



northern  
beaches  
council

# AGENDA

## **NORTHERN BEACHES LOCAL PLANNING PANEL MEETING**

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

**WEDNESDAY 16 OCTOBER 2019**

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

A handwritten signature in black ink, appearing to read 'Peter Robinson'.

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

## **Panel Members**

Paul Vergotis	Chair
Brian Kirk	Town Planner
Robert Hussey	Town Planner
Phil Jacombs	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 16 October 2019  
in the Council Chambers, Civic Centre, Dee Why  
Commencing at 1.00pm**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 2 October 2019	
<b>3.0</b>	<b>DEVELOPMENT APPLICATIONS .....</b>	<b>5</b>
3.1	DA2019/0789 - 13 Lindley Avenue, Narrabeen - Alterations and additions to a dwelling house .....	5
3.2	DA2019/0739 - 193 Headland Rd, North Curl Curl - Alterations and additions to a dwelling house .....	53
3.3	DA2018/1669 - 21 Whistler Street, Manly - Demolition works and construction of a shop top housing development including strata subdivision .....	77
3.4	MOD2019/0294 - 25 Pittwater Road, Manly - Modification of Development Consent DA2017/1217 granted for alterations and additions to an existing heritage item and construction of a residential flat building .....	146
3.5	DA2019/0154 - 1955 Pittwater Road, Bayview - Demolition works and construction of a seniors housing development .....	161

## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 2 OCTOBER 2019**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 2 October 2019 were adopted by the Chairperson and have been posted on Council's website.

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### 3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1 DA2019/0789 - 13 LINDLEY AVENUE, NARRABEEN -  
ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE

AUTHORISING MANAGER RODNEY PIGGOTT

TRIM FILE REF 2019/574567

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 the applicant/land owner is a member of council staff who is principally involved in the exercise of council's functions under the *Environmental Planning and Assessment Act 1979*.

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#### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives of the R2 zone.
  
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0789 for alterations and additions to a dwelling house at Lot 1 DP1049263, 13 Lindley Avenue, Narrabeen subject to the conditions and for the reasons set out in the Assessment Report.

**DEVELOPMENT APPLICATION ASSESSMENT REPORT**

<b>Application Number:</b>	DA2019/0789
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<b>Responsible Officer</b>	Sarah McNeilly (Consultant Planner)
<b>Land to be developed (address)</b>	Lot 1 DP1049263 13 Lindley Avenue, Narrabeen
<b>Proposed Development</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	R2 Low Density Residential (WLEP2011)
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Caoimhin Arden
<b>Applicant:</b>	Caoimhin Arden

<b>Application lodged:</b>	25/07/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting category:</b>	Residential – Alterations and Additions
<b>Notified:</b>	06/08/2019 to 20/08/2019
<b>Advertised:</b>	Not Advertised, in accordance with A.7 of WDCP
<b>Submissions:</b>	Nil
<b>Clause 4.6 Variation:</b>	4.3 Height of Buildings: 6.47%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$292,500
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**EXECUTIVE SUMMARY**

This application has been referred to the Northern Beaches Local Planning Panel as the development site is owned by a Council employee. The development is for alterations and additions to an existing 2 storey dwelling on a steeply sloping block. The development includes small breaches to the wall height and building envelope controls. It also includes a breach to the front setback and a 6.47% variation to the height development standard.

This report recommends that the consent authority support the request to vary Clause 4.3 of Warringah LEP 2011 under the provisos of Clause 4.6 and approves Development Application No. DA2019/0789 for alterations and additions to an existing dwelling house at

Lot 1 DP1049263, 13 Lindley Avenue, Narrabeen subject to the conditions and for the reasons set out in the Assessment Report.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B1 Wall Heights  
 Warringah Development Control Plan – B3 Side Boundary Envelope  
 Warringah Development Control Plan – B7 Front Setbacks  
 Warringah Development Control Plan – D8 Privacy  
 Warringah Development Control Plan – D7 Views

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP1049263 13 Lindley Avenue, Narrabeen
<b>Detailed Site Description:</b>	<p>The subject site is located on the southern side of Lindley Avenue, approximately 120 metres west of its intersection with Clarke Street in Narrabeen. The site is irregularly shaped with an angled frontage to Lindley Avenue of 24.05m/8.32m, rear boundary to bushland of 18.285 metres and side boundaries of 20.35 m (west) and 44.675 m (east). The lot has an area of 666.3m<sup>2</sup>.</p> <p>The site is zoned R2 Low Density Residential and is currently developed with a one and two storey timber dwelling constructed with a metal roof. A single carport is provided in front of the dwelling. The site slopes steeply up from Lindley Avenue. A large rock/bushland area of Council land sits at the street frontage and provides an informal front yard to the site. The steep driveway access to the site is shared and burdened by easements for rights of carriageway and to drain water.</p>

	<p>The site is well vegetated and includes areas of bush rock.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b> Adjoining and surrounding development is characterised by single, two and three storey dwellings on sloping sites and associated outbuildings/structures.</p>
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### SITE HISTORY

The land has been used for residential purposes for an extended period of time. The following applications were found within Council records.

**Development Application DA2009/0201**

Tree removal x 3 – approved 03/03/2009

**Development Application DA2002/0382**

Remove rotting unstable Retaining wall, excavation of Retaining Wall, Construction of Slab Floor & Reinforced Concrete Block Retaining Wall– approved 21/05/2002

**Development Application DA19998/0709**

Turning Bay to Existing Share Driveway– approved 05/02/1999

## PROPOSED DEVELOPMENT IN DETAIL

The Development Application seeks consent for alterations and additions to the existing dwelling. The development proposes vertical weatherboard finishes with surf mist colorbond roof sheeting roof.

The details of the proposal include:

### Alterations and additions to the existing dwelling

#### *Carport (under proposed deck)*

- The existing carport is to be extended in width towards Lindley Avenue to a total width of 4m
- Existing shed behind carport to be removed and an enclosed work bench installed

#### *Level One*

- Addition of ensuite for guest bedroom (western side of dwelling)
- Addition of laundry (eastern side of dwelling)
- Deck (45.9m<sup>2</sup>) on northern side of dwelling with stair access on eastern and western side to garden.
- Internal alterations to allow for guest bedroom, new windows  
(Note – there is no internal access to dwelling, there is also no kitchen, so this is not considered to be a secondary dwelling.)

