspections

All holes (e.g. those excavated for footing or installations) and any construction materials/stockpiles/machinery must be inspected for penguins and bandicoots before they are moved or cleared. Filling of holes, operation of machinery and clearing of materials/stockpiles may only proceed if the inspection concludes that no penguins or bandicoots are present. A record of each inspection is to be kept with a copy of the CMEC and be made available on site for inspection by the Principal Certifying Authority or Council. If a penguin or bandicoot is found within the works area, works must cease and the Project Ecologist contacted for advice. Works are not to commence until the animal has been safely relocated away from the works area.

Written evidence of compliance with this condition is to be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To avoid injury to penguins and other fauna.

29. Delivery of Construction Materials

Construction materials are to be delivered to the site via land only and all waste, debris and unused construction materials are to be removed from the site via land only.

Written confirmation of compliance with this condition is to be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To prevent disturbance to nesting and moulting penguins.

30. Construction and repair works timing restrictions - Little Penguin habitat

All demolition, excavation and construction works below the line of the existing cliff, including the staircase adjacent to the boatshed, are only permitted to be carried out outside of the Little Penguin breeding season (i.e. only between 1 March and 31 May) unless written approval of a representative of Council's Bushland & Biodiversity Team is obtained. The project ecologist is to notify Council's Bushland & Biodiversity Team of the proposed commencement date of these works at least 5 working days prior to works commencing. Any demolition, excavation and construction works below the line of the existing cliff, including to the staircase, are not to be undertaken whilst penguins are occupying breeding habitat on the property or adjoining properties at any time of year.

Compliance with this condition is to be certified by the project ecologist and evidence provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To avoid disturbance to nesting and moulting penguins.

31. Scaffolding timing restrictions - Little Penguin habitat

Erection and removal of scaffolding footed on the lower lawn level is only permitted to be carried out outside of the Little Penguin breeding season (i.e. only between 1 March and 31 May) unless written approval of a representative of Council's Bushland & Biodiversity Team is obtained. The Project Ecologist is to notify Council's Bushland & Biodiversity Team of the proposed commencement date of these works **at least 5 working days** prior to works commencing. Erection and removal of scaffolding footed on the lower lawn level are not to be undertaken whilst penguins are occupying breeding habitat on the property or adjoining properties at any time of year.

Compliance with this condition is to be certified by the Project Ecologist and evidence provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To prevent disturbance to nesting and moulting penguins.

32. Stormwater works timing restrictions - Little Penguin Habitat

Excavation and construction works associated with stormwater infrastructure installation on the harbour level are only permitted to be carried out outside of the Little Penguin breeding season (i.e. only between 1 March and 31 May) unless written approval of a representative of Council's Bushland & Biodiversity Team is obtained. The project ecologist is to notify Council's Bushland & Biodiversity Team of the proposed commencement date of these works at least 5 working days prior to works commencing. Excavation and construction works associated with stormwater infrastructure installation on the harbour level are not to be undertaken whilst penguins are occupying breeding habitat on the property or adjoining properties at any time of year.

Compliance with this condition is to be certified by the Project Ecologist and evidence provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To prevent disturbance to nesting and moulting penguins.

33. No Artificial Lighting

No artificial light is to be directed toward or illuminate the Area of Outstanding Biodiversity Value (formerly Little Penguin Critical Habitat) at any time during construction. No bright lighting or motion detectors which illuminate the formed back yard or foreshore areas are to be installed. Low intensity lighting may be used in the formed back yard for safety purposes only.

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

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

34. Report Dead or Injured Penguins or Bandicoots – Penguin and Bandicoot Habitat

Any injured or dead Long-nosed Bandicoots or Little Penguins found within the worksite must be reported to the National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434). Compliance with this condition is to be certified by the project ecologist in writing and this evidence provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To prevent impacts to Long-nosed Bandicoots and Little Penguins in accordance with the Biodiversity Conservation Act 2016.

35. 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.

36. Tree and vegetation protection

A) Existing trees and vegetation shall be retained as follows:

i) all trees and vegetation within the site, excluding trees and vegetation nominated for removal on the plans, shall be protected during all construction stages, and excluding exempt trees under the relevant planning instruments or legislation,

- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation,
- B) Tree protection shall be generally undertaken as follows:
 - i) all tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, with particular attention to section 4,
 - ii) any tree roots exposed during excavation with a diameter greater than 25mm within the TPZ must be assessed by an AQF Level 5 Arborist,
 - iii) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - iv) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorized by the Project Arborist on site,
 - v) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
 - vi) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist,
 - vii) should either or all of iv), v) and vi) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
 - ix) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

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

37. **Pollution Control**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

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

38. **Staircase Gate and Advisory Signage for Penguin AOBV**

A self-closing gate with a 100mm gap at base must be installed at the top of the harbour-garden level staircase to help mitigate entry of cats, dogs and foxes into the Little Penguin Area of Outstanding Biodiversity Value. The gate must have a permanently attached sign displaying the wording below. The sign is to be A4 in size and made of metal with permanent lettering that is at least 14 points in size. The wording is to be:

"Little Penguin Area of Outstanding Biodiversity Value

This foreshore is a declared Area of Outstanding Biodiversity Value (AOBV) for the end

The following restrictions apply in the little penguin AOBV:

- Companion animals (assistance animals excepted) are not permitted within

- Touching or damaging penguin habitat (including nest boxes) is not permitted
 - No person is to come within **five metres** of a Little Penguin;
 - Fishing is only permitted between sunrise and sunset;
 - Any dead or injured penguins must be reported to Sydney Wildlife (9413 43 43)
- Penalties for non-compliance may apply in accordance with Division 3.2 of the NSW Bi

Written confirmation of compliance with this condition is to be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To prevent impacts to Little Penguins and the adjoining Area of Outstanding Biodiversity Value.

39. **Project Ecologist Certification**

The Project Ecologist is to provide a statement in writing that they were engaged by the proponent for the duration of all works located below the cliff line. The statement is to be provided to the Principal Certifying Authority and Council prior to issue of the Occupation Certificate, and should include confirmation of the following details:

1. That they were engaged throughout the works
2. That they carried out the induction of the Site Manager
3. That they carried out inspections of the site in accordance with the CEMC
4. That no works below the cliff line were carried out at times prohibited by the condition
5. That no scaffolding was erected or removed at times prohibited by the condition "Sc
6. That no stormwater works were carried out at times prohibited by the condition "Stor
7. That the CEMC was implemented and followed during the works on the site
8. That the AOBV was managed and protected during works in accordance with the co

Reason: To ensure that the works undertaken on the site maintain compliance with the conditions of consent.

40. **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.

41. **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.

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

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

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

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

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

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification).

Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted) - Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Council for approval prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure

44. 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.

45. Post-Construction Dilapidation Survey

A post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2>.

The post construction dilapidation report must be submitted to the Council for review and the Principal Certifying Authority prior to the issue of the Occupation Certificate. Any damaged to Council's stormwater infrastructure is to be rectified in accordance with Council's technical specifications prior to the release of the security bond.

Reason: Protection of Council's Infrastructure

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

46. No Artificial Lighting

No artificial light is to be directed toward or illuminate the Area of Outstanding Biodiversity Value (formerly Little Penguin Critical Habitat) post-construction in perpetuity. No bright lighting or motion detectors which illuminate the formed back yard or foreshore areas are to be installed. Low intensity lighting may be used in the formed back yard for safety purposes only.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

47. No Planting Environmental Weeds

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

Reason: Weed management.

48. Maintain Fauna Access and Landscaping Provisions – Manly LEP Clause 6.5

All fauna access/movement and landscaping provisions specified in these conditions of consent are to be implemented and maintained for the life of the development.

Reason: To maintain fauna access to existing and proposed habitat within and surrounding the site.

49. Dead or Injured Wildlife – Manly LEP Clause 6.5

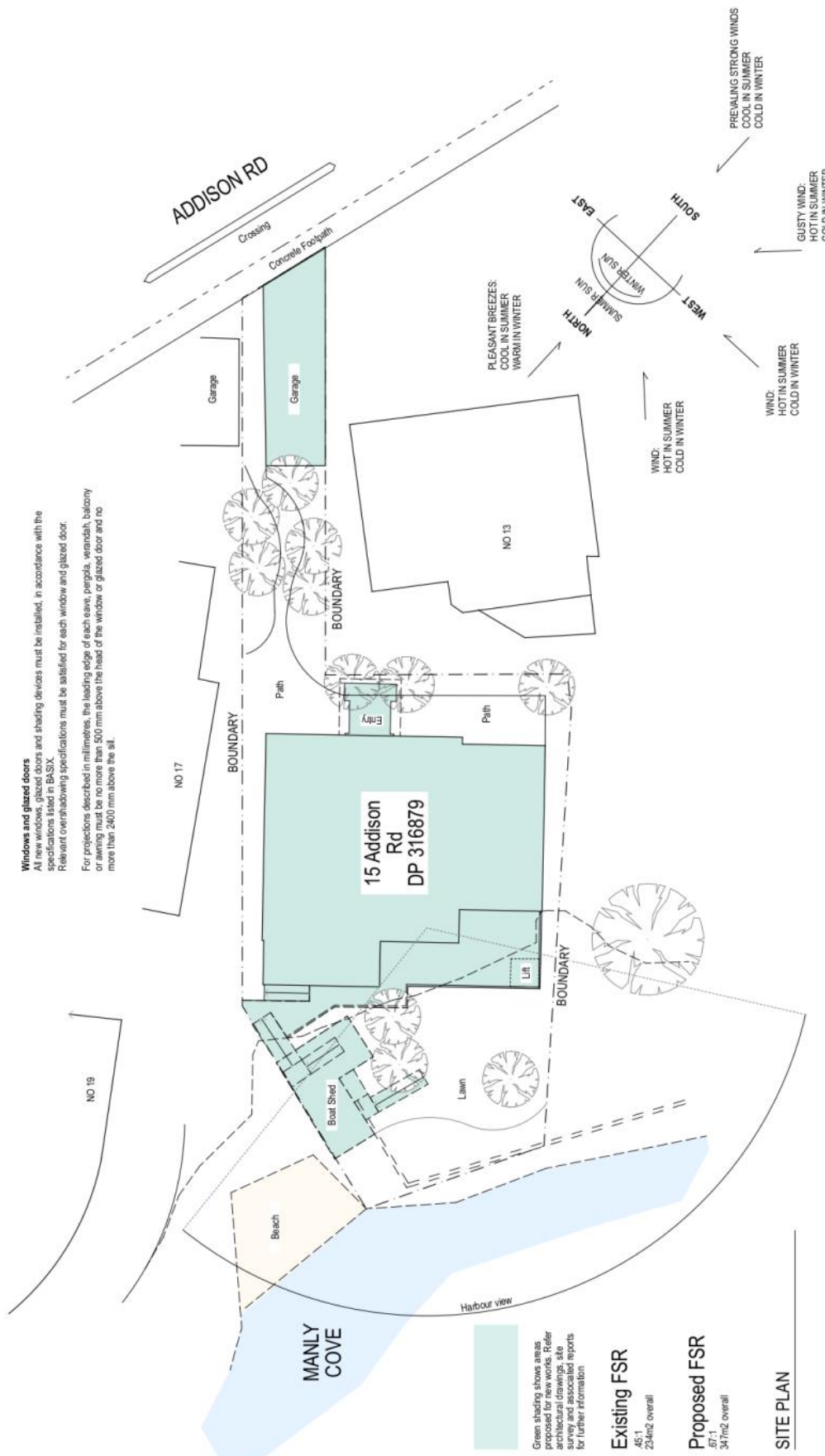
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice. A statement outlining any incidents of death or injury to native wildlife, or lack thereof, during the construction stage, is to be prepared by the project ecologist and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

BASIX COMMITMENTS

Insulation requirements
All new or altered construction (floors, walls, and ceilings) must be constructed in accordance with the specifications listed in BASIX, except that a) additional insulation is not required where the area of new construction is less than 2m², b) insulation specified is not required for parts of altered construction where insulation already exists.

Windows and glazed doors
All new windows, glazed doors and shading devices must be installed, in accordance with the specifications listed in BASIX, except that a) additional insulation is not required where the area of new construction is less than 2m², b) insulation specified is not required for parts of altered construction where insulation already exists.
Relevant overshadowing specifications must be satisfied for each window and glazed door.
For projections described in millimetres, the leading edge of each eave, pergola, verandah, balcony or awning must be no more than 500 mm above the head of the window or glazed door and no more than 2400 mm above the sill.



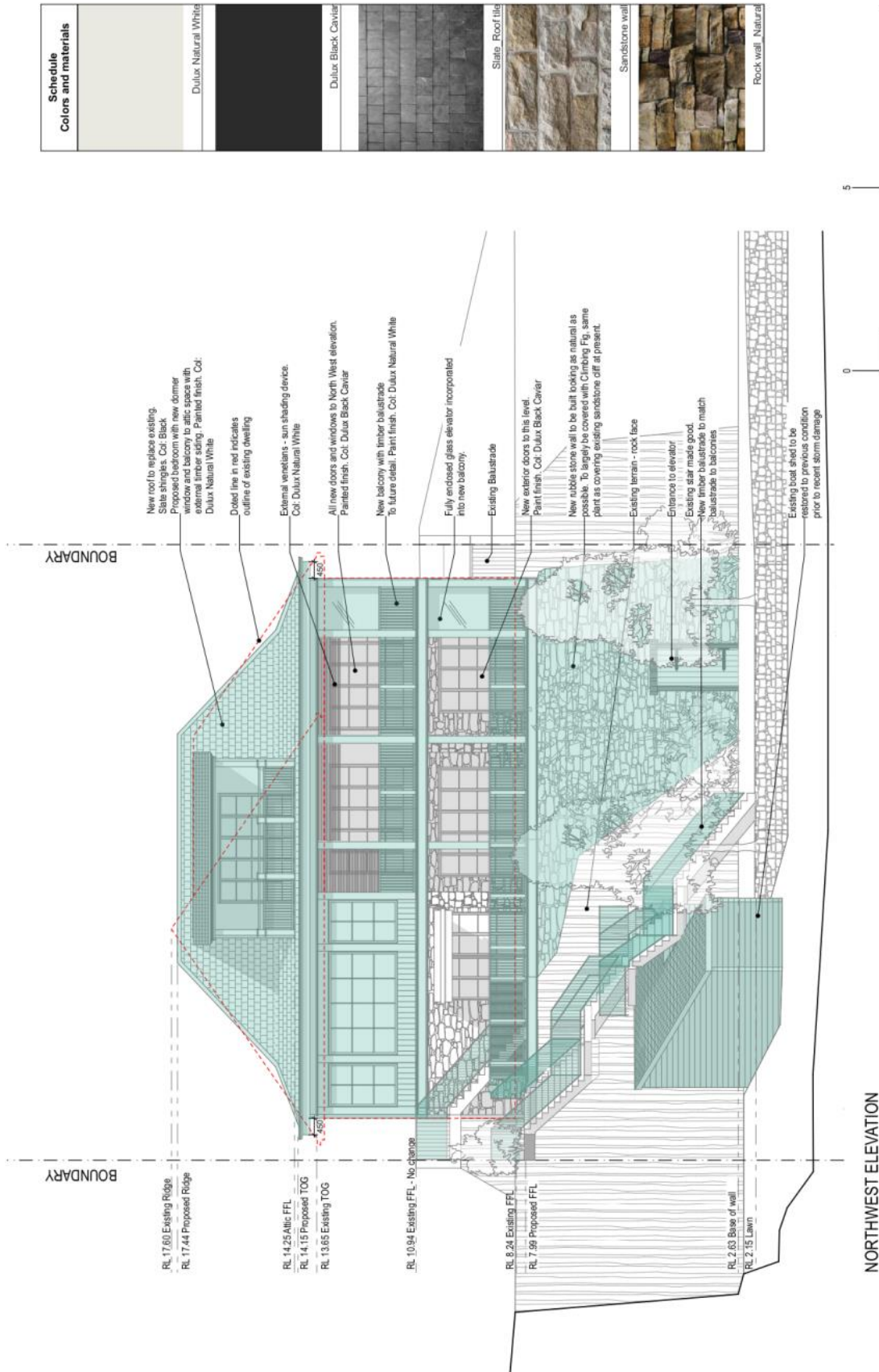
Green shading shows areas proposed for new works. Refer architectural drawings, site survey and associated reports for further information

Existing FSR
45.1
234m² overall

Proposed FSR
67.1
347m² overall

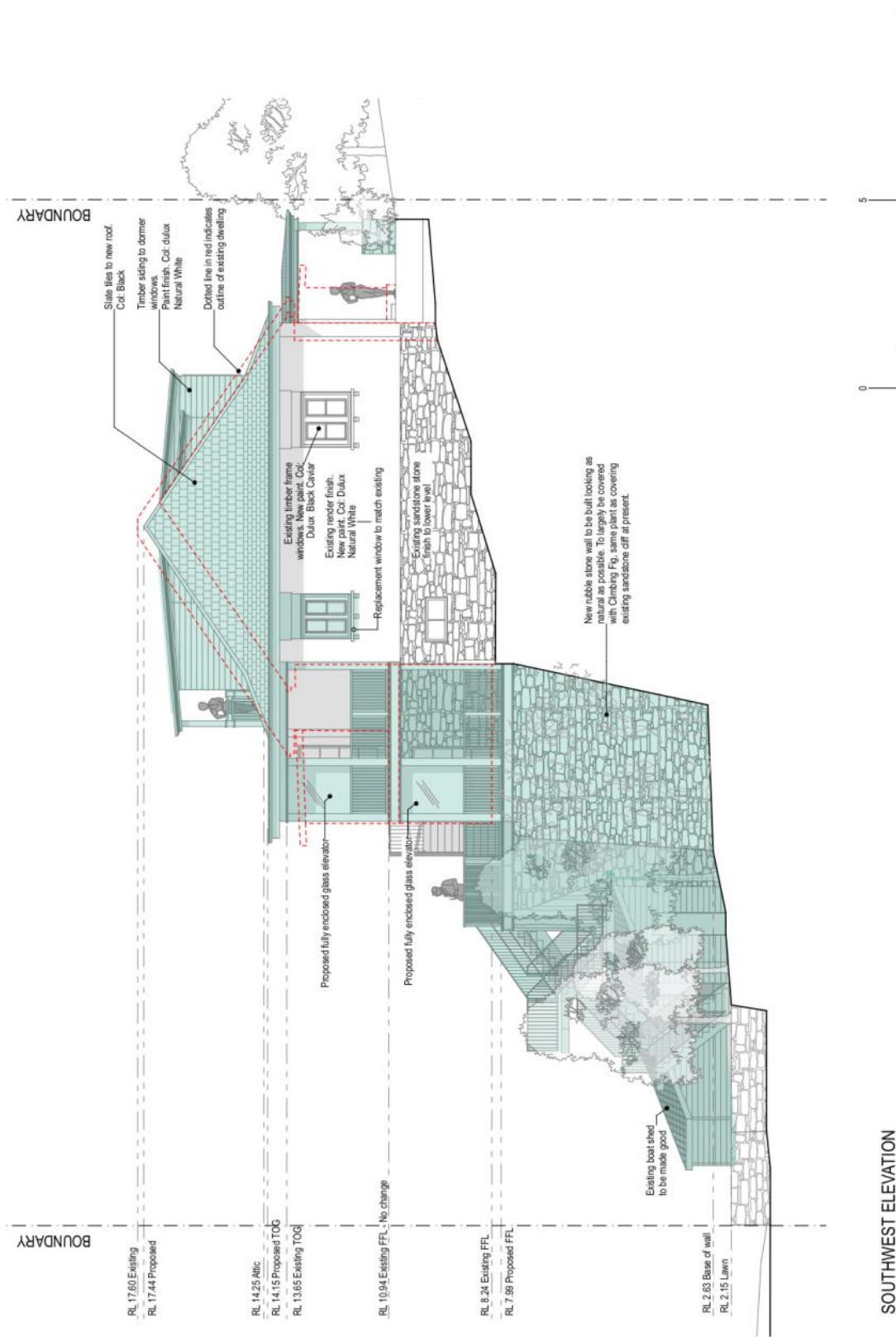
SITE PLAN

HESS HOEN Studio 15a, 617 Elizabeth Street Redfern Sydney 2016 Email: hess@hesshoen.com.au Ph: +61 2 432 432 700 Fax: +61 2 432 432 865 M: +61 438 432 865	Dimensions in millimetres Dimensions are indicated only All dimensions are finished Dimensions are indicated as the prior to commencing work Use figured dimensions only Do not scale The design is the property of the designer IF IN DOUBT ASK	Comply with relevant Australian Standards. Comply with all relevant Standards. Copyright in all drawings and and in any works executed from these drawings and designs shall remain the property of the designer or creation used in the design	Issue A: Preliminary Design Issue B: Development Application Issue C: Preliminary Pricing Issue D: Construction Issue E: Construction Issue F: Construction Issue G: Construction	NOTES: N	REVISIONS	PROJECT Addison Road 15 Addison Rd Manly CLIENT Sue & Michael Hunter	BUILDER TBN STRUCT. ENGINEER TBN SERVICES ENGINEER TBN	DATE of ISSUE 06.12.2018 ISSUE B DRAWN BH PH SCALE 1:200 @ A3	TITLE PLANNED STATUS DRAWING No DA 00 REVISION 00

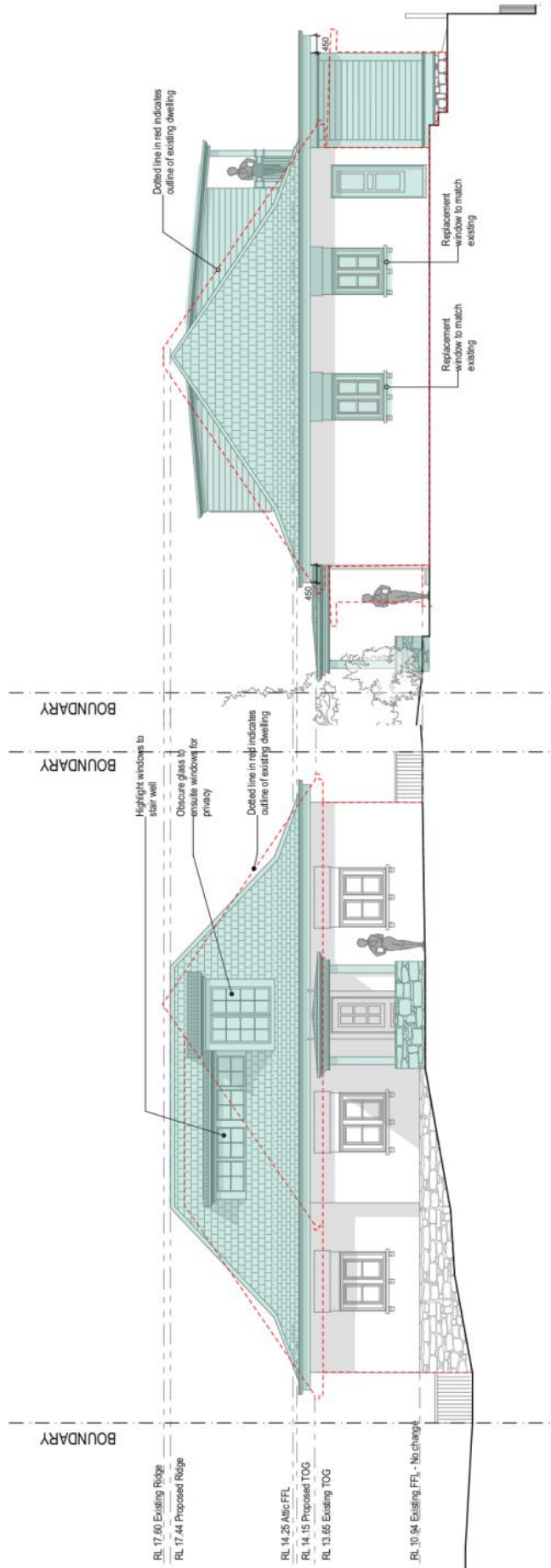


NORTHWEST ELEVATION

HESS HOEN Studio 15a, 617 Elizabeth Street Redfern Sydney 2016 Email: hesshoen.com.au Phone: 412 423 700 Fax: 412 423 700 M: +61 438 432 865	Dimensions in millimetres All dimensions are indicated only All dimensions are rounded Dimensions are indicated as the prior to commencing work Use of scale dimensions only Do not scale The company accepts no liability for creation and in the designer	Copyright in all documents and drawings prepared by the designer and in any works executed from them shall remain the property of the designer or creation and in the designer	Issue A: Preliminary Design Issue B: Development Application Issue C: Preliminary Pricing Issue D: Construction Issue E: Construction Issue F: Construction Issue G: Construction	NOTES: Revisions: Project: Addison Rd Manly 15 Addison Rd Manly CLIENT: Sue & Michael Hunter	BUILDER: TBN TBN TBN SERVICES ENGINEER: TBN	DATE of ISSUE: 06.12.2018 ISSUE: B DRAWN: BH PH	TITLE: PLANNED STATUS NORTHWEST DRAWING No: BA9001-13.23, 1.2.35, 1.1.99, 1.2.44, 1.4.56 @ A3	DRAWING: NORTHWEST REVISION: 00



HESS HOEN Studio 15a, 617 Elizabeth Street Redfern Sydney 2016 Email: hesshoen.com.au Ph: +61 2 432 432 700 M: +61 438 432 865	Dimensions in millimetres unless otherwise stated All dimensions are finished dimensions unless otherwise stated Use metric dimensions only Do not scale The company accepts no liability for errors or omissions or creation and in the designer	IF IN DOUBT ASK	Notes: Issue A: Preliminary Design Issue B: Development Application Issue C: Preliminary Pricing Issue D: Construction Issue E: Construction Issue F: Construction Issue G: Construction	Revisions	Project: Addison Road 15 Addison Rd Manly Client: Sue & Michael Hunter	Builder: TBN TBN TBN	Date of Issue: 06.12.2018 Issue: B Drawn: BH PH	Title: PLANNED STATUS DRAWING No: DA 301 Scale: 1:100 @ A3	Drawing: SOUTH WEST Revision: 00



HESS HOEN Studio 15a, 617 Elizabeth Street Redfern Sydney 2016 Email: hesshoen.com.au Ph: +61 2 423 432 700 Fax: +61 2 423 432 865 M: +61 438 432 865	Dimensions in millimetres All dimensions are relative only All dimensions are finished Dimensions are indicated as the prior to commencing work Use figure dimensions only Do not scale The design is the property of the designer IF IN DOUBT ASK	Comply with relevant Australian Standards Comply with relevant Australian Standards Copyright in all documents and drawings prepared by the designer and in any works executed from the drawings shall remain the property of the designer	Issue A: Preliminary Design Issue B: Development Application Issue C: Preliminary Pricing Issue D: Construction Issue E: Construction Issue F: Construction Issue G: Construction	NOTES: 	REVISIONS	PROJECT Addison Road 15 Addison Rd Manly CLIENT Sue & Michael Hunter	BUILDER TBN TBN TBN	DATE of ISSUE 06.12.2018 ISSUE B DRAWN BH PH	TITLE PLANNED STATUS DRAWING No DA 302 SCALE 1:100 @ A3	DRAWING SOUTH-NORTHEAST REVISION 00



15 Addison Road, Manly – Alterations and Additions to Dwelling house, garage and boatshed

Clause 4.6 Variation Statement – April 2019

MODURBAN.COM.AU

CONTENTS

CONTENTS	1
Introduction	1
The Standards Being Objected to	2
Proposed Variation to Clause 4.3 Height of Building	3

MODURBAN.COM.AU
Copyright disclaimer © 2019

This document contains material protected under copyright and intellectual property laws and is to be used only by and for the intended client. Any unauthorised reprint or use of this material beyond the purpose for which it was created is prohibited. No part of this work may be copied, reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system without express written permission from Mod Urban Pty Ltd.