#### *Level Two*

- Enclosure of existing balcony to north west of existing living room/ bedroom 3 to enlarge these rooms.
- Deck (38.92m<sup>2</sup>) on western side of dwelling directly accessed form living area
- Extension to the south west to provide ensuite to Bedroom 2 and pantry area
- New fit out of existing bathroom including windows
- Internal stair to level three
- Minor internal alterations to layout and room use

#### *Level Three*

- New level incorporating master suite with dressing room and ensuite
- Internal stair to level Two
- Tiled deck facing east (35.55m<sup>2</sup>)

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (EPAA)

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Not Applicable
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah 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 regulations	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. Should the Development Application be approved, these matters will be addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. Should the Development Application be approved, this matter will be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. Should the Development Application be approved, this matter will be addressed via a condition of consent.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). Should the Development Application be approved, this matter will be addressed via a condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report</p> <p>The proposed development will not have a detrimental impact on the built environment.</p> <p>The proposed development will not have a detrimental social impact on the locality.</p> <p>The proposed development will not have a detrimental economic impact on the locality.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>The application was notified for a period of 14 days from 06/08/2019 to 20/08/2019. The public exhibition resulted in no objections.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>The proposal presents a design which well addresses the public street and neighbouring properties. The application is a positive contribution to Lindley Avenue and the development is not at odds with the public interest.</p>

### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan. As a result of the public exhibition of the application Council received no submissions.

### MEDIATION

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

## REFERRALS

### Internal Referrals

Referral Body Internal	Comments	Consent Recommended
Parks, reserves and Foreshores	The application was referred to Council's Parks, Reserves and Foreshores officer. No objections were raised to the proposed development. No conditions of consent were proposed.	Yes
Biodiversity	<p>The application was referred to Council's Natural environment officer as the application seeks consent to development on land, or within 40m of land, containing:</p> <ul style="list-style-type: none"> <li>• Actual or potential threatened species, populations, ecological communities, or their habitats;</li> <li>• Wildlife corridors;</li> <li>• Vegetation query stipulating that a Flora and Fauna Assessment is required;</li> <li>• Vegetation query - X type located in both A &amp; C Wards;</li> </ul> <p><b>Officer comments</b></p> <p><i>This application was assessed under Warringah DCP E2 Prescribed vegetation, E3 Threatened species, populations and ecological communities, E4 wildlife corridors, E5 Native vegetation, and E6 Retaining unique environmental features.</i></p> <p><i>The proposal is for the alterations and additions to the existing dwelling including extension of the carport, new third floor addition, new deck, and additions to the first floor. The SEE states, "The works will not require the removal of any significant trees to facilitate the new works." and "A lilly pilly will need to be removed to build the deck outside the bedroom on the south-western side of Level 2."</i></p> <p><i>Council's Natural Environment - Biodiversity section supports the application, subject to conditions.</i></p>	Yes
Engineer	<p>The application was referred to Council's development engineer. The following response was provided:</p> <p><i>No objections are raised to the proposed development subject to conditions.</i></p>	Yes

### External Referrals

Referral Body Internal	Comments	Consent Recomm ended
Ausgrid	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.	Yes
NSW RFS	The proposal was referred to the RFS and supported subject to conditions of consent.	Yes

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

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

#### SEPP 55 – Remediation of Land

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

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

A BASIX Certificate number A2979820\_02 dated 23 May 2019 has been submitted for the alterations and additions to the dwelling.

The certificate indicates compliance with the state government's requirements for sustainability.

#### SEPP (Infrastructure) 2007

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).

- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

**SEPP (Coastal Management) 2018**

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

10 Development on certain land within coastal wetlands and littoral rainforests area  
"(1) The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:

- (a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
- (b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
- (c) the carrying out of any of the following:
  - (i) earthworks (including the depositing of material on land),
  - (ii) constructing a levee,
  - (iii) draining the land,
  - (iv) environmental protection works,
- (d) any other development."

Comment:

Not applicable to the site.

**11 Development on land in proximity to coastal wetlands or littoral rainforest**

"(1) Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
- (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest."

Comment:

Not applicable to the site.

**12 Development on land within the coastal vulnerability area**

"Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- (b) the proposed development:
  - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and
  - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and
  - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazard."

Comment:

At the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified.  
Not applicable.

**13 Development on land within the coastal environment area**

"(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
- (b) coastal environmental values and natural coastal processes,
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- (f) Aboriginal cultural heritage, practices and places,
- (g) the use of the surf zone."

Comment:

The proposed works are unlikely to cause an adverse impact upon the matters identified in this clause. The proposal is located wholly within the subject site and does not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

"(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact."

Comment:

The proposal has been designed in such a way that it satisfies the relevant matters identified in this clause.

**14 Development on land within the coastal use area**

"(1) (a) has considered whether the proposed development is likely to cause an adverse impact on the following:

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

(b) is satisfied that:

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development."

Comment:

The proposal is not located within the Coastal use area.  
Not applicable.

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:

The proposed development is not likely to cause an increased risk of coastal hazards on that land or other land, given the proposed development is reasonable in size and is sited wholly within the subject site.

**Warringah Local Environmental Plan 2011**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
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Height of Buildings	8.5 metres	9.05m	6.47%	No
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Compliance Assessment

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

Detailed Assessment

**4.6 Exceptions to development standards**

Description of non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	9.05m
Percentage variation to requirement:	6.47%

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 Building Height 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.*

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

cl 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 has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. The applicant has demonstrated consistency with the objectives of the Building Height development standard as detailed below.:

- The applicant's written request submits that the proposed height of the building is consistent with that of neighbours and the desired character, and that the variation to the standard is a result of the topography of the land.
- The request states that height variation does not change the scale of the structure itself, being only a small portion the building at one corner of the site, with generous setbacks provided otherwise for the side boundaries.
- The request submits that the additional height will not impact any views, solar access or privacy.
- The request submits the use of low pitch and dark colours further minimises impacts of the variation.
- The request submits that all objectives of the height control are achieved.

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 has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard, as detailed below:

- The applicant’s written request submits that the overall result is an architecturally pleasing development, in keeping with neighbouring development and the public domain.
- The requests states that the shadow resulting from the minimal additional height is also negligible, with compliance achieved for neighbouring sites.
- The request states that the variation to the height is only for a very limited area in one corner of the site for a limited portion of the land, and will have a negligible impact on the key private open space of adjoining properties.

In doing so, the applicant’s written request has demonstrated that the proposed development is of a good design and will protect the amenity of the surrounding built environment therefore satisfying cl 1.3 (c)(g) of the EPA Act.

In this regard, the applicants written request has adequately demonstrated the that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by cl 4.6(3). cl 4.6 (4)(a)(ii) (Public Interest) assessment:

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

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

Comment:

In considering whether or not the proposed development will be in the public interest consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the WLEP 2013 are:

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

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

Comment:

The topography of the site and surrounds is sloping and varied. Accordingly, the siting and heights of neighbouring developments vary. The minimal variation will not be easily detectable to the eye, as the fall of the land in this area is so variable, and the dwelling will appear consistent with the remainder of the house and neighbouring sites.

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

Comment:

The proposed western corner of the dwelling will have minimal visual impact of the streetscape and surrounding properties. The proposal will have no impact on views and privacy and a negligible impact on solar access and therefore it is considered to satisfy this merit objective.

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

Comment:

The proposed height has minimal impact on the scenic quality of Warringah’s coastal and bush environments and therefore it is considered to satisfy this merit objective.