INTRODUCTION

1. Overview

This Clause 4.6 Variation request has been prepared in support of the development application for the proposed alterations and additions to the dwelling house, boatshed and garage at 15 Addison Road, Manly.

This Clause 4.6 Variation has been submitted in conjunction with the Statement of Environmental Effects (SEE) that assessed the proposed works as described above. The request for variation of the development standard has been prepared in accordance with the requirements of Clause 4.6 of the Manly LEP 2013 (MLEP 2013) which has the following aims and objectives:

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

The proposed variations to development standards for the proposed development are in relation to Clause 4.3 Height of Buildings of the MLEP 2013. In summary the following variations are proposed:

Manly LEP 2013 Clause	MLEP 2013 Development Standard	Proposed Development Non Compliance	% of Variation
Clause 4.3 Height of Buildings	Maximum Height 8.5m	The proposal results in a maximum Height of Building of 12.1m	29%

In accordance with Clause 4.6 of the MLEP 2013 Council is required to consider the following:

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

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

This Clause 4.6 Variation request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards.



THE STANDARDS BEING OBJECTED TO

2. Relevant Development Standards

The development standards being requested to be varied are Clause 4.3 Height of Buildings of the MLEP 2013.

2.1 The objectives/underlying purpose of the clause

A key determination of the appropriateness of a variation to a development standard is the proposal's compliance with the underlying objectives and purpose of the development standard. Therefore, while there is a specified numerical control for Clause 4.4 Height of Buildings, the objectives and underlying purpose behind each of the development standards are basic issues for consideration in the development assessment process.

Section 3 of this Clause 4.6 Variation addresses the proposed variation to Clause 4.3 Height of Building development standard.

2.2 Proposed Variation to Standards

The proposed variations to development standards for the proposed development are in relation to Clause 4.4 Height of Buildings of the MLEP 2013. In summary, the following variations to development standards are proposed:

Manly LEP 2013 Clause	MLEP 2013 Development Standard	Proposed Development Non Compliance	% of Variation
Clause 4.3 Height of Buildings	Maximum Height 8.5m	The proposal results in a maximum Height of Building of 12.1m	29%



PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDING

3. Overview

Pursuant to Clause 4.6 of MLEP 2013, we hereby seek exception to the 8.5m height of building standard applicable pursuant to Clause 4.3 of MLEP 2013. Clause 4.6(4)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the standard and the zone.

The proposed variation to the height of building standard is a result of the provision of the proposed alterations and additions. The proposed variation to the 8.5m height standard seeks an additional 3.6m for over the height standard to a very minor portion of the rear elevation, through the proposed alterations and additions to the buildings balcony and provision of a cantilevered roof over that portion of the balcony, the equivalent of a 29% increase to the maximum permitted height of building standard.

3.1 Objectives of the Standard

The objectives of the Clause 4.3 Height of Building standard of the MLEP 2013 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,*
- (b) to control the bulk and scale of buildings,*
- (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),*
- (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,*
- (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.*

Notwithstanding the proposed variation to the standard, the proposed development is nevertheless consistent with these objectives:

- (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,*

The proposed building is consistent with the prevailing building height. Furthermore, the element of the proposal that represents its highest point is the ground floor living area and balcony structure which is a small structure which currently exists on site. The majority of the building has a lesser height. The portion of the building that exceeds the maximum height standard is set atop a cliff face which contributes to the numerical non-compliance.

The proposed variation to the 8.5m height standard seeks an additional 3.6m for over the height standard to a very minor portion of the rear elevation, through the proposed alterations and additions to the buildings



balcony and provision of a cantilevered roof over that portion of the balcony, the equivalent of a 29% increase to the maximum permitted height of building standard.

The proposal reflects the topographic landscape, stepping down with the slope of the land.

The desired streetscape is maintained through the generous front setback and provision of landscaping.

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

- The proposal has a bulk that is commensurate with the expected outcomes of the planning controls and a scale that is less than its neighbours.
- The breaches of the building height relate to relatively minor elements of the building and the majority of the building is substantially below the building height control.
- The proposed building envelope is consistent with the existing building envelope and other similar development. The proposal results in a small scale roof addition through the provision of a dormer and some minor cutting into the existing footing of the building within the existing building envelope.
- The bulk and scale of the proposal is consistent with this style of residential building which is common for residential areas.
- In light of the proposals contribution to achieving the desired future character of the area, a reduction of gross floor area would serve no material planning purpose, other than numerical compliance with a generic Council control.
- The proposal will not have any impact on the existing streetscape as the additional GFA is largely set away from the street.
- Other aspects of the design further reduce the bulk of the building, including a variety of finished surface materials and colours, and varying setbacks.

(c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

- The proposed building forms part of the urban backdrop when viewed from the harbour and foreshores. The building will have no perceptible impact on views to nearby residential development from public places. This objective is achieved.

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

- The site is located on a ridgeline and a view analysis with the proposal indicates that no views are impacted. This objective is achieved.

(iii) views between public spaces (including the harbour and foreshores),

- The proposal does not result in any disruption to views between public spaces. This objective is achieved.
- (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,
- The shadow diagrams provided at Appendix I of the SEE demonstrate no additional shadow from the proposed works, to both neighbouring properties. No adjoining habitable rooms will be impacted from the proposal. The proposed impacts are considered negligible.



(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.

- The proposal is considered to be consistent with this objective. The proposal will not impact upon the landscape character of the site or the area and is located at first floor level.
- The character and appearance of the harbour frontage will not be altered and will largely be improved as a result of the proposal.

3.2 Objectives of the Zone

The site is currently zoned E4 Environmental Living zone under the Manly LEP 2013. The proposed development results in alterations and additions to the existing dwelling house, and is therefore considered permissible within the E4 zone, as outlined in the accompanying SEE.

The proposed works are consistent with the E4 zone objectives in that:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.

The proposed development is acceptable in terms of its impacts on the ecological and aesthetic values.

- To ensure that residential development does not have an adverse effect on those values.

The proposed development is acceptable in terms of its effects on values.

- To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.

Not applicable.

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

The proposal is considered to be consistent with this objective. The proposal will not impact upon the landscape character of the site or the area and is located at ground floor level.

The character and appearance of the harbour frontage will not be altered and will largely be improved as a result of the proposal.

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

The proposal is not considered to have any negative impacts on the foreshore

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

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.

3.3 Establishing if the Development Standard is Unreasonable or Necessary

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 Preston CJ set-out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation:

1. *Establish that compliance with the development standard is unreasonable or unnecessary because **the objectives of the development standard are achieved notwithstanding non-compliance with the standard.***
2. *Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*


3.4 Establishing if the Development Standard is Unreasonable or Necessary

In applying the tests of *Wehbe v Pittwater Council* [2007] NSWLEC 827, only one of the above rationales is required to be established. Notwithstanding the proposed variation, as demonstrated in Sections 3.1 and 3.2, the proposed development is consistent with the underlying objectives of the standard for Height of Building and the E4 zone of MLEP 2013.

3.5 Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The variation to the development standard for Height of Building is considered well founded because, notwithstanding the proposed non-compliance with Height of Building standards:

- The proposed development is consistent with the underlying objective or purpose of the standard as demonstrated in **Section 3.1**.
- The proposed maximum height of building for the site is currently in exceedance of the height of building controls as existing and is appropriate for an E4 zone that primarily consists of residential development.
- The proposed building is consistent with the prevailing building height. Furthermore, the element of the proposal that represents its highest point is the ground floor living area and balcony structure with new roof which is a small structure which currently exists on site. The majority of the building has a lesser height. The portion of the building that exceeds the maximum height standard is set atop a cliff face which contributes to the numerical non-compliance.
- The proposed building envelope is consistent with the existing building envelope and other similar development.

- 
- The bulk and scale of the proposal is consistent with this style of residential building which is common for residential areas.
 - The proposed building provides an appropriate height, bulk and scale to the site and is largely compliant with MLEP 2013 height provisions.
 - The proposal will not have any impact on the existing streetscape or the foreshore character and appearance.
 - In light of the proposals contribution to achieving the desired future character of the area, a reduction of building height would serve no material planning purpose, other than numerical compliance with a generic Council control.
 - The proposal will add to delivering a mix of well-designed housing that meets the needs of Sydney's growing population unique family dwellings to meet the changing population needs.
 - The proposed development will not significantly impact on the amenity of adjoining occupiers.
 - The proposed development will not result in any unreasonable privacy intrusion or loss of daylight access to adjacent properties.

3.6 Overview

This exception to the development standard demonstrates that the proposed variation to building height standard should be supported because:

- The proposed new alterations and addition to the residential building and its built form and character are consistent with the underlying objectives of the standard.
- The proposed variation to the 8.5m height standard seeks an additional 3.6m for over the height standard to a very minor portion of the rear elevation, through the proposed alterations and additions to the buildings balcony and provision of a cantilevered roof over that portion of the balcony, the equivalent of a 29% increase to the maximum permitted height of building standard.
- The proposed variation allows for the provision of improved residential accommodation, for family housing.
- The proposed variation does not result in any unreasonable privacy, sunlight, view loss or visual impacts.
- The proposed variation to the standard does not raise any matter of significance for State or regional environmental planning.
- There is no public benefit in maintaining strict compliance with the standard.
- Strict application of the standard is therefore unreasonable and unnecessary in the circumstances of the case.

Overall, it is considered that the proposed variation to the maximum height of building control (29%) is entirely appropriate and can be clearly justified having regard to the matters listed within MLEP Clause 4.6.

3.7 Conclusion

It is requested that council supports the proposed variation to Clause 4.3 of the MLEP 2013 for the following reasons:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.



- There are sufficient environmental planning grounds to justify contravening the development standard.
- The proposed variation allows for the provision of improved residential accommodation, for family housing.
- No unreasonable environmental impacts are introduced as a result of the proposal.
- There is no public benefit in maintaining strict compliance with the standards.



4.0 REVIEW OF DETERMINATIONS

ITEM 4.1	REV2019/0026 - 57 SMITH STREET, MANLY - REVIEW OF DETERMINATION OF MODIFICATION APPLICATION MOD2018/0703 IN RELATION TO ALTERATIONS AND ADDITIONS TO A SEMI-DETACHED DWELLING (DA0251/2017)
AUTHORISING MANAGER	MATTHEW EDMONDS
TRIM FILE REF	2019/548843
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 review 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, **refuses** Application No. REV2019/0026 for Review of Determination of Modification Application MOD2018/0703 in relation to alterations and additions to a semi-detached dwelling (DA0251/2017) at Lot 131 DP 603177, 57 Smith Street, Manly for the reasons set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2019/0026
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 131 DP 603177, 57 Smith Street MANLY NSW 2095
Proposed Development:	Review of Determination of Modification Application MOD2018/0703 in relation to alterations and additions to a semi-detached dwelling (DA0251/2017)
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:	Paul Rybicki Olivia Dix Rybicki
Applicant:	Paul Rybicki
Application Lodged:	03/06/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	12/06/2019 to 26/06/2019
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	Refusal
Estimated Cost of Works:	\$ 720,000.00

EXECUTIVE SUMMARY

The application seeks a review of the determination of MOD2018/0703, which was refused by the NBLPP on 8 May 2019. The applicant has put forward an unchanged application, and is seeking a review of the proposal/decision by an alternate panel. The review by an alternate heritage officer maintains the previous position that the proposal is inappropriate with regard to heritage, and therefore the proposal is recommended for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The application has been lodged under the provisions of section 8.3 of the EP&A Act, seeking a review

of the refusal of MOD2018/0703, which sought to modify the works approved in Development Application DA251/2017 in the following ways:

- Reduction in the depth of the approved first floor rear balcony (in accordance with condition of consent ANS01A, to allow for deletion of the condition);
- Internal reconfiguration of the first floor;
- Changes to approved windows;
- Replacement of the pitched upper floor roof, with a flat roof and parapet;
- Alteration of the lower roof from pitched apron to flat;
- Amendment of the first floor rear balcony privacy screen (in accordance with condition of consent ANS01B, to allow for deletion of the condition); and
- Changes to materials and finishes.

The subject review application remains entirely consistent with MOD2018/0703, with no changes to the proposal compared with those previously sought and refused.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation
 Manly Development Control Plan - 3.2 Heritage Considerations
 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

SITE DESCRIPTION

Property Description:	Lot 131 DP 603177 , 57 Smith Street MANLY NSW 2095
Detailed Site Description:	The site is slightly irregular in shape, with frontages to Smith

Street to the east, Alexander Street to the north, Collingwood Street to the west and a total area of 231.9m². The site currently contains a single storey semi-detached dwelling, with vehicular access to Alexander Street. The site is generally flat, and lacks any significant vegetation.

The site is located within the Pittwater Road Heritage Conservation Area, being an area identified as having a *"cohesive period of building styles from the Victorian and Edwardian eras... with a consistent pattern of one and two storey residential cottages, with the occasional terrace"*.

Map:



SITE HISTORY

On 4 April 2018, Development Application DA0251/2017 for alterations and additions to the existing semi-detached dwelling was approved by the Northern Beaches Local Planning Panel.

On 20 December 2018, Modification Application MOD2018/0703 was lodged with Council, seeking consent for modifications to the development approved pursuant to DA0251/2017.

On 8 May 2019, Modification Application MOD2018/0703 was refused by the Northern Beaches Local Planning Panel for the following reasons:

1. *The site is in the Pittwater Road Conservation Area, is part of a semi-detached dwelling and is on a highly visible corner location. The proposed modification would result in a form that would be seen from Alexander and Collingwood Streets and will have a greater impact on the significance of the conservation area than that which was approved in the development consent.*
2. *The justification provided by the applicant for the modification is not sufficient to warrant the increased impact on the conservation area.*

On 3 June 2019, the subject review application was lodged with Council.

On 20 August 2019, the assessing officer undertook an inspection of the subject site.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.55(2)

The relevant matters for consideration under Section 4.55 (2) of the EP&A Act 1979 are:

Section 4.55 (2) - Other Modifications	Comments
<p>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:</p> <p>(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</p>	<p>In order to be satisfied that the proposed works are substantially the same as those approved pursuant to DA0251/2017, Council must undertake an analysis of the quantitative and qualitative differences and be satisfied that the proposed modifications will result in a development that is essentially and materially the same as that originally approved.</p> <p>The main quantitative aspects of the approved development that remain unchanged as a result of the proposed modified development are:</p> <ul style="list-style-type: none"> a. The development continues to provide for a one and two storey semi-detached dwelling with four bedrooms, and b. The footprint, floor area, landscaped area, building height, and setbacks remain generally consistent with that previously approved. <p>The main quantitative aspects of the approved development that would change as a result of the proposed modified development are:</p> <ul style="list-style-type: none"> a. The proposed modification facilitate the inclusion of an additional bathroom at the upper floor. <p>The main qualitative aspect of the approved development that will change as a result of the proposed modifications is the roof form of the rear floor additions. The original proposal maintained the pitched, tiled roof line of the existing dwelling along the side setback of the ground floor, and mimicked the roof form of the adjoining semi-detached dwelling at the upper floor. The modification seeks to replace these approved roof forms with flat metal roofs and parapets.</p>

Section 4.55 (2) - Other Modifications	Comments
	<p>Whilst the form and finish of the roof forms are different to that originally approved, the form and treatment of the majority of the development is considered to remain essentially and materially the same.</p> <p>As such, Council can be satisfied that the proposed works will result in a development that is substantially the same as that already approved under DA0251/2017.</p>
(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 DA0251/2017 did not require concurrence from the relevant Minister, public authority or approval body.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Regulation 2000 and Manly Development Control Plan 2013.
(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 Evaluation

In accordance with Section 4.55(3) of the EP&A Act, in determining a modification application, the consent authority must take into consideration such of the matters referred to in Section 4.15 of the EP&A Act as are of relevance to the development the subject of the application. The relevant matters for consideration under Section 4.15 are:

Section 4.15 Evaluation	Comments
Section 4.15 (1) (a)(i) – Provisions of any	See discussion on "Environmental Planning

Section 4.15 Evaluation	Comments
environmental planning instrument	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 2013 has been considered in relation to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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 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>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 of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 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.

Section 8.3 Application for and Conduct of Review

In accordance with section 8.3 of the EP&A Act, an applicant may request a review of a determination of a modification application. The review must be lodged and determined within 6 months of the date of determination of the application. To meet this requirement, noting that the application was determined on 8 May 2019, the subject review application must be determined before 8 November 2019.

Section 8.3(3) of the EP&A Act provides that the applicant may amend the proposal, however the consent authority must be satisfied that the amended proposal presented in the review application remains substantially the same as that considered in the original modification application. The applicant has not made any changes to the proposal, and thus Council can be satisfied in this regard.

Section 8.3(5) of the EP&A Act prescribes that an application to review a decision by a local planning panel must also be determined by the local planning panel. As such, the application is referred to the NBLPP for determination.

Overall, the subject review application is considered to be consistent with the provisions of section 8.3 of the EP&A Act, subject to the matter being determined before 8 November 2019.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan. As a result of the public exhibition process council is in receipt of 1 submission from:

Name:	Address:
Brendan Paul Green Mrs Jillian Elizabeth Green	65 Headland Road DEE WHY NSW 2099

The issues raised in the submissions received in response to the notification of the subject application are considered as follows:

- **Impact of parapet upon adjacent gutter**

Comment: The upper floor roof of the adjoining semi-detached dwelling at 55 Smith Street has a hip and gabled roof form with a gutter that runs immediately along the common side boundary. The roof form approved pursuant to DA0251/2017 at the subject site essentially mirrored this roof form. The applicant now seeks consent for a flat roof form and the erection of a parapet along the common side boundary, extending higher than the gutter line of the adjoining dwelling. The adjoining property owner has raised objection with regard to this design change, with concerns that the proposed parapet will remove access for maintenance and create an inaccessible alcove below the gutter line of their dwelling along the common side boundary.

The subject site is not burdened by an easement for access associated with the nil setback of the gutter line of the adjoining dwelling at 55 Smith Street, and as such, there is no requirement to provide access for maintenance along the common side boundary. Council's Development Engineer has reviewed these concerns and has advised that this matter may be resolved with a box gutter and splitter at 55 Smith Street. However, this is a civil matter to be negotiated between the relevant land-owning parties.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>Approval, no conditions.</p> <p><i>Development Engineering has no objection to the application. No engineering condition is required.</i></p>
Strategic and Place Planning (Heritage Officer)	<p>Refusal.</p> <p><u>Reason for referral</u></p> <p><i>This application for Review has been forwarded for heritage comment as the site is located within the Pittwater Road Conservation Area, listed in Schedule 5 of Manly Local Environmental Plan 2013.</i></p> <p><i>The site is also located in the vicinity of a number of listed heritage item, being:</i></p> <p><i>Item 177 - Street trees - Alexander Street (from Collingwood Street to Balgowlah Road)</i></p> <p><i>Item 178 - House - 30 Alexander Street</i></p> <p><i>Item 1223 - Street trees - Smith Street (from Pine Street to Carlton Street and around the intersection with Alexander Street)</i></p> <p><u>Details of heritage items affected</u></p> <ol style="list-style-type: none"> <p>Pittwater Road Conservation Area</p> <p><i>This site is within a part of the Pittwater Road Conservation Area which is generally characterised by a consistent pattern of 1 and 2 storey residential cottages, some conjoined. Many single storey cottages have upper level additions, some appropriately recessive but some intrusive, being too close to the street. The Conservation Area displays an aesthetically distinctive pattern of development. Illustrates cohesive period of building styles from the Victorian and Edwardian eras. Displays a distinctive pattern and scale of development. Landmark qualities include the Kangaroo statues, escarpment, views, historic street planting, and sandstone kerb and guttering. The Pittwater Road Conservation Area has representative significance as a late 19th century and early 20th century urban village developed within a relatively short period displaying a unique historic cohesiveness. Through its physical form, topography, early road layout, Victorian and Edwardian subdivision and even scale of domestic and</i></p>

Internal Referral Body	Comments
	<p>commercial development demonstrates and typifies the early suburbanisation of Manly.</p> <p>2. Item 177 - Street trees - Alexander Street (from Collingwood Street to Balgowlah Road) Listed for the streets aesthetic importance (from Collingwood Street to Balgowlah Road). Mixed planting of Norfolk Island pines, Camphor Laurels, Brush Box and Bunya Bunya pine. Avenue planting.</p> <p>3. Item 178 - House - 30 Alexander Street No.30 Alexander Street, Manly is an excellent representative example of a Federation Bungalow of local significance to the Manly area. The residence is well built, retains high integrity and is substantially intact. The residence has a number of features typical of the Federation Bungalow that are still intact and in extremely good condition, including ornate Australian plaster ceilings and cornices, decorative Australiana windows (flannel flower) and Australiana lead light panels to front (primary entrance) door and marble main fireplace. The property represents the transition from farming and other occupations in the early years of northern Manly, through the horse transportation era before motor transport gained ascendancy, and into a residential neighbourhood which remains today virtually as it appeared in the 1920s. No. 30 Alexander Street is the earliest house on the northern side of the street which has access right through to Rolfe Street. It is the only one built and used for dual purpose of good quality middle class accommodation and the office for a horse drawn cab business. No.30 Alexander Street is one of the best preserved Federation bungalows in this important Federation period streetscape. The curtilage of the place contributes strongly to the setting of the place and includes the present day allotment boundaries and the streetscape (of single storey appearances; roof forms; simple front verandahs and front gardens; street trees; the lack of driveways, crossings, garages; and sympathetic front fencing).</p> <p>4. Item 1223 - Street trees - Smith Street (from Pine Street to Carlton Street and around the intersection with Alexander Street) - Aesthetic. Unique tree species used for street planting. Only one of its type within the Manly Municipality. Unique planting of Tuckeroo (<i>Cupaniopsis Anacardioides</i>) and Avenue effect created with further planting of Brush Box (<i>Lophostemon Confertus</i>) c. 1920's</p> <p><u>Consideration of Application</u> This application is for a review of the decision made in relation to MOD2018/0703. (refused on 8 May 2019).</p> <p>This site is subject to a current planning consent for a first floor rear addition, which was approved by the Northern Beaches Local Planning Panel on 4 April 2018 (DA251/2017). A modification application was then submitted (MOD2018/0703), which was refused by the Northern</p>

Internal Referral Body	Comments
	<p><i>Beaches Local Planning Panel on 8 May 2019. The reasons for refusal were:</i></p> <ol style="list-style-type: none"> <i>The site is in the Pittwater Road Conservation Area, is part of a semi-detached dwelling and is on a highly visible corner location. The proposed modification would result in a form that would be seen from Alexander and Collingwood Streets and will have a greater impact on the significance of the conservation area than that which was approved in the development consent.</i> <i>The justification provided by the applicant for the modification is not sufficient to warrant the increased impact on the conservation area.</i> <p><i>The heritage advice provided as part of consideration of MOD2018/0703, by Council's Heritage Advisor, was as follows:</i></p> <p><i>"Further to a repeated site visit, in my opinion the proposal is a major step back in the design process, and will have a notable adverse impact on the heritage values of the surrounding conservation area and the subject site. The house is one of a pair of semi-detached houses, and thus any changes should be (as far as practical) closely matched with those on the adjoining (conjoined) semi. The proposal appears to achieve the opposite, utilising different form, roof shape, fenestration, materials and finishes (presumably also colours?). The proposal cannot be supported, and it is deemed futile to amend it as the proposal is mainly designed for these externally visible changes."</i></p> <p><i>This application for review of the refusal decision has now been referred for further heritage comment.</i></p> <p><i>The history of this application has been reviewed, along with the plans and other documentation and the site has been visited to view the context. The application has also been assessed in relation to relevant heritage provisions contained within the Manly Development Control Plan (DCP) 2013.</i></p> <p><i>It is considered that the application is inconsistent with the Heritage Objectives 1, 2 and 3, outlined in Section 3.2 Heritage Considerations of Manly DCP 2013 and specifically inconsistent with Section 3.2.2 Alterations or Additions to Heritage Items or Conservation Areas, as detailed below:</i></p> <p>Section 3.2 Heritage Considerations</p> <ul style="list-style-type: none"> <i>To retain and conserve environmental heritage and cultural significance of Manly including:</i> <ul style="list-style-type: none"> <i>- significant fabric, setting, relics and view associated with heritage items and conservation areas;</i> <i>- the foreshore, including its setting and associated views;</i>

Internal Referral Body	Comments
	<p>and</p> <ul style="list-style-type: none"> - potential archaeological sites, places of Aboriginal significance and places of natural significance. <p><i>Comment:</i> While this application does not affect significant fabric at the front of the semi fronting Smith Street, it proposes significant changes to fabric at the rear, as a result of the modified design. This includes removal of part of the ground floor roofing and diminishing the context of the original chimney. The proposal is also considered to have an adverse impact upon the view of this building, in the context of the Pittwater Road Conservation Area.</p> <ul style="list-style-type: none"> To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality. <p><i>Comment:</i> It is considered that the design of the first floor addition is not appropriate and will have a negative impact upon the heritage significance of the Pittwater Road Conservation Area. It is considered that by diminishing the existing roof along Alexander Street and incorporating a flat roof profile, the addition will dominate the existing building form. This is particularly a concern given the exposure and visibility of the long frontage of the site, which means that it will be highly visible from a number of viewpoints, thereby impacting on the overall visual character of the Conservation Area. This Conservation Area, while containing a mix of building styles, is dominated by buildings with pitched roof forms. Also as part of a semi, the design should respond to the design of the adjoining semi to maintain symmetry, which this proposal does not.</p> <ul style="list-style-type: none"> To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items. <p><i>Comment:</i> See comments for Objective 2. It is considered that this proposal will detract from the significance of the overall Pittwater Road Conservation Area, affecting views from within the Conservation Area as well as from the residential area to the west, which also has views of the Conservation Area.</p> <p>3.2.2 Alterations or additions to Heritage Items or Conservation Areas</p> <p>3.2.2.1. Complementary Form and Scale that Distinguishes</p>