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

Comment:

Given the proposed height and location of the site it is considered that the development will have minimal impact on the public domain and therefore demonstrate compliance with this merit objective.

Conclusion:

The proposed development satisfies the underlying objectives of the Building Heights development standard.

**Zone objectives**

The underlying objectives of the R2 Low Density Residential zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

Comment:

The proposal retains the existing residential use of the site.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by Council staff given the height breach is less than 10%. However the application is to be determined by the Local Planning Panel as the Landowner is a Council Employee who provides referral comments for the Planning Department.

**Warringah Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall Height	7.2m	South- western wall 4.4 – 8.3m  North-western wall 6.6 - 9.7m  South – East Elevation 5m  North-east elevation 6.8m	34.7%	No
B3 Side Boundary Envelope	East: 4m x 45°	No change	N/A	Yes
	West: 4m x 45°	Encroachment (Max – 3.5m at	87.5%	No

B5 Side Boundary Setbacks	East: 0.9m	Corner decreasing to nil over a length of 2.5 metres) Carport N/A  First floor – 920mm  Second Floor - Unchanged (1.5m)  Third Floor – 7.5m (ensuite) 5.5m (deck)	N/A	Yes
	West: 0.9m	Carport N/A  First floor – 5m  Second Floor - 915mm  Third Floor – 1.47m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Carport 0.95m  First floor – 0.95m  Second Floor - 0.95m  Third Floor – 3.5m	85%  85%  85%  46%	No
B8 Rear Setback D1 Landscaped Open Space and Bushland setting	6m 40% (266.52m <sup>2</sup> )	10.45m 47.53% (316.71m <sup>2</sup> )	N/A N/A	Yes Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	N/A	Yes
B1 Wall Height	No	Yes
B3 Side Boundary Envelope	No	Yes
R2 Side boundary envelope exceptions	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
Side setbacks - R2	Yes	Yes
Side Setback Exceptions – R2	N/A	N/A
R2 – All other land in R2 zone	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
R2 – all other land in R2	Yes	Yes

Front Boundary Setbacks exemptions - R2	N/A	N/A
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and sedimentation	Yes	Yes
C7 Excavation and landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped open space and bushland setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree management	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

## Detailed Assessment

### **B1 Wall Height**

#### Description of Non-compliance

The proposed wall height exceeds the control (7.2m) by 2.5 metres on the north western elevation where the third level is proposed. The actual wall height is 7.2 metres, however as it is elevated and the calculation measures from ground level, the total height from ground to ceiling is 9.7 metres.

The proposed wall height exceeds the control (7.2m) by 1.1 metres on the south western elevation where the third level is proposed. The actual wall height is 7.2 metres, however as it is elevated and the calculation measures from ground level, the total height from ground to ceiling is 8.3 metres.

#### Merit consideration

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

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

#### Comment:

The proposed development has varied the control through the inclusion of a third storey at the rear of an existing split-level dwelling on a sloping site. Due to the undulating topography of the site, the existing dwelling is raised on piers at this point and according to the upper level needs to sit within the context of the existing building. The overall actual walls are only 7.2 metres, they are however raised from the ground on piers. They are

also broken up to a large extent by decking. The vegetation on the site and large Council verge ensures that the area is well screened. Given the above it considered the proposal will ensure the visual impact of the development is minimal and appropriate ensuring compliance with this merit consideration.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

The proposed development sits well below the existing tree canopy level. Given the above it is considered that the proposal will demonstrate compliance with this merit consideration.

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

Comment:

The proposed development is consistent with the adjoining and surrounding dwellings in relation to height (overall) and bulk and scale ensuring reasonable sharing of views are maintained. Given the above it is considered that the proposal will demonstrate compliance with this merit consideration.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The proposed development is consistent with the adjoining and surrounding dwellings in relation to height (overall) and bulk and scale ensuring reasonable sharing of views are maintained. Given the above it is considered that the proposal will demonstrate compliance with this merit consideration.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The proposed development is above an existing elevated single storey element of the dwelling and has been designed to complement the existing dwelling, form and roof line. Given the above it is considered that the proposal will demonstrate compliance with this merit consideration.

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

Comment:

The proposed new roof is consistent with the existing dwelling which ensures consistency with this merit consideration.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **B3 Side Boundary Envelope Description of non-compliance**

#### Description of non-compliance

The proposal exceeds the envelope control on the side boundary envelope through the inclusion of a second storey above an existing elevated single storey component of the dwelling on a sloping site. The north eastern corner of the building, to a height of 3.5 metres extrudes from the envelope at a decreasing amount for 2.5 metres.

#### Merit consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

#### Comment:

It is considered that the resultant development is consistent with the surrounding residential development within the vicinity with neighbours primarily presenting as 2 storey dwellings. The design demonstrates sufficient articulation, is broken up by an open sub floor space and demonstrates good setbacks to all boundaries. Additionally, the envelope variation, sits just behind the large deck located at the neighbouring site to the west and will not be within their immediate eyeline, with their dwelling oriented to the views to the north. Consideration of all of these factors ensures compliance with this merit consideration.

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

#### Comment:

The design is sufficiently setback to all boundaries and oriented ensuring adjoining properties will enjoy adequate light, solar access and privacy. The variation is for one corner only of the dwelling and not an entire wall length, due to the irregular lot shape and dwelling siting. Given the above it is considered that the proposal will demonstrate compliance with this merit consideration.

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

#### Comment:

The proposed development is above an existing elevated single storey element of the dwelling and has been designed to complement the existing dwelling, form and roof line. Given the above it is considered that the proposal will demonstrate compliance with this merit consideration.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **B7 Front setbacks**

### Description of non-compliance

The site has an angled setback to Lindley Avenue, with the northern line being the more obvious setback to the frontage. The 6.5 metre setback is achieved for this component of the boundary. The north western component of the frontage has a wide, sloping and bushy Council verge area in front. The setback to this component is 950mm.

### Merit consideration

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

- *To create a sense of openness.*

#### Comment:

There is a significant Council verge which is well landscaped and screens this component of the frontage. A sense of openness is retained due to this existing landscaping from which the site benefits. Additionally, we note that some similar setback are provided for neighbouring dwellings which sit close to the boundary, with large decks in a similar line.

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

#### Comment:

The design is sufficiently setback to and oriented ensuring the pattern of dwelling siting is retained and landscape elements are dominant when viewed from the street and neighbouring sites. Given the above it is considered that the proposal will demonstrate compliance with this merit consideration.

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

#### Comment:

The proposed development will retain an open and landscaped streetscape view due to the landscape Council verge in the area that the variation is proposed.

- *To achieve reasonable view sharing.*

#### Comment:

The proposed development does not impact on view sharing with the variation to the front setback control.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## D8 Privacy

### Description of non-compliance

The proposal includes three large decks which are elevated.