Internal Referral Body	Comments
	<p>Heritage Significance <i>This section requires that alterations or additions to buildings within a conservation area do not replicate, overwhelm, dominate or challenge the heritage details or character of a building or area. It is considered that the design of the proposed addition dominates the heritage details of the existing building, is not consistent with the design of the adjoining semi and challenges the heritage character of the conservation area.</i></p> <p>3.2.2.2 Retaining Significant Features and Landscape Setting <i>This section requires that alterations or additions to buildings within a conservation area must retain original features and any new detailing should be complementary with the character of the item or place. Additions can be contemporary in style as long as the design is complementary with the character of the item.</i></p> <p><i>In this instance, the roof form is not complementary with the original architectural detailing of the house, or that of the overall conservation area which is dominated by pitched roof forms. Similarly, the proposed first floor window openings are not complementary with the shape and size of original window openings. In addition, as it is part of a conjoined semi, the alterations are not considered complementary with the symmetry that is normally associated with semis. This factor is more important in this case, due to the location of the site, with exposure to 3 street frontages, making the rear addition more visible.</i></p> <p>Conclusion <i>The subject building is located on a highly visible corner location, with three street frontages. The longest street frontage to Alexander Street is a highly visible site within the Pittwater Road Conservation Area and therefore the proposed extension is visible from many aspects. The previously approved extension was considered to have an acceptable heritage impact on the Conservation Area, but the same cannot be said of the changed design.</i></p> <p><i>It is considered that the external design changes now proposed with this modification, including the roof form and the window openings, do not respect the form and proportions of the original Federation semi. In addition, as part of a semi, it is more appropriate to keep symmetry with its adjoining semi, which these new plans do not attempt to do.</i></p> <p><i>Compared to the previous approval, the design of the first floor addition is considered to dominate the existing building by diminishing the existing roof along Alexander Street, lining it up more with the ground floor external walls. This also has the effect of removing the context of the original chimney. The size and shape of the proposed window openings on the first floor are also not complementary with original window openings. As part of a federation semi, the design should, as far as practicable, try to be complementary in design, form, roof shape, fenestration, materials and finishes, and try to maintain the original design intent of symmetry with the other half. This proposal does not achieve this.</i></p>

Internal Referral Body	Comments
	<i>Therefore, this application for Review cannot be supported on heritage grounds.</i>

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 proposed continuation of the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate was submitted with the modification application (see Certificate No. A296936_02 dated 19 December 2018).

SEPP (Infrastructure) 2007

In accordance with clause 45 of this policy, the proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

The site is identified as being within the "coastal environment area" on the Coastal Environment Area Map under the provisions of *State Environmental Planning Policy (Coastal Management) 2018* ("CM SEPP") and the proposal is subject to the provisions of clauses 13 and 15 of this policy. In this regard, Council can be satisfied of the following:

- The proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP,
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the

- matters listed in clause 13(1) of the CM SEPP, and
- The proposal is not likely to cause an increased risk of coastal hazards on the site or other land.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clause 13 and 15 of this policy.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.76m	7.3m	-	Yes
Floor Space Ratio	0.6:1 139.1m ²	0.7:1 161.5m ²	0.7:1 161.5m ²	16% (unchanged)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
5.10 Heritage conservation	No
6.4 Stormwater management	Yes

Detailed Assessment

4.4 Floor space ratio

The proposed modification retains the same floor space ratio as that approved pursuant DA0251/2017.

5.10 Heritage conservation

As detailed in the response from Council's Heritage Officer (above), the proposed modifications have been found to result in a development that will have an adverse impact upon the significance of the Pittwater Road Heritage Conservation Area, inconsistent with the requirements and objectives of clause 5.10 of MLEP 2013.

Manly Development Control Plan

Built Form Controls

--	--	--	--	--

Built Form Controls - Site Area: 231.9sqm	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	N: 6.5m (based on flat site)	6.42m	6.72m	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	No parapet	580mm	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	First Floor: 2.4m	890mm-1.5m	650mm-1.4m	No
	Windows: 3m	890mm-1.5m	930mm-1.4m	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	No	No
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.7 Stormwater Management	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
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
5 Special Character Areas and Sites	No	No
5.2 Pittwater Road Conservation Area	No	No

Detailed Assessment

3.2 Heritage Considerations

and 5.2 Pittwater Road Conservation Area

As detailed in the response from Council's Heritage Officer (above), the proposed modifications have been found to result in a development that will have an adverse impact upon the significance of the Pittwater Road Heritage Conservation Area, inconsistent with the requirements and objectives of clauses 3.2 and 5.2 of MDCP 2013.

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

4.1.2.1 Wall Height

With a proposed wall height of 6.72m, the proposed modifications result in inconsistency with the 6.5m maximum wall height prescribed by this development control. However, the minor non-compliance will

not be visually discernible and is not attributed to excessive floor to ceiling heights. Overall, the wall height non-compliance is not considered to result in inconsistency with the objectives of the development control, as follows:

- *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: As a consequence of the proposed change in roof form, the overall height of the development is reduced whilst the wall height is slightly increased. The height of the development is consistent with surrounding built form, and whilst concern is raised in relation to the proposed parapet roof from a heritage perspective, the wall height non-compliance does not detract from the desired streetscape character of the locality.

- *to control the bulk and scale of buildings,*

Comment: The 220mm wall height non-compliance does not attribute to excessive bulk and scale, or a built form outcome of a scale that is incompatible with surrounding development. The scale of the building remains generally the same as that approved pursuant to DA0251/2017.

- *to minimise disruption to the following:*
 - views to nearby residential development from public spaces (including the harbour and foreshores),*
 - views from nearby residential development to public spaces (including the harbour and foreshores),*
 - views between public spaces (including the harbour and foreshores),*

Comment: The non-compliant wall height does not result in any unreasonable impacts upon views to, from or between public or private space.

- *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 non-compliant wall height does not result in any unreasonable impacts upon solar access of adjacent dwellings.

- *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.

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

4.1.4.2 Side Setbacks and Secondary Street Frontages

The proposed modifications include minor reductions to the approved setbacks to Alexander Street. Furthermore, as the wall height is slightly increased as a result of the altered roof form, the extent of non-compliance with the side setback control is further intensified.

- Required setback to Alexander Street: 2.4m
- Approved setbacks to Alexander Street (upper floor): 0.89m (window boxes) and 1.5m

- (dominant northern elevation)
- Proposed amended setbacks to Alexander Street (upper floor): 0.65m (window boxes), 0.8m (Bedroom 4 wall) and 1.4m (dominant northern elevation)

Despite intensified non-compliance with the minimum side setback (to a secondary street frontage), the proposed development is considered to remain consistent with the objectives of the side setback control, as follows:

- *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 setbacks of the upper floor are increased compared to the setbacks of the existing ground floor, and the upper floor elevation is stepped with varied materiality to minimise bulk and scale. Reduced setbacks to secondary street frontages are notable throughout the locality, and in this regard, the proposal is consistent with the spatial arrangement of surrounding built form.

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

Comment: The reduced setback to Alexander Street does not result in any unreasonable impacts upon the amenity of surrounding properties or the public domain. The siting of the proposed development is consistent with surrounding and nearby built form, and does not attribute to any adverse impacts upon site lines at intersections.

- *To promote flexibility in the siting of buildings.*

Comment: The siting/setback of the upper floor is considered to be an appropriate design response in consideration of the context of the site.

- *To enhance and maintain natural features by:*
 - i. *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
 - ii. *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*
 - iii. *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment: The footprint of the existing dwelling remains unchanged as a result of the proposed modifications, and the non-compliant side setbacks along the northern elevation of the upper floor do not attribute to inconsistency with the requirement to maintain and enhance the

natural features of the site.

- *To assist in appropriate bush fire asset protection zones.*

Comment: The subject site is not bushfire prone.

The proposed modifications to the northern setback of the upper floor remain inconsistent with the provisions of this clause which require windows to be setback 3m from the side boundary. Whilst it is appreciated that secondary street frontages are to be considered as side setbacks with regards to the minimum setbacks prescribed, the 3m setback requirement for windows along this elevation is not considered to be relevant, as the wall adjoins a public street. Nonetheless, the minor amendments proposed to the setbacks of the windows along the northern elevation of the upper floor are not considered to attribute to any unreasonable impacts upon the public domain, and will not detract from consistency with the objectives of this clause.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Inconsistent 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 unchanged proposal has been reviewed in response to the request of the applicant in accordance

with the provisions of section 8.3 of the EP&A Act. As part of the review, and to assist the panel in its determination, the proposal was also referred to an alternate heritage officer, who ultimately concurred with the position expressed in the previous application. As such, the application is recommended for refusal due to concerns relating to potential adverse impacts upon the Pittwater Road Conservation Area.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Modification Application MOD2018/0703 under Review of Determination Application REV2019/0026 in relation to alterations and additions to a semi-detached dwelling (DA2051/2017) on land at Lot 131 DP 603177, 57 Smith Street, Manly, for the following reason:

1. The proposed modifications will result in an adverse impact upon the heritage significance of the Pittwater Road Conservation Area, inconsistent with the provisions of clause 5.10 (Heritage Conservation) of Manly Local Environmental Plan 2013, and clauses 3.2 (Heritage Considerations) and 5.2 (Pittwater Road Conservation Area) of Manly Development Control Plan 2013.





ITEM 4.2

**REV2019/0032 - 16 FAIRLIGHT CRESCENT, FAIRLIGHT -
REVIEW OF DETERMINATION OF APPLICATION DA2018/1634
FOR CONSTRUCTION OF A DWELLING HOUSE INCLUDING A
SWIMMING POOL**

AUTHORISING MANAGER MATTHEW EDMONDS

TRIM FILE REF 2019/548877

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 review 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. REV2019/0032 for Review of Determination of Application DA2018/1634 for construction of a dwelling house including a swimming pool at Lot 9 DP 3742, 16 Fairlight Crescent, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2019/0032
----------------------------	--------------

Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 9 DP 3742, 16 Fairlight Crescent FAIRLIGHT NSW 2094
Proposed Development:	Review of Determination of Application DA2018/1634 for construction of a dwelling house including a swimming pool
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:	Alexandra Claire Rees
Applicant:	Alexandra Claire Rees

Application Lodged:	19/06/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	08/07/2019 to 22/07/2019
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 2,204,000.00
---------------------------------	-----------------

EXECUTIVE SUMMARY

The application seeks a review of the determination of DA2018/1634, for the construction of a dwelling house and swimming pool, which was refused by the NBLPP on 3 April 2019. The proposal has been satisfactorily amended to address the reasons for refusal relating to the front and eastern side setbacks and the lift overrun, and as such, the application is referred to the NBLPP for determination with a recommendation of approval.

PROPOSED DEVELOPMENT IN DETAIL

The application has been lodged under the provisions of section 8.3 of the EP&A Act, seeking a review of the refusal of DA2018/1634, which sought approval for the construction of a new dwelling and swimming pool at the subject site. In response to the refusal of DA2018/1634, the proposed new

dwelling has been amended in a number of ways, including but not limited to, the following:

- the distance between the front elevation of Bedroom 1 and the front boundary has been increased by 400mm, to a minimum setback of 6m,
- the eastern side setback of the upper floor has been increased,
- the layout of the upper floor has been amended,
- portions of the the western side setback of the upper floor have been decreased,
- the depth/length of the western side of the upper floor has been extended (decreasing the rear setback on this side of the dwelling),
- the position of the lift has been altered,
- the lift overrun and the maintenance hatch has been removed,
- the clerestory window on the roof has been deleted,
- windows along the eastern side setback of the upper floor have been deleted, relocated or converted to highlight windows,
- the design of the roof has been amended,
- the western side setback of the front upper floor balcony has been reduced,
- the external massing/height of the fireplace has been decreased, and
- the area to the west of the 'arrival' terrace on the ground floor has been replaced with stairs, and the setback to the boundary has been increased.

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 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 3.4.3 Maintenance of Views

Manly Development Control Plan - 3.4.4 Other Nuisance (Odour, Fumes etc.)

Manly Development Control Plan - 3.9 Mechanical Plant Equipment

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 - 4.1.9 Swimming Pools, Spas and Water Features

Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot 9 DP 3742 , 16 Fairlight Crescent FAIRLIGHT NSW 2094
Detailed Site Description:	The site is rectangular in shape, with a 15.24m wide frontage to the northern side of Fairlight Crescent, a maximum depth of 40.3m and a total area of 613.2m ² . The site currently contains a single storey dwelling house with a detached garage at the rear of the property. The site experiences a fall of 3.86m from the upper rear boundary down towards the street, with a slope of approximately 9%. The site is surrounded by residential development of varied density, scale and character.

Map:



SITE HISTORY

On 11 April 2018, a complying development certificate was issued with respect to the demolition of the existing dwelling and garage at the subject site.

On 4 October 2018, Development Application DA2018/1634 was lodged with Council.

On 4 December 2018, Council wrote to the applicant, raising concerns relating to:

- building height non-compliance,
- visual privacy, and
- the incorporation of solid fuel heaters.

On 6 December 2018, the applicant provided amended plans.

On 17 December 2018, Council requested the erection of height poles.

On 8 March 2019, Council received confirmation of the erection of height poles at the site.

On 3 April 2019, the application was presented to the NBLPP for determination, with a recommendation of approval. The NBLPP ultimately refused the application for the following reasons:

1. *The first (top) floor on the eastern side does not comply with the side setback provisions contained in the Manly DCP 2013 and bedroom 1 on that floor does not comply with the front setback provisions in the Manly DCP 2013.*
2. *The Panel is not satisfied that the extent of the lift overrun is necessary.*

On 19 June 2019, the subject review application was lodged with Council.

On 5 August 2019, Council received confirmation of the erection of amended height poles at the site.