- The third floor includes a 32.55m<sup>2</sup> tiled deck from the master suite above the second floor with a 1.2 metre privacy screen.
- The second floor includes a 38.92m<sup>2</sup> timber deck on the north western side with a 1.8 metre privacy screen on the western side boundary. The remainder of the deck looks over the site frontage.
- The first floor includes a 45.9m<sup>3</sup> timber deck on the northern side with a 1.8 metre privacy screen on the western side boundary. The remainder of the deck looks over the front of the site.

### Merit consideration

With regard to the consideration of neighbouring privacy, the inclusion of the decks is considered against the underlying Objectives of the Control as follows:

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

#### Comment:

It is considered that the first and second floor decks are appropriately located and screened to allow for privacy. The first floor deck is located lower than the neighbouring deck to the east. The second floor deck is located setback from the neighbouring deck to the west.

The site has no usable open space and accordingly the provision of larger decks to allow for usable outdoor area is reasonable and appropriate.

However, the size of the third level deck is considered excessive for a master suite and may result in use and visual privacy concerns for neighbours. Accordingly, a condition of consent is proposed to reduce the depth and width of this deck to allow for a maximum of 2.5m x 5.7m, with the bulk of the deck to be moved away from the eastern and western boundaries and the deck to sit immediately outside the area shown as the master suite, excluding the ensuite and awning (reduced from 4.1m x 7.95m).

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

#### Comment:

The inclusion of decks is a solution to the need to provide for usable open space. The lower levels are supported, with the reduction in the third floor, the development will fulfil this objective.

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

#### Comment:

Personal and property security will be enhanced for the subject site. Neighbouring properties will not be adversely impacted. Given the above it is considered that the proposal will demonstrate compliance with this merit consideration.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, as conditioned, in this particular circumstance.

#### **D7 Views**

The site benefits from views to the lake. Similarly, neighbours achieve views with all sites elevated and designed to look out to the north, there are not properties behind the site which are impacted. The neighbours on either side are negligibly impacted with their outlooks to the north unchanged. This is not considered to be a view loss issue associated with the application.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

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

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

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

#### **POLICY CONTROLS**

##### **Northern Beaches Section 7.12 Development Contribution Plan 2019**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019. A monetary contribution of \$2925 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$292,500.00.

#### **CONCLUSION**

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

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

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2011, Warringah Development Control Plan and the relevant codes and policies of Council. In consideration of the proposal and the merit consideration 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 of the relevant EPI's
- Consistent with the objects specified in S.5(a)(i) and (ii) 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**

A. That Northern Beaches Council as the consent authority vary the Height of Building Development Standard of Clause 4.3 of WLEP 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives of the R2 zone.

B. THAT Council as the consent authority approve Development Consent to DA2019/0789 for alterations and additions to an existing dwelling house Lot 1 DP1049263 13 Lindley Avenue, Narrabeen, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A1 Roof Plan	21.12.2017	Sally Gardner Design and Draft
A2 Proposed Level 3 Floor Plan	21.12.2017	Sally Gardner Design and Draft
A3 Proposed Level 2 Floor Plan	21.12.2017	Sally Gardner Design and Draft
A4 Proposed Level 1 Floor Plan	21.12.2017	Sally Gardner Design and Draft
A5 Proposed Carport Floor Plan	21.12.2017	Sally Gardner Design and Draft
A6 Elevation – North West	21.12.2017	Sally Gardner Design and Draft
A7 Elevations – South West	21.12.2017	Sally Gardner Design and Draft
A8 Elevation – North East	21.12.2017	Sally Gardner Design and Draft
A9 Elevation - South East	21.12.2017	Sally Gardner Design and Draft
A10 Section A-A	21.12.2017	Sally Gardner Design and Draft
A11 Section B-B	21.12.2017	Sally Gardner Design and Draft
E1 Existing Level 2 Floor Plan	21.12.2017	Sally Gardner Design and Draft
E2 Existing Level 1 Floor Plan	21.12.2017	Sally Gardner Design and Draft
E3 Existing Carport Floor Plan	21.12.2017	Sally Gardner Design and Draft
N1 Specification & Drawing List	21.12.2017	Sally Gardner Design and Draft
N2 Schedules & BASIX Notes	21.12.2017	Sally Gardner Design and Draft
S1 Site Analysis Plan	21.12.2017	Sally Gardner Design and Draft
S2 Site Plan & Calculations	21.12.2017	Sally Gardner Design and Draft



<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Bushfire Report	05.09.2017	Bush Fire Planning Services
Geotechnical Report	21.12.2017	White Geotechnical Group
Statement of Environmental Effects	May 2017	Ruby and Caoimhin Ardren

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:

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
S3 Sediment Control& Site Management Plan	21.12.2017	Sally Gardner Design and Draft

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

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

## 2. **Compliance with Other Department, Authority or Service Requirements**

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

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>
NSW RFS	Response - DA2019/0789 13 Lindley Avenue Narrabeen - NSW Rural Fire Service	15 August 2019

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

## 3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments



- specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.



#### 4. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



- dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;  
  
Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2008
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$2,925.00 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 \$292,500.00.



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

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

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

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

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

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

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

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

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

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

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

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

#### 7. **Stormwater Disposal**

The Applicant is to demonstrate stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Warringah Water Management Policy PL850. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction



Certificate.

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

8. **Amendments to the approved plans**

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

- o The tiled deck accessed from the master suite on the third level is to be reduced in depth and width of this deck to allow for a maximum of 2.5m x 5.7m, with the bulk of the deck to be moved away from the eastern and western boundaries and the deck to sit immediately outside the area shown as the master suite, excluding the ensuite and awning (reduced from 4.1m x 7.95m). Privacy screens are to be retained as shown on the DA plans.

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

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

9. **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.

10. **Compliance with Standards**

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

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

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

11. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. 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.

12. **Sydney Water "Tap In"**

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

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

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

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

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

13. **Survey**

A survey prepared by a registered surveyor indicating all works and structures can be located within the property boundaries and consistent with the approved plans shall be provided prior to the issue of any construction certificate.

Reason: To ensure all works are contained within the property boundaries.

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

14. **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.

15. **Tree Protection during work - No Works within 5m/calculated Tree Protection Zone (TPZ)**

The developer or contractor will take all measures to prevent damage to trees and root systems during site works and construction activities including provision of water, sewerage and stormwater drainage services. In particular, works, erection of structures, excavation or changes to soil levels within 5 metres of the trunks or the calculated TPZ of trees to be retained are not permitted, and the storage of spoil, building materials, soils or the driving or parking of any vehicle or machinery within 5 metres of the trunk or the calculated TPZ of a tree to be retained, is not permitted.

Reason: To protect and retain trees/the natural environment proposed for retention.

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

16. **Stormwater Disposal**

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



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

17. **New vegetation planting**

Prior to the issue of any Occupation Certificate, evidence that the new vegetation planting comprises a minimum of 80% locally native vegetation species (as per species listed in the Native Gardening Booklet available on Councils website) is to be provided to the Principal Certifying Authority.