On 5 August 2019, the assessing officer undertook inspections of the subject site and adjoining sites, including the adjoining flat building at 14 Fairlight Crescent.

On 20 August 2019, correspondence was sent to the applicant requesting additional information and clarification relating to:

- Building height calculation,
- Location of surveyed poles in relation to proposed works,
- BASIX requirements,
- Side setbacks,
- Roof detail,
- Extent of amendments, and
- Visual privacy.

On 28 August 2019, amended plans and additional documentation were provided to support the application.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Evaluation

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	Manly Development Control Plan (' MDCP 2013 ')

Section 4.15 Matters for Consideration'	Comments
development control plan	applies to this proposal.
Section 4.15 (1) (a)(iii) – 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 can be addressed via a condition of 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 can be 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 can be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built 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 MDCP 2013 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.

Section 8.3 Application for and conduct of review

In accordance with Section 8.3 of the EP&A Act, an applicant may request a review of a determination of a development application. The review must be lodged and determined within 6 months of the date of determination of the development application. To meet this requirement, noting that the development application was determined on 3 April 2019, the subject review application must be determined before 3 October 2019.

Section 8.3(3) of the EP&A Act provides that the applicant may amend the proposal, however the consent authority must be satisfied that the amended proposal presented in the review application remains substantially the same as that considered in the original development application. In this regard, the applicant has made amendments to the proposal in an attempt to address the reasons of refusal as outlined in the Notice of Determination for the original development application. The changes are outlined in the 'Detailed Description of Works' section of this report. Upon review of these amendments, the consent authority can be satisfied that the amended proposal the subject of the review application remains essentially and materially the same as that proposed in the original application at the time of determination.

Section 8.3(5) of the EP&A Act prescribes that an application to review a decision by a local planning panel must also be determined by the local planning panel. As such, the application is referred to the NBLPP for determination.

Overall, the subject review application is considered to be consistent with the provisions of Section 8.3 of the EP&A Act, subject to the matter being determined before 3 October 2019.

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 8 submission/s from:

Name:	Address:
Tracy Davey Proprietors of Strata Plan 4548	14 Fairlight Crescent FAIRLIGHT NSW 2094
Mr Bruce Williams	6 / 14 Fairlight Crescent FAIRLIGHT NSW 2094
Ms Martina Elisabeth Gabrielsson Mr James Patrick Gabrielsson	1 / 14 Fairlight Crescent FAIRLIGHT NSW 2094
Mr Simon Robert Buttenshaw	5 / 14 Fairlight Crescent FAIRLIGHT NSW 2094
Mr Richard Charles Ogden	Villa 2 26-30 Ashington Street WEST END NSW 4010
Mrs Kathleen Judith O'Doherty	4 / 12 Fairlight Crescent FAIRLIGHT NSW 2094
Mr Simon Albert Rosewell	4 / 20 Fairlight Crescent FAIRLIGHT NSW 2094
Mr Ian David Watson	18 Fairlight Crescent FAIRLIGHT NSW 2094

The issues raised in the submissions received in response to the notification of the subject application

are considered as follows:

- **View loss**

Comment: Submissions have been received from and on behalf of owners of surrounding properties, raising concerns regarding impacts to views. Whilst it is acknowledged that the proposed development will impact upon views currently enjoyed, the impact is not unreasonable in the circumstances of the proposal. See further discussion with regard to clause 3.4.2 of MDCP 2013.

- **Side setbacks**

Comment: The proposed development is inconsistent with respect to the minimum setbacks prescribed in relation to both side elevations, and a number of submissions have been received that raise concern in this regard. The proximity of the proposed development to the existing buildings to the east and west is not considered to result in any unreasonable impacts upon the amenity of the respective dwellings, as discussed in further detail with regards to clause 4.1.4.2 of MDCP 2013.

It is noted that one specific submission makes reference to the need for a 3m side setback to the eastern side boundary, to mimic that currently provided on site. The minimum side setback prescribed by MDCP 2013 is calculated based on the height of the proposed development, and in this regard, the maximum setback required is 2.7m at the front of the upper floor of the building, reducing to 1.1m at the rear lower floor of the building. There is no requirement for the side setback of the proposal to mimic the setback of the existing dwelling, or that of adjoining development.

- **Wall height**

Comment: The front corners of the proposed development are inconsistent with the maximum wall height prescribed by MDCP 2013 and submissions have been received in objection to the proposal in this regard. As discussed in further detail with regard to clause 4.1.2 of MDCP 2013, the wall height non-compliance does not attribute to excessive bulk and scale or any unreasonable impacts upon adjoining properties, and the proposed development is consistent with the objectives of the wall height development control.

- **Impacts upon amenity associated with roof terrace**

Comment: Submissions have been received in objection to the impacts associated with the roof terrace. However, the roof terrace in question was removed from the proposal during the assessment of the original development application, and does not form part of the subject review application.

- **Noise and vibration during construction**

Comment: Submissions have been received which raise concerns in relation to the potential noise and vibration associated with construction of the proposed development. Should the application be approved, conditions of consent can be imposed to minimise impacts associated with construction.

- **Height of roof terrace**

Comment: Concerns have been raised regarding the height of the proposed development, specifically in relation to the roof terrace. As above, the roof terrace in question was removed from the proposal during the assessment of the original development application, and does not form part of the subject review application. The height of the proposed development is maintained below the 8.5m maximum height limit prescribed by clause 4.3 of MLEP 2013.

- **Redundant boundary wall**

Comment: A submission has been received from an adjoining property owner raising concern regarding the eastern wall of the existing garage at the rear of the subject site. The submission suggests that this wall is to be retained, and will become redundant as a result of the proposal. However, the application seeks to demolish the garage as a whole. As the garage is located wholly within the boundaries of the subject site, no concern is raised by Council in this regard. The resultant treatment of the boundary and any necessary fencing will then be a matter to be resolved between the relevant land owners.

- **Solar access**

Comment: Submissions have been received from adjoining properties to both the east and west with regard to solar access. In relation to the dwelling to the west, the proposal does not result in any unreasonable overshadowing of windows associated with living rooms or areas of private open space. Furthermore, the proposal has been designed to maximise solar access to the property to the west, with the length of the dwelling reduced on the western side of the site.

In relation to the residential flat building to the east, the shadow diagrams confirm that the proposal will maintain current levels of direct sunlight between 9am and 3pm in midwinter, with no additional overshadowing of windows arising from the proposed development during this time frame. The proximity and additional height of the proposed development will remove an outlook of the sky and obstruct late afternoon (after 3pm) sunlight to the lower floor units, however the affected rooms (bedrooms) will still receive adequate levels of both direct and indirect light.

- **Visual privacy**

Comment: Submissions have been received from adjoining properties to both the east and west with regard to visual privacy. As discussed in further detail with regard to clause 3.4.2 of MDCP 2013, the proposed development is not considered to result in any unreasonable impacts upon the privacy of adjoining properties.

- **Acoustic privacy**

Comment: A submission has been received on behalf of the adjoining property to the west, raising concerns with regard to acoustic privacy associated with the non-compliant side setbacks. The non-compliant side setbacks are not considered to alter the noise levels associated with the proposed development, particularly noting that the majority of the western side elevation is free of any windows. The same submission also raises concerns regarding the unknown location of the pool plant equipment and any associated adverse acoustic impacts. The pool plant equipment is shown to be located within the basement, which is considered to appropriately contain any noise associated with the ongoing use of the plant equipment.

- **Ventilation**

Comment: Submissions have been received which raise concern regarding the proximity of the

proposed development to the side boundaries and the associated impacts upon ventilation. The setbacks of the proposed development are not considered to unreasonably restrict the flow of air between adjoining properties.

- **Front setback**

Comment: Concerns have been raised in relation to the front setback of the proposed development. As discussed with regards to clause 4.1.4 of MDCP 2013, the siting of the proposed development with respect to the front setback control is considered to be acceptable with regard to the context of the site.

- **Pollution associated with fireplace**

Comment: A submission has been received in objection to the potential air pollution associated with the two solid fuel fireplaces proposed. As discussed by Council's Health Officer, the application has not satisfactorily demonstrated that the fireplaces can comply with relevant standards, and are not supported in this regard.

- **Impact to 3/2 Bolingbroke Parade**

Comment: A submission has been received from a property owner at 14 Fairlight Crescent that raises concerns regarding the potential impacts upon the amenity of the dwelling at 3/2 Bolingbroke Parade. The property owner of 3/2 Bolingbroke Parade was notified of both the original application and the subject review application. To date, no correspondence has been received from or on behalf of the property owner of 3/2 Bolingbroke Parade in this regard.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p>Refusal</p> <p><i>Insufficient information has been provided in relation to the proposed solid fuel heaters.</i></p> <p><u>Planner comment:</u> The lack of information relating to the proposed solid fuel heaters is not considered to warrant the refusal of the proposed development. Rather a condition of consent has been included in the draft determination to delete the proposed solid fuel heaters from the proposal.</p>
Landscape Officer	<p>Approval, with conditions.</p> <p><i>The landscape component of the proposal is acceptable subject to the completion of landscaping.</i></p> <p><i>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</i></p>
NECC (Development Engineering)	<p>Approval, with conditions.</p> <p><i>Development Engineer has no objection to the application subject</i></p>

Internal Referral Body	Comments
	<i>to conditions of consent.</i>

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 proposed continuation of the residential use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 950862S dated 14 August 2019).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	81

SEPP (Infrastructure) 2007

The proposal was referred to Ausgrid in accordance with Clause 45 of this policy. 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	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.47m	-	Yes
Floor Space Ratio	0.6:1	0.6:1	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	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	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 2 dwellings (max.)	1	-	Yes
4.1.2.1 Wall Height	East: 6.9m	8m	16%	No
	West: 6.9m	6.9m	-	Yes
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	0.7m	-	Yes
	Pitch: maximum 35 degrees	5 degrees	-	Yes
4.1.4.1 Street Front Setbacks	6m	4.8m	20%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 1.1 - 2.7m (based on wall height)	0.9 - 2.7m	32%	No
	West: 1.2 - 2.3m (based on wall height)	1m	56%	No
	Windows: 3m	1m	66%	No
4.1.4.4 Rear Setbacks	8m	8.2m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements	Total open space 55% of site area	55.8%	-	Yes

Residential Open Space Area: OS3	Open space above ground 25% (max) of total open space	13%	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	54.6%	-	Yes
	3 native trees	0 trees	100%	No
4.1.5.3 Private Open Space	18sqm	>18sqm	-	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	5.3m	-	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0m	-	Yes
	1m curtilage/1.5m water side/rear setback	0.8m/1m	20%/50%	No
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 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	Yes	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	No	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	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

3.4.2 Privacy and Security

3.4.2.1 Window Design and Orientation

The provisions of this development control prescribe that when located close to boundaries, windows must be off-set from those in the adjacent building to restrict direct viewing and to mitigate impacts on privacy.

In plan, windows W.F8 and W.F10 on the eastern elevation of the upper floor appear to be located directly opposite windows on the western elevation of the adjoining residential flat building. However, as highlighted in the elevations and sections, the height/levels of the windows are offset from those of the adjoining development, and the high level sills prevent downward overlooking of the adjoining development from within each of the proposed bedrooms.

Window W.F15 is oriented towards the western boundary, with potential opportunity for overlooking of the private open space of the adjoining dwelling at 18 Fairlight Crescent. However, the window in question is located approximately 9.5m from the western side boundary, such that adequate spatial separation is considered to be achieved.

All other windows along the eastern and western side elevations of the dwelling comprise screens or opaque glazing to prevent overlooking between adjoining dwellings or are located well away from windows of adjoining dwellings.

3.4.2.2 Balconies and Terraces

The proposed new dwelling comprises an elevated balcony on the front elevation of the ground floor, immediately adjacent to the living room. Whilst privacy louvres extend forward of the front facade of the living room, the south-eastern most corner of the terrace is unscreened. This portion of the deck is situated forward of the balconies of the adjoining residential flat building, and is oriented towards the available views to the south-east. Whilst an individual would be able to stand in this position and look backwards towards the balconies of the adjoining residential flat building, this impact is not considered

to be unreasonable in this context, particularly noting the available views and the absence of screening measures along the remainder of the streetscape.

The proposed new dwelling also comprises a balcony at the front of the upper floor of the development, accessible from Bedroom 1 and the Billiard Room. The portion of the balcony adjacent to Bedroom 1 is located opposite balconies of the adjoining residential flat buildings and does not incorporate any measures to minimise overlooking between properties. However, the lack of a screen is not considered to be unreasonable in these circumstances noting the limited depth and likely use of the balcony proposed.

The western side of the front upper floor balcony adjacent to the Billiard Room and Study is also unscreened, resulting in technical non-compliance with this control. However, a screen on this elevation would be of little benefit to the amenity of the adjoining property, noting that there are no windows or areas of private open space located directly to the west of the proposed balcony. Whilst an elevated terrace is located at the south-eastern corner of the adjoining dwelling to the west, the terrace is located forward of the proposed dwelling, and screening along the side setback would not prevent overlooking of this space.

The proposed development is considered to be consistent with the objectives of this development control, as follows:

- *To minimise loss of privacy to adjacent and nearby development by appropriate design for privacy including screening between closely spaced buildings and mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment: The proposed development will alter the current amenity of adjoining dwellings. However, the impacts of the proposal upon the privacy of adjoining dwellings are considered to be reasonably minimised to a degree that is acceptable within a mixed density residential environment.

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

Comment: The proposed development is considered to achieve an appropriate balance between privacy and the obtainment of light and air to the rooms along the side elevations. The inclusion of windows along the upper floor side elevations is not unreasonable, and the proposal is considered to be a skilful design response that maximises privacy between adjoining dwellings.