**Reason: To maintain native vegetation in accordance with relevant Natural Environment LEP/DCP controls.**

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

18. **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 (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website [http://www.pittwater.nsw.gov.au/environment/noxious\\_weeds](http://www.pittwater.nsw.gov.au/environment/noxious_weeds)

**Reason:** Weed management.

19. **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.

20. **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.

21. **Dead or Injured Wildlife**

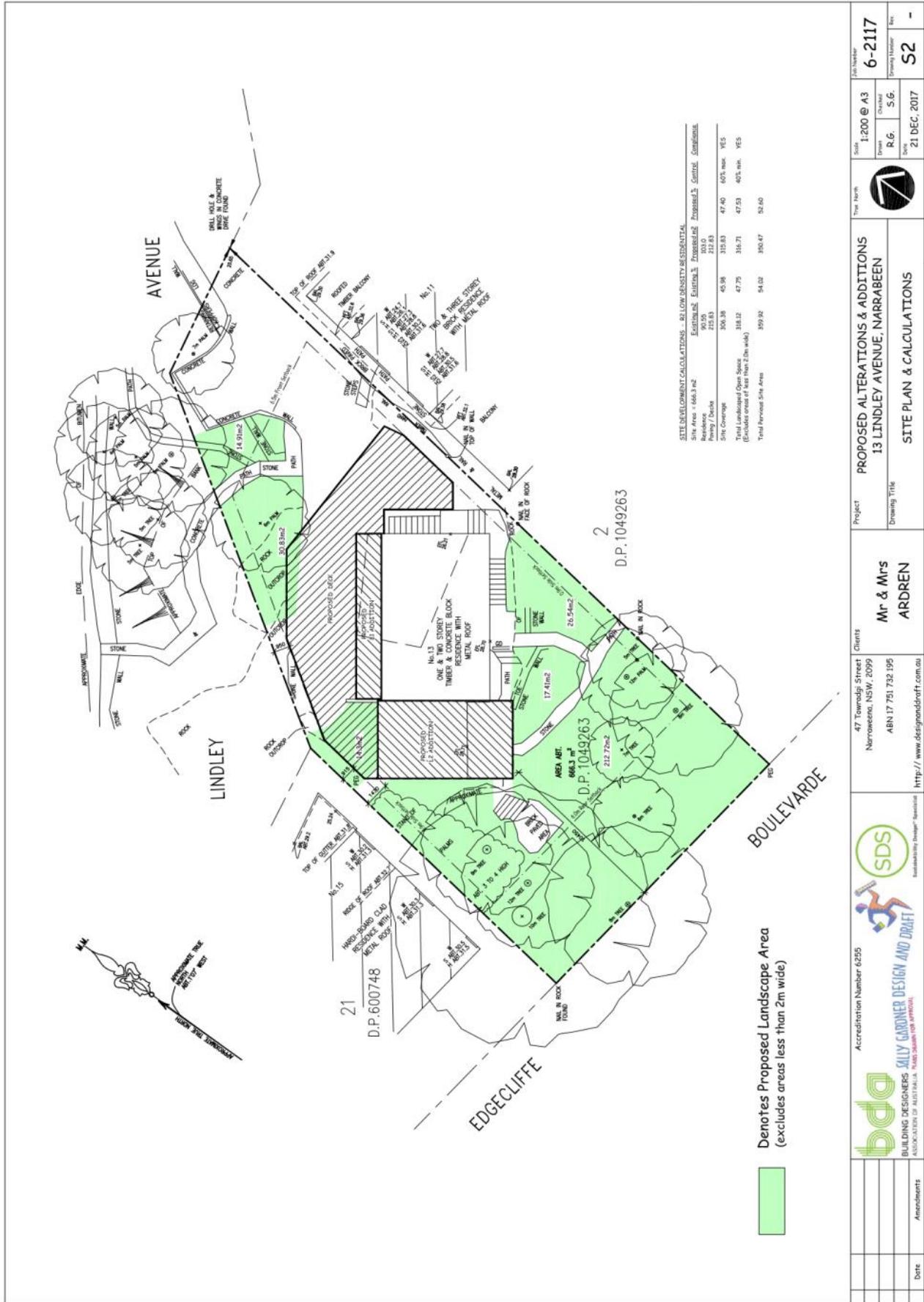
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

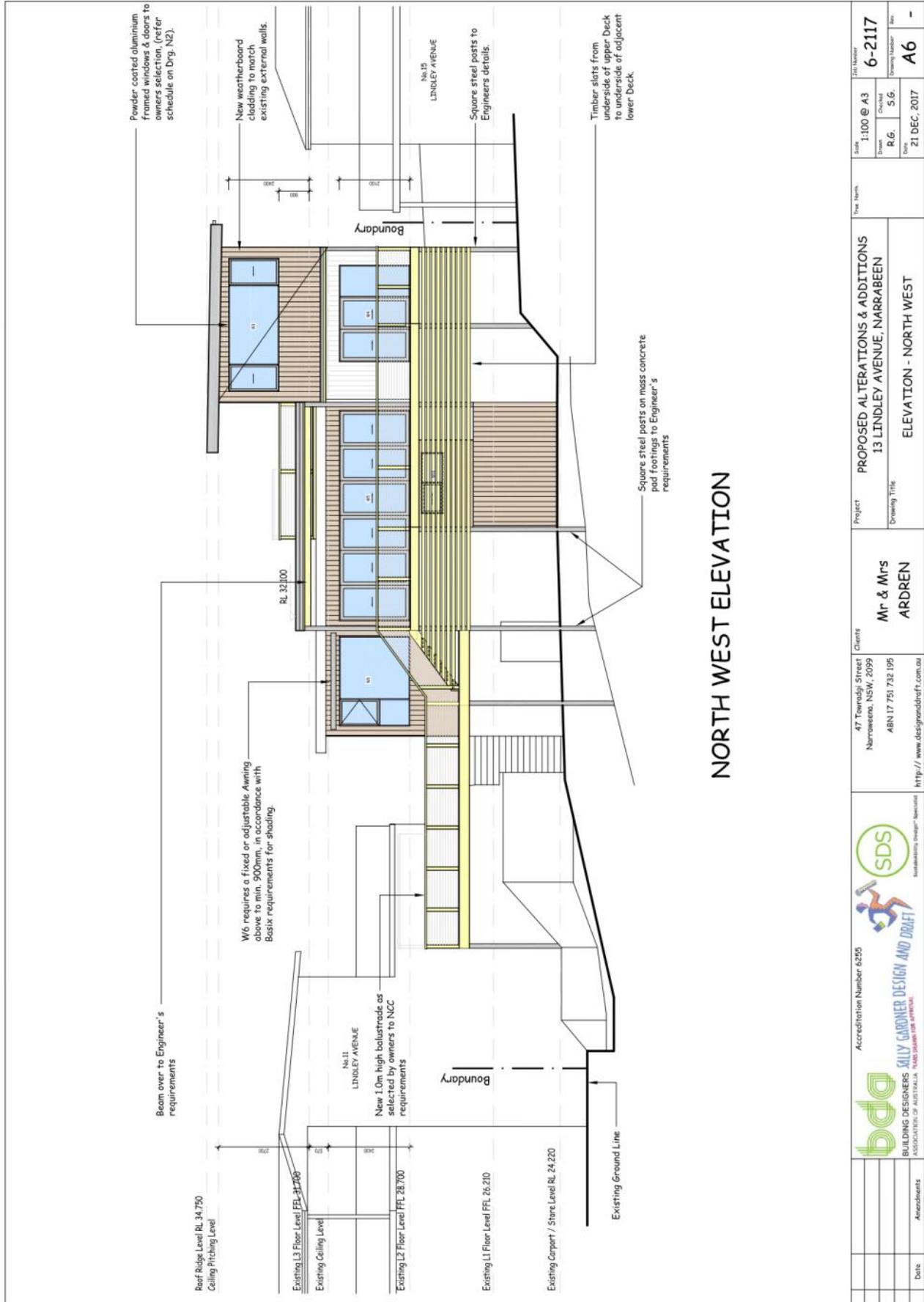
**Reason:** To mitigate potential impacts to native wildlife resulting from construction activity.

22. **Domestic Animals Exclusion**

For the life of the development, cats are to be kept in a cat run and/or inside the dwelling such that they are prevented from entering wildlife habitat areas at all times. Dogs are to be kept in an enclosed area such that they cannot enter areas of bushland, unrestrained, on surrounding properties.

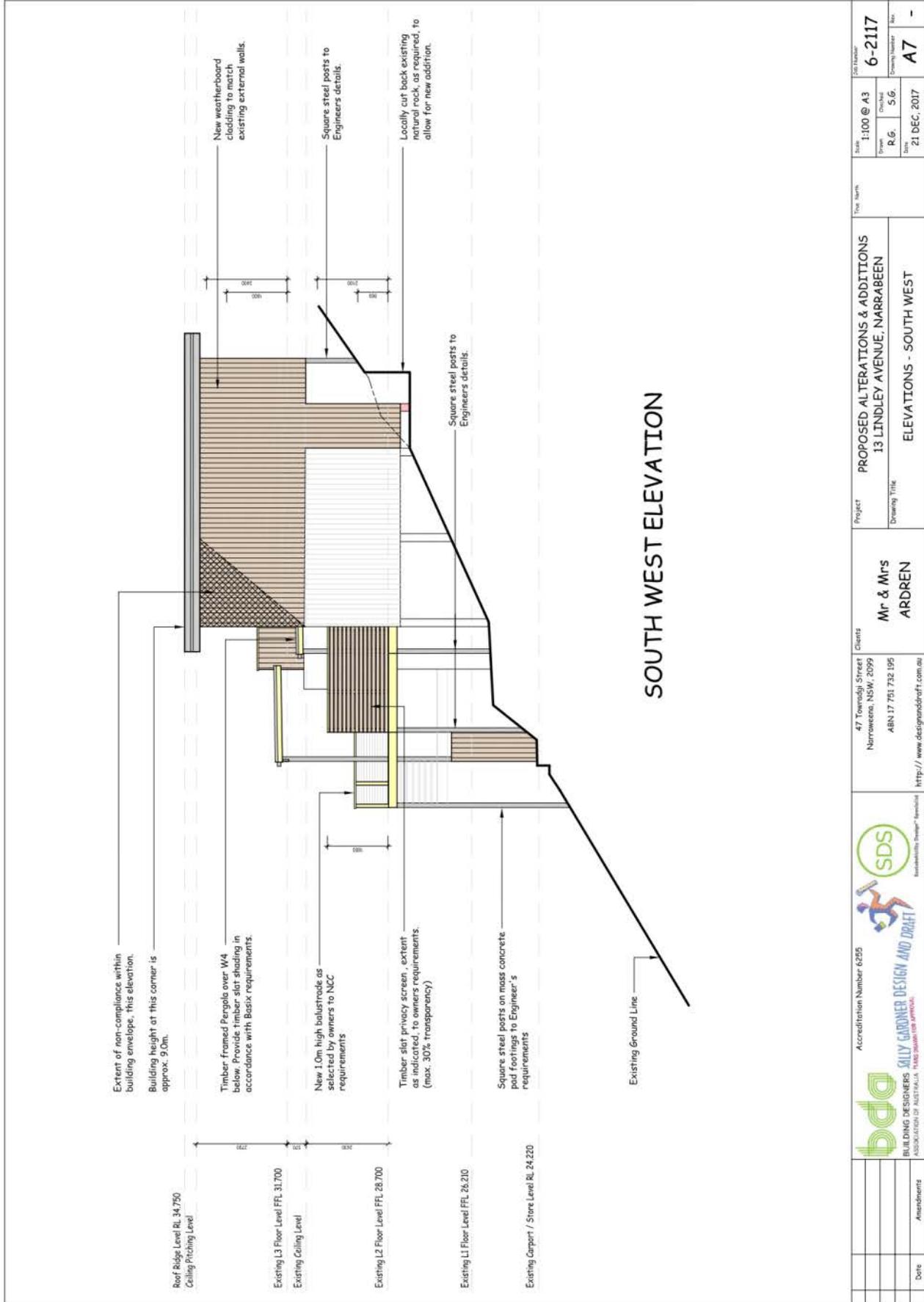
**Reason:** Wildlife protection





NORTH WEST ELEVATION

Date	Amendments	 <b>BUILDING DESIGNERS ASSOCIATION OF AUSTRALIA</b> <small>REGISTERED PROFESSIONAL ORGANISATION</small>	 <b>SDS</b> <small>Structural Design Solutions</small>	 <b>GARDNER DESIGN AND DRAFT</b> <small>REGISTERED PROFESSIONAL ORGANISATION</small>	Accreditation Number 6255 47 Tweedopi Street Narrabeen, NSW, 2099 ABN 17 761 732 195 <a href="http://www.designsdraft.com.au">http://www.designsdraft.com.au</a>	Clients <b>Mr &amp; Mrs ARDREN</b>	Project <b>PROPOSED ALTERATIONS &amp; ADDITIONS          13 LINDLEY AVENUE, NARRABEEN</b>	Drawing Title <b>ELEVATION - NORTH WEST</b>	Title Number <b>6-2117</b>	Scale <b>1:100 @ A3</b>	Date <b>21 DEC, 2017</b>	Drawing Number <b>A6</b>	Rev. <b>-</b>



Date	Amendment	bda BUILDING DESIGNERS ASSOCIATION OF AUSTRALIA MEMBERSHIP NUMBER 105749000	Accreditation Number 6295	  <b>DAILY GARDNER DESIGN AND DRAFT</b> <small>MEMBERSHIP NUMBER 105749000</small>	<a href="http://www.designsdraft.com.au">http://www.designsdraft.com.au</a>	Clients 47 Tweedoli Street Narrabeen, NSW, 2099 ABN 17 781 732 195	Mr & Mrs ARDREN	Project PROPOSED ALTERATIONS & ADDITIONS 13 LINDLEY AVENUE, NARRABEEN	Drawing Title ELEVATIONS - SOUTH WEST	Title North 6-2117	Date 21 DEC, 2017	Rev -
										Scale 1:100 @ A3	Drawn R.G.	Checked S.G.





**WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF  
WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

**13 LINDLEY AVENUE, NARRABEEN**

**PROPOSED ALTERATIONS & ADDITIONS TO AN EXISTING DWELLING**

**For:** Proposed construction of additions and alterations to an existing dwelling  
**At:** 13 Lindley Avenue, Narrabeen  
**Owner:** Ruby & Caoimhin Ardren  
**Applicant:** Ruby & Caoimhin Ardren

**1.0 Introduction**

This written request is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

**2.0 Background**

Clause 4.3 restricts the height of a building and refers to the maximum building height noted within the "*Height of Buildings Map*."

The maximum building height for this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed additions and alterations to the existing dwelling will provide a height of up to 9.05m which exceeds Council's maximum building height by 0.55m or 6.47% and therefore does not comply with this control.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

**3.0 Purpose of Clause 4.6**

The Warringah Local Environmental Plan 2011 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

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abn: 16 746 875 134

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

#### **4.0 Objectives of Clause 4.6**

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of additions and alterations to the existing dwelling, which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

- *To provide for the housing needs of the community within a R2 Low Density Residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposal will provide for the construction of additions and alterations to an existing dwelling, and which will enhance the amenity of the existing residential use within the site.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes in order to provide for a high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum overall height, the new works will provide an attractive residential development that will add positively to the character and future character of the local residential neighbourhood.

The proposed additions to the dwelling have been limited to the south-western corner of the building to mitigate any adverse impacts in terms of overshadowing and loss of view for the neighbouring properties.

The development will not see any unreasonable impacts on view sharing.

## 5.0 Onus on Applicant

Clause 4.6(3) provides that:

*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 written request has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

## 6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11 Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the Samadi judgement states:

*Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).*

### Precondition 1 - Consistency with zone objectives

The site is located in the R2 Low Density Residential Zone. The objectives of the R2 zone are noted as:

- *To provide for the housing needs of the community within a R2 Low Density Residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

It is considered that notwithstanding the noncompliance with the maximum building height for the new roof over proposed level 3, the dwelling will be consistent with the individual Objectives of the R2 Low Density zone for the following reasons:

- ***To provide for the housing needs of the community within a R2 Low Density Residential environment.***

The R2 Low Density Residential Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed additions to the residential dwelling which will provide for an appropriate level of family accommodation and in a form which respects the predominant height and scale of the surrounding dwellings.

The development will see a minor noncompliance with the building height control, however the stepped rear setbacks and compatible building form with low pitch roof and the darker external finishes considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade and building elevations, together with the increased side setbacks, appropriate rear setback and recessive external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The compatible form and scale of the new works to the dwelling will meet the housing needs of the community within a single dwelling house which is a permissible use in this low density residential zone.

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

The development does not suggest any alternate land uses and this Objective is not directly relevant to the subject single residential proposal.

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

The proposal provides for the construction of additions and alterations to an existing dwelling and in a manner which will retain the single dwelling character of the site and the immediate area.

Further, the modulation of the front façade and side elevations where visible from the public domain minimises the visual impact of the development and respects the existing single dwelling form.

The surrounding dwellings are similar low density residential dwellings.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and the wider Warringah area.

This objective is achieved in that the proposal will not require any significant excavation, with minimal alteration to the natural ground levels and through the retention of the existing landscaped area, will maintain the balance between landscaping and built form.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

**Precondition 2 - Consistency with the objectives of the standard**

The objectives of Clause 4.3 are articulated at Clause 4.3(1):

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

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities*

**Comments**

Despite the variation to the maximum building height, the proposed construction of additions and alterations to the existing dwelling is considered to be in keeping with the relevant Objectives of Clause 4.3 for the following reasons:

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

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development.

The surrounding area is predominantly characterised by one, two and in some instances, three storey dwellings which are stepped to follow the sloping topography.

The overall building height respects the surrounding character and the design seeks to minimise the visual height by providing for generous setbacks to the upper floor level and towards the rear of the site to reduce the visual impact of the dwelling from neighbouring properties.

The proposed external colour and materials palette utilises receive finishes to the upper floor level towards the rear and is intended to ensure that the building's visual height and scale is further minimised.

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

Due to the general slope of the site towards the north-east, the properties to the west of the site enjoys view local views past the site are generally maintained over and past the subject dwelling.

The proposed new level 3 will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

The proposal will provide for varied setbacks to the upper floor level which will allow for suitable views and access to sunlight to be maintained through and over the site.

Views from the surrounding public spaces are not adversely affected.

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

The proposal is located within an established residential zone and any longer distance view of the proposed additions will not read the works as out of scale or incompatible with its neighbours.

The proposal will not have any direct impact on the nearby coastal or bush environment.

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

The site is not within a recreation or environmental protection zone and is well removed from the foreshore area. The site is not within a conservation area or in the vicinity of any heritage items.

The proposal is intended to reflect the predominant scale and form of the surrounding development in Lindley Avenue and will reflect the existing single dwelling uses in the vicinity.

The proposal will see areas of suitable soft landscaping which will maintain an appropriate balance between the landscaping and the built form.

Despite the variation to the building height control which occurs as a result of the sloping topography of the site, proposal is generally consistent with the height and scale of newer development in the locality.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

**Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for the construction of additions and alterations to an existing dwelling, which are constrained by the nature of the existing development on site and the sloping topography of the site.

Council's controls in Clause 4.3 provide a maximum building height of 8.5m. As a result of the slope of the site towards the street, a portion of the roof will be up to 9.05m above ground level.

In the *Wehbe* judgment (*Wehbe v Pittwater Council [2007] NSWLEC 827*), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded, and that approval of the Objection may be consistent with the aims of the policy.

These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

**Comment:** Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

**Comment:** It is considered that the purpose of the standard is relevant, but the purpose is satisfied.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

**Comment:** Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

**Comment:** Whilst it is not suggested that Council has abandoned its control, variations to the maximum building height control have been granted in the immediate vicinity, where Council has considered it appropriate to do so for development that meets the objectives of the zone. In this instance it is considered that the proposed development appropriately addresses the zone objectives and is worthy of the support of Council

5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

**Comment:** The development standard is applicable to and appropriate to the zone.

For the above reasons, it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

**Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed**

Council's controls in Clause 4.3 provide a maximum building height of 8.5m for the subject development.