- *To encourage awareness of neighbourhood security.*

Comment: The proposed development maximises casual surveillance of the street.

3.4.3 Maintenance of Views

The proposed development will impact upon views currently enjoyed by adjoining properties and submissions have been received from and on behalf of the owners of adjoining and nearby properties in this regard. The impact upon views from each of these properties is considered individually with respect to the provisions of this development control and the Views Planning Principle developed by the NSW LEC in the matter of *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.

To assist in consideration of the impact upon views, height poles were erected at the site. Certification of the height and location of the height poles was provided by a registered surveyor, with the location of the height poles superimposed upon the site plan by the project architect.

6/14 Fairlight Crescent

Apartment 6 is located at the rear of the upper (third) floor of the adjoining residential flat building at 14 Fairlight Crescent. Apartment 6 has a balcony and living room oriented towards the south, with views of the harbour obtained in a southerly direction. Views to the south-west of Forty Baskets Beach, the adjacent foreshore and the escarpment beyond are also available from the bedroom, which is located on the western side of the building. The views of the harbour in a south-easterly direction are obtained over the front boundary of 14 Fairlight Crescent and over/between properties downslope. The views towards Forty Baskets Beach to the south-west are obtained over the side boundary and the current roof form of the dwelling at the subject site.

The views currently enjoyed in a southerly direction will remain unaffected by the proposal. The views to the south-west of Forty Baskets Beach and the surrounding foreshore will be impacted by the roof of the proposed new dwelling, as shown in **Figure 1**. Noting that the primary views from the living room and private open space remain unaffected, the impact upon views enjoyed from the entirety of the property is considered to be minor.



Figure 1 - View from bedroom at 6/14 Fairlight Crescent with impact highlighted by red lines.

The portion of the proposed roof form that is impacting upon the views to the south-west is maintained below the maximum height limit, and has been designed with a minimal roof pitch that is to be finished in dark, non-reflective finishes. Whilst evident in **Figure 1**, the protrusions on the roof form (lift overrun and access hatch) have subsequently been removed, to minimise visual clutter and allow for the

retention of the whole of the view of the escarpment. In this regard, the proposal is considered to be skilfully designed to minimise impacts upon the views/outlook from the bedroom of Apartment 6, and the impact upon views is considered to be reasonable.

5/14 Fairlight Crescent

Apartment 5 is located at the front of the upper (third) floor of the adjoining residential flat building at 14 Fairlight Crescent. Apartment 5 has a balcony and open plan living room oriented to the south, with sweeping views of the harbour and surrounding foreshores from the south-east to the south-west. Views to the south-west of Forty Baskets Beach, the adjacent foreshore and the escarpment beyond are also available from the two bedrooms, which are located on the western side of the building. The views of the harbour from the living room and balcony are primarily obtained over the front boundary of 14 Fairlight Crescent and over/between properties downslope, with the view towards Forty Baskets Beach to the south-west obtained over the side boundary. The views from the bedrooms towards Forty Baskets Beach to the south-west are obtained over the side boundary and the current roof form of the dwelling at the subject site.

The primary view of the harbour from the living room and balcony will remain unaffected by the proposal. However, a minor portion of the side view towards Forty Baskets Beach will be obstructed by the roof of the proposed new dwelling, as shown in **Figure 2**. The view towards Forty Baskets Beach from each of the bedrooms will also be affected, as shown in **Figure 3** and **Figure 4**. With regard to the views retained from the living room and balcony, and in consideration of the use and location of the rooms where the impact is to occur, the impact upon views currently enjoyed from the entirety of the property is considered to be minor.



Figure 2 - View from balcony at 5/14 Fairlight Crescent with impact highlighted by red lines.



Figure 3 - View from Bedroom 1 at 5/14 Fairlight Crescent with impact highlighted by red lines.



Figure 4 - View from Bedroom 2 at 5/14 Fairlight Crescent with impact highlighted by red lines.

The portion of the proposed dwelling impacting upon views from the living room and balcony has been setback to comply with the minimum front and side setback development control, and the height of the development is maintained below the maximum building height. Whilst the front south-eastern corner of the proposed development is non-compliant with the wall height control, the non-compliant element is not attributed to an unreasonable impact upon the available views. The portion of the proposed roof form that is impacting upon views from the bedroom is maintained below the maximum height limit, and has been designed with a minimal roof pitch that is to be finished in dark, non-reflective finishes. Overall, the impact upon views currently enjoyed from Apartment 5 is considered to be reasonable.

3/14 Fairlight Crescent

Apartment 3 is located on the middle (second) floor of the adjoining residential flat building at 14 Fairlight Crescent. Apartment 3 has a balcony and open plan living room oriented to the south, with views of the harbour and surrounding foreshores from the south-east to the south-west. An oblique view of the harbour to the south is also available from the bedrooms, which are located on the western side of the building. The views of the harbour from the living room and balcony are primarily obtained over the front boundary of 14 Fairlight Crescent and over/between properties downslope, with the view towards Forty Baskets Beach to the south-west obtained over the side boundary. The views from the bedrooms towards the harbour to the south are obtained over the side boundary.

The primary view of the harbour from the living room and balcony will remain unaffected by the proposal. However, a portion of the side view towards Forty Baskets Beach will be obstructed by the front balcony of the proposed new dwelling, as shown in **Figure 5** and **Figure 6**. The oblique view of the harbour from the bedrooms will also be affected, as shown in **Figure 7**. With regard to the views retained from the living room and balcony, and in consideration of the nature of the view obtainable

from the bedrooms, the impact upon views currently enjoyed from the entirety of the property is considered to be minor.

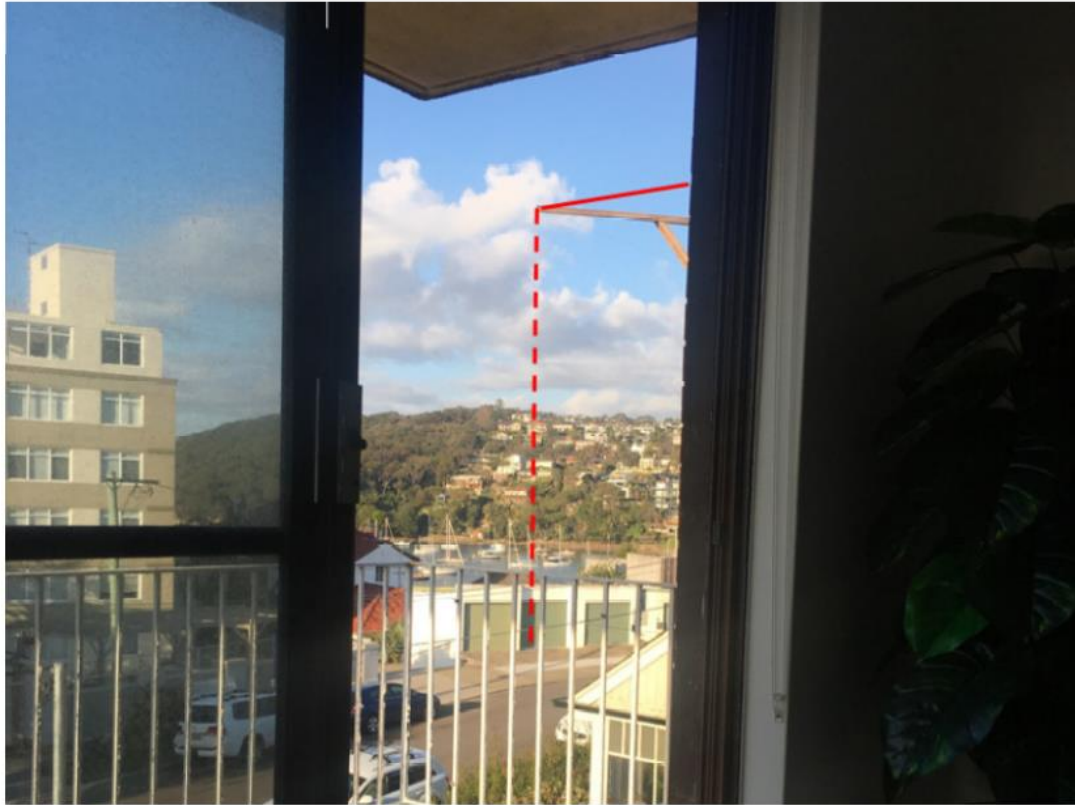


Figure 5 - View from living room at 3/14 Fairlight Crescent with impact highlighted by red lines.



Figure 6 - View from balcony at 3/14 Fairlight Crescent with impact highlighted by red lines.



Figure 7 - View from bedroom at 3/14 Fairlight Crescent with impact highlighted by red lines.

The resultant impact upon all views currently enjoyed from Apartment 3 is generally attributable to the front upper floor balcony of the proposed new dwelling. Whilst the proposed balcony is forward of the 6m front building line, the impact upon the angled/secondary view arising from the structure is not unreasonable in the context of the streetscape, where the majority of buildings feature terraces and decks forward of the 6m minimum setback requirement. The impact upon the views currently enjoyed from Apartment 3 is considered to be reasonable in the circumstances of the site.

4/20 Fairlight Crescent

Apartment 4 is located at the southern end of the top floor of the nearby residential flat building at 20 Fairlight Crescent. Apartment 4 has two bedrooms with windows on the southern facade, with partially obstructed views of the harbour obtained in a southerly and south-westerly direction. Apartment 4 also has an elevated walkway and stairwell on the eastern elevation, with a narrow view corridor towards the harbour, specifically North Head, to the south. The views available from the bedrooms and elevated walkway are obtained over the side boundary of the property.

The upper floor of the proposed development will impact upon a portion of a narrow view corridor of North Head currently visible from the second bedroom, as shown in **Figure 8**. However, the larger available view corridor of the foreshore surrounding Forty Baskets Beach and the headlands beyond will remain unaffected by the proposal. The upper floor of the proposed dwelling will also impact upon the partially obstructed view corridor towards North Head from the elevated walkway, as shown in **Figure 9**. In consideration of the nature and use of where the views are obtained, the retention of larger view corridors, and noting that the affected view corridor is vulnerable to future vegetation growth, the impact upon the views currently enjoyed at the property is considered to be minor.



Figure 8 - View from Bedroom 2 at 4/20 Fairlight Crescent with impact highlighted by red lines.



Figure 9 - View from elevated walkway at 4/20 Fairlight Crescent with impact highlighted by red lines.

Whilst it is acknowledged that the portion of the development attributing to the impact upon this view corridor is non-compliant with respect to the side setback prescribed by MDCP 2013, the level of impact is not considered to be unreasonable in the context of the site.

Other properties

It is acknowledged that additional concerns regarding view loss were raised in response to the notification of DA2018/1634. However, these concerns have not been raised in relation to the subject review application. Nonetheless, the potential impact upon these additional properties was considered in detail as part of the assessment of the earlier development application, which concluded that the impact upon views to these properties was not unreasonable in the circumstances.

Summary

Overall, the impact upon views arising from the proposed development is not considered to be unreasonable, and view sharing between properties is considered to be achieved.

3.4.4 Other Nuisance (Odour, Fumes etc.)

The proposed new dwelling comprises two solid fuel fireplaces, with flues located in close proximity of windows of adjoining dwellings. The application has not demonstrated that the use of these fireplaces will not result in unreasonable impacts upon the amenity of adjoining dwellings, nor that compliance with the relevant Australian Standards can be achieved. As discussed by Council's Environmental Health Officer, the inclusion of solid fuel fireplaces is not supported in this regard.

3.9 Mechanical Plant Equipment

Development application DA2018/1634 was refused by the NBLPP due to concerns relating to the extent of the lift overrun, as follows:

The Panel is not satisfied that the extent of the lift overrun is necessary.

The application has been amended to remove the lift overrun in its entirety, in addition to the maintenance access shaft and clerestory windows. With the exception of solar panels, which are required to satisfy BASIX requirements and can be installed as exempt development, the proposed roof plan is free of any protruding structures, consistent with the objectives of this control and clause 3.4 of MDCP 2013.

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

4.1.2.1 Wall Height

With a maximum wall height of 8m on the eastern elevation, the proposed development is inconsistent with the 6.9m maximum wall height prescribed by this development control. However, it is noted that the proposed roof form is maintained well below the maximum permitted roof form, and that the overall height of the development is consistent with the 8.5m maximum building height development standard prescribed by MLEP 2013. Furthermore, the non-compliance, which is limited to the front 9m of the proposed dwelling, does not give rise to any unreasonable impacts upon adjoining properties or attribute to excessive bulk and scale.

4.1.2.2 Number of Storeys

The proposed development comprises 3 storeys, inconsistent with the 2 storey limit prescribed by this development control. However, the lower floor of the proposal is more appropriately described as a basement, with no more than 1m in height protruding above existing ground at any point. The proposed height and presentation of the dwelling is not inconsistent with the character of surrounding built form.

Overall, despite technical non-compliance with the wall height and number of storeys controls, the proposed development is considered to be consistent with the relevant objectives, as follows:

- *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 development has been designed to step down the slope of the site, with a building height that is compatible with surrounding built form and the character of the streetscape.

- *to control the bulk and scale of buildings,*

Comment: The three storey nature of the development is consistent with surrounding built form and the bulk and scale of the proposed development is appropriate in the context.

- *to minimise disruption to the following:*

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

Comment: The non-compliant wall height does not result in any unreasonable impacts upon

views to/from adjoining properties or the public domain.

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

Comment: The proposed development does not result in unreasonable impacts upon solar access to adjoining development.

- *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.

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

4.1.4.1 Street Front Setbacks

Street frontage setbacks vary along the high side of Fairlight Crescent, with no prevailing building line. As such, clause 4.1.4.1 prescribes that a minimum 6m front setback generally applies. However, it is noted that the majority of developments along Fairlight Crescent are forward of this 6m requirement, with setbacks ranging between 3m and 7m from the front setback.

With the exception of the plant room in the south-western corner of the lower ground floor, the proposed dwelling is consistent with the 6m front setback prescribed, noting that the control allows balconies to project forward of the front building line where there is no adverse impact on the streetscape or adjoining properties.

One of the reasons that the original development application was refused was due to the non-compliant front setback of Bedroom 1 in the south-eastern corner of the upper floor. In response to this reason for refusal, the setback of Bedroom 1 has been increased by 400mm to achieve strict compliance with the 6m minimum street front setback prescribed by this control.

4.1.4.2 Side setbacks and secondary street frontages

With a 1m setback, the entire length of the western side elevation is inconsistent with the prescribed side setback, which varies from 1.2m - 2.3m based on the wall heights proposed. Furthermore, a considerable portion of the eastern side elevation is also inconsistent with the prescribed side setback, which varies from 1.1m - 2.7m based on the wall heights proposed. All windows along the eastern elevation are also inconsistent with the 3m minimum window setback prescribed.

One of the reasons that the original development application was refused was due to the non-compliant eastern side setback of the upper floor. In response to this reason for refusal, the setback of the upper floor from the eastern boundary has been increased by up to 1.3m (as shown in red on the upper floor plan), however minor elements remain within the setback prescribed. The required and proposed setbacks of the upper floor are calculated as follows;

Room	Required	Proposed	Non-compliance (max)
Bedroom 1	2.5 - 2.7m	2.7m	-
Ensuite (wall)	2.4m	2.3m	0.1m
Ensuite (window)	2.4 - 2.5m	1.7- 2.3m	0.8m

Bedroom 2 (wall)	2.3m	2.3m	-
Bedroom 2 (window)	2.3 - 2.4m	1.6 - 2.3m	0.8m
Bedroom 3 (wall)	2.1 - 2.2m	2.3m	-
Bedroom 3 (window)	2.2m	1.6 - 2.3m	0.6m
Bath (wall)	2m	1.8m	0.2m
Bath (screen)	2.0 - 2.1m	1.5 - 1.8m	0.6m
Bedroom 4	1.9 - 2.0m	1.8m	0.2m

The encroachments within the eastern side setback on the upper floor are generally associated with angled windows, which have been designed to maximise visual privacy and amenity for both the adjoining residential flat building and the proposed new dwelling. The areas of non-compliance are reasonably minimised, provide relief along the length of the facade, and do not attribute to any unreasonable impacts upon the amenity of adjoining properties.

Despite minor areas of non-compliance with the front and side setbacks prescribed by clauses 4.1.4.1 and 4.1.4.2, the proposed development is considered to be consistent with the objectives of the setback controls, as follows:

- *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 development is well articulated, with a resultant built form that is compatible with the proportions of other development in the street. Furthermore, the proposal will result in an appropriate landscaped response for the site.

- *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 proposed development has been designed to maximise privacy for occupants of the proposed development and dwellings within the adjoining residential flat building, with no overlooking arising as a result of non-compliant setbacks. The minor areas of non-compliance are limited in both width and depth, and do not result in unreasonable impacts upon access to light, sunshine or air movement to adjoining dwellings. As discussed with regard to clause 3.4.3, the minor protrusions within the setbacks do not result in unacceptable impacts upon existing views, and view sharing between properties is achieved.

- *To promote flexibility in the siting of buildings.*

Comment: The design of the proposed dwelling is considered to be an appropriate design response for the site. Whilst the screens along the eastern elevation of the top floor extend within the side setback, the screens maximise privacy for all parties and provide necessary modulation and variation in materiality along what would otherwise be a long unarticulated wall.

- *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 development will result in the enhancement of vegetation on the site, to a degree that is commensurate with surrounding development and the landscaped character of the streetscape.

- *To assist in appropriate bush fire asset protection zones.*

Comment: Not applicable.

4.1.5 Open Space and Landscaping

With no native canopy trees proposed, the landscape solution is inconsistent with the provisions of clause 4.1.5.2, which require 3 native canopy trees to be planted on the site. However, Council's Landscape Officer has recommended a condition of consent to require compliance in this regard. To minimise impacts upon views between buildings and to soften the proposed built form, a condition is recommended to restrict the necessary canopy plantings from within 3m of the side and rear boundaries.

4.1.9 Swimming Pools, Spas and Water Features

The western setback of the proposed swimming pool (both the coping and the waterline) is inconsistent with the minimum setbacks prescribed by this control. Nonetheless, the siting of the proposed swimming pool does not result in any adverse impacts upon the amenity of the adjoining property, and the proposal is consistent with the objectives of the control, as follows:

- *To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;*

Comment: The proposed swimming pool is located at ground level, and the boundary fence provides appropriate visual and aural privacy to the adjoining property to the west. The minor area of non-compliance, being 200mm to the coping and 500mm to the waterline, does not result in an impact that is discernible from that associated with a pool setback in accordance with the minimum setbacks prescribed.

- *To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;*

Comment: The proposed pool, located within the rear yard of the subject site, will not adversely impact upon the streetscape or the character of the locality.

- *To integrate landscaping; and*

Comment: The proposed development does not result in any adverse impacts upon existing landscaping and will result in an enhanced landscape outcome on the site.

- *To become an emergency water resource in bush fire prone areas.*

Comment: Not applicable.

4.4.5 Earthworks (Excavation and Filling)

The proposed development, which involves excavation approximately 3.5m deep in association with the basement storage area, is inconsistent with the requirements of this clause which seek to limit the depth of excavation to 1m. The area of excavation is located within the footprint of the level above, does not necessitate retaining walls, and will not be visible from the public domain. Furthermore, the works will not unreasonably impact upon the natural flow of ground water or water quality. As such, despite technical non-compliance in this regard, the proposed development is considered to be consistent with the objective of this control.

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 \$22,040 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,204,000.

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 proposed development has been amended in response to the reasons for the refusal, to satisfactorily address the concerns of the NBLPP, as follows:

1. *The first (top) floor on the eastern side does not comply with the side setback provisions contained in the Manly DCP 2013 and bedroom 1 on that floor does not comply with the front setback provisions in the Manly DCP 2013.*

Comment: The front facade of Bedroom 1 on the upper floor has been setback to achieve strict compliance with the front setback control. The eastern side setback of the upper floor has been increased by up to 1.3m, such that the dominant alignment of the facade is generally compliant with the setback prescribed. The resultant areas of non-compliance are largely attributed to the angled windows, which are considered to be a skilful design solution that maximises visual privacy and the amenity of both adjoining buildings.

2. *The Panel is not satisfied that the extent of the lift overrun is necessary.*

Comment: The lift overrun, in addition to all other protruding structures, have been deleted from the proposal.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to REV2019/0032 for Review of Determination of Application DA2018/1634 for construction of a dwelling house including a swimming pool on land at Lot 9 DP 3742, 16 Fairlight Crescent, FAIRLIGHT, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site & Roof Plan DA02, issue 7	22 August 2019	Vaughan Architects
Proposed Basement Plan DA03, issue 7	22 August 2019	Vaughan Architects
Proposed Ground Floor & Swimming Pool Plan DA04, issue 7	22 August 2019	Vaughan Architects
Proposed First Floor Plan DA05, issue 7	22 August 2019	Vaughan Architects
North & South Elevations DA07, issue 7	22 August 2019	Vaughan Architects
East & West Elevations DA08, issue 7	22 August 2019	Vaughan Architects
Sections DA09, issue 7	22 August 2019	Vaughan Architects
Swimming Pool/Basement Gym Sections DA10, issue 7	22 August 2019	Vaughan Architects
Schedule of Colours and Finishes DA16, issue 7	22 August 2019	Vaughan Architects
Landscape Plans - Endorsed with Council's stamp		
Landscape Plan LP3817-01, issue A	21 August 2018	Edwina Stuart Landscape Design
Planting Plan LP3817-01, issue A	21 August 2018	Edwina Stuart Landscape Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate 950862S	14 August 2019	Vaughan Architects Vaughan

Geotechnical Risk Management Report	29 August 2018	Jack Hodgson Consultants Pty Limited
-------------------------------------	-------------------	---

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

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

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

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

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

Reason: Legislative Requirement

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative

change. The applicable fee at the time of payment of the Long Service Levy will apply.

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

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

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

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

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

- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

4. **Solid Fuel Heaters**

This consent does not authorise the construction/installation/use of any solid fuel heaters on the site.

Reason: To minimise impacts upon the surrounding environment.

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$22,040.00 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 \$2,204,000.00.

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 \$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.

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

7. Amended Landscape Plan

The approved Landscape Plan referenced in Condition 1 of this consent is to be amended, as follows:

- a. 3 x native trees, with a maximum maturity height of 8.5m and a minimum pot size of 75L, are to be provided on site
- b. Details of all proposed plantings are to be included on the plan, including appropriate siting and pot size in accordance with section 2.1.3 of Manly Development Control Plan 2013 and Schedule 4, Part B, Native Tree Selection
- c. Each of the 3 x native canopy trees shall be planted into ground with a minimum soil area of 3m x 3m, contained wholly within the site
- d. Each of the 3 x native canopy trees must be planted within the rear yard, setback a minimum distance of 3m from any boundary

Details are to be submitted with the construction certificate to the satisfaction of the certifying authority.

Reason: To ensure the planting of endemic trees on the site.

8. Amendments to the approved plans

The following amendments are to be made to the approved plans referenced in Condition 1 of this consent:

- o The solid fuel heaters are to be removed from the development.

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

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

9. On-site Stormwater Detention Compliance

Detailed drainage plans are required to demonstrate the provision of on-site detention in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003.

The plans are to be certified by a suitably qualified engineer and submitted to the Certifying

Authority prior to the issue of the construction certificate

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

10. **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 Certifying Authority prior to the issue of the construction certificate.

Reason: To provide public and private safety.

11. **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 Certifying Authority prior to the issue of the construction certificate.

Reason: To facilitate suitable vehicular access to private property.

12. **Pre-commencement Dilapidation Report**

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

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

13. **External Schedule of Finishes**

The approved Schedule of Colours and Finishes referenced in Condition 1 of this consent is to be amended, as follows:

- o all roof forms are to be finished in a dark, non-reflective tone, equivalent to or darker than Colorbond 'Woodland Grey'.

Reason: To ensure that the visual impact of the development is minimised.

14. **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.

15. **Boundary Survey**

A boundary survey, prepared by a Registered Surveyor, shall be provided as evidence that all buildings/works are within the subject site, with the setbacks shown on the approved plans referenced in Condition 1 of this consent. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issuance of the construction certificate.

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

16. **Environmental Reports Certification**

Written certification from suitably qualified persons is required to confirm that all the works/methods/procedures/control measures/recommendations approved by Council in the reports referenced in Condition 1 of this consent have been incorporated into the construction certificate detail.

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

Reason: To ensure compliance with recommendations endorsed by Council.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Public Liability Insurance - Works on Public Land**

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. **Road Reserve**

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

Reason: Public Safety.

19. **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:

- Work Health and Safety Act
- Work Health and Safety Regulation
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)] and

- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)]
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005.
- 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.

20. **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.

21. **Vehicle Crossings**

The provision of one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/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.

22. **Survey Certification**

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.

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

23. **Noise and Vibration**

All works conducted on site must be undertaken in accordance with the requirements of the NSW Environment Protection Authority to ensure that noise, vibration and any other adverse effects to adjoining land are minimised.

Reason: To minimise impacts to adjoining land.

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

24. **Landscape Certification**

Prior to the issuance of the occupation certificate, a qualified Landscape Consultant is to submit a Certificate of Practical Completion stating the work has been carried out in accordance with the amended landscape plan required by this consent and that a maintenance program has been established.

Reason: This is to ensure the landscaping is planted in accordance with this consent and maintained appropriately.

25. **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 the occupation certificate.

Reason: To create encumbrances on the land.

26. **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 the occupation certificate.

Reason: To identify encumbrances on land.

27. **Reinstatement of Kerb**

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: To facilitate the preservation of on street parking spaces

28. **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 the occupation certificate.

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

29. **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 the occupation certificate.

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

30. **Post-Construction Dilapidation Report**

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties

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

31. **Environmental Reports Certification**

Written certification from suitably qualified persons is required to confirm that all the works/methods/procedures/control measures/recommendations approved by Council in the reports referenced in Condition 1 of this consent have been incorporated into the as-built development.

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

Reason: To ensure compliance with recommendations endorsed by Council.

32. **Colours and Finishes**

Prior to the issuance of the occupation certificate, the project architect is to provide written confirmation to the certifying authority that the external finishes of the dwelling are consistent

with the amended Schedule of Colours and Finishes required by this consent.

Reason: To ensure that the visual impact of the proposal is minimised.

33. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

- a. All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the 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
- b. A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.
- c. Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.
- d. A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.
- e. Signage showing resuscitation methods and emergency contact
- f. All signage shall be located in a prominent position within the pool area.
- g. Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life.

34. **Survey Certification**

A registered surveyor is to confirm that the surveys required by Condition 22 of this consent were undertaken, and that the as-built location and levels of the development is in accordance with the approved plans.

Written certification in this regard is to be submitted to the certifying authority prior to the issuance of the occupation certificate.

Reason: To ensure that the as-built development is consistent with the approved plans.

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

35. **Landscaping Maintenance**

Any existing landscaping required to be retained together with any additional landscaping required by this consent is to be maintained for the life of the development.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plans, as amended by this consent.

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