The proposed new additions to the dwelling will provide a height of 9.05m or a 0.55m variation to the control.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum building height.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

*"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".*

Accordingly, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are

considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The external form of the proposed additions to the dwelling are stepped to follow the sloping topography of the site and results in a dwelling which is compatible in scale to its surrounding neighbours, which promotes the orderly & economic use of the land.
- Similarly, the proposed development will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Lindley Avenue, which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties.

The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard.

#### **7.0 Conclusion**

This development proposes a departure from the maximum building height control, with the proposed additions and alterations to the existing dwelling to provide a maximum building height of 9.05m or a variation of 0.55m or 6.47%.

This variation occurs as a result of the siting of the sloping topography of the site.

This written request to vary the maximum building height control specified in Clause 4.3 of the Warringah LEP 2011 adequately demonstrates that that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height would be unreasonable and unnecessary in the circumstances of this case.



**VAUGHAN MILLIGAN**  
*Town Planner*



**DEVELOPMENT APPLICATION ASSESSMENT REPORT**

<b>Application Number:</b>	DA2019/0739
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<b>Responsible Officer</b>	Sarah McNeilly (Consultant Planner)
<b>Land to be developed (address)</b>	Lot 3 DP16078 193 Headland Rd, North Curl Curl
<b>Proposed Development</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	R2 Low Density Residential (WLEP2011)
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Robert Warren Natalie Warren
<b>Applicant:</b>	Rapid Plans

<b>Application lodged:</b>	11 July 2019
<b>Application Type:</b>	Local
<b>State Reporting category:</b>	Residential – Alterations and Additions
<b>Notified:</b>	24/07/2019 to 07/08/2019
<b>Advertised:</b>	Not Advertised, in accordance with A.7 of WDCP
<b>Submissions:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$72,000
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**EXECUTIVE SUMMARY**

This application has been referred to the Northern Beaches Local Planning Panel as the development site is owned by a Councillor. The development includes internal alterations and a small addition to the first floor on the northern side to provide an additional bedroom for the existing two storey dwelling. The development includes small breaches to the wall height and building envelope controls.

This report recommends that the consent authority, approves Development Application No. DA2019/0739 for alterations and additions to an existing dwelling house at Lot 3 DP16078,

193 Headland Rd, North Curl Curl subject to the conditions and for the reasons set out in the Assessment Report.

### ASSESSMENT INTRODUCTION

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

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

### SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B1 Wall Heights  
Warringah Development Control Plan – B3 Side Boundary Envelope

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 3 DP16078 193 Headland Rd, North Curl Curl
<b>Detailed Site Description:</b>	<p>The subject site is located on the southern side of Headland Road, opposite its intersection with Quirk Road in North Curl Curl. The site is irregularly shaped with a splayed frontage to Headland Road of 19.93m , rear boundary of 17.92 metres and side boundaries of 34.608 m (west) and 29.775 m (east). The lot has an area of 543.8m<sup>2</sup>.</p> <p>The site is zoned R2 Low Density Residential and is currently developed with a two storey split level dwelling constructed with a metal roof. A double carport is provided on the street frontage. The site slopes away from Headland Road with a terraced sloping yard.</p> <p>The site does not contain any significant canopy trees or significant vegetation, with some turf within the frontage of the site which enclosed by a timber and masonry fence.</p>

	<p><b>Detailed Description of Adjoining/Surrounding Development</b> Adjoining and surrounding development is characterised by single, two and three storey dwellings with landscape gardens and associated outbuildings/structures.</p>
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**SITE HISTORY**

The land has been used for residential purposes for an extended period of time. The following applications were found within Council records.

**Development Application DA2011/0265**

Alterations and additions to an existing dwelling house – withdrawn

**Development Application DA2011/0629**

Alterations and additions to an existing dwelling house – approved 05/07/2011

**PROPOSED DEVELOPMENT IN DETAIL**

The Development Application seeks consent for alterations and additions to the existing dwelling. The development proposes horizontal cladding finishes with a sheet metal roof.

The details of the proposal include:

**Alterations and additions to the existing dwelling**

*Lower Ground Floor*

- No changes proposed

*Ground level*

- New kitchen wall cabinets within existing floor plan

*First Floor*

- New bedroom located at front of dwelling in northern corner
- Reconfiguration of Bedroom 2, bathroom and hallway

Works are contained internally and in the northern upper level of the existing dwelling.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

**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	Not Applicable
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah 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 regulations	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. Should the Development Application be approved, these matters will be addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. Should the Development Application be approved, this matter will be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. Should the Development Application be approved, this matter will be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). Should the Development Application be approved, this matter will 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>The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report</p> <p>The proposed development will not have a detrimental impact on the built environment.</p> <p>The proposed development will not have a detrimental social impact on the locality.</p> <p>The proposed development will not have a detrimental economic impact on the locality.</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	The application was notified for a period of 14 days from 24/07/2019 to 07/08/2019. The public exhibition resulted in no objections.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (e) – the public interest	The proposal presents a design which well addresses the public street and neighbouring properties. The application is a positive contribution to Headland Road and the development is not at odds with the public interest.

### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan. As a result of the public exhibition of the application Council received no submissions.

### MEDIATION

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

### REFERRALS

#### *Internal Referrals*

Referral Body Internal	Comments	Consent Recomm ended
Engineer	The application was referred to Council's development engineer. The following response was provided:  <i>No objections are raised to the proposed development subject to conditions.</i>	Yes

#### *External Referrals*

No external referrals were required.

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

#### SEPP 55 – Remediation of Land

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

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

A BASIX Certificate number A322880\_02 dated 28 June 2019 has been submitted for the alterations and additions to the dwelling.

The certificates indicate compliance with the state government's requirements for sustainability.

#### Warringah Local Environmental Plan 2011

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5 metres	8.324	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

#### Zone R2 Low Density Development Residential

Land use definition: WLEP 2011	Permitted or Prohibited
Dwelling house	Permitted with consent

### Zone objectives

The objectives of the R2 Low Density Residential zone are:

- *"To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah*

The proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone being minimal in scale, within the existing footprint, and presenting well to the street frontage and neighbouring sites.

### Warringah Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall Height	7.2m	New works western wall 6.8 – 7.9m	9.7%	No
B3 Side Boundary Envelope	East: 5m x 45°	No change	N/A	Yes
	West: 5m x 45°	Encroachment (Max – 0.6m at Southern end decreasing to 0.1m (eaves) at frontage, over a length of 4.5 metres)	12%	No
B5 Side Boundary Setbacks	East: 0.9m	N/A	N/A	Yes
	West: 0.9m	Basement-unchanged  Ground floor – Unchanged  First Floor - 1.322m-2.557m	N/A	Yes

B7 Front Boundary Setbacks	6.5m	Ground floor – Unchanged	N/A	Yes
		First Floor - 5.881- 9.474m (new works 8 m – 9.474m)	N/A	Yes
B9 Rear Setback	6m	13.4m	N/A	Yes
D1 Landscaped Open Space and Bushland setting	40% (217.52m <sup>2</sup> )	45% (244.35m <sup>2</sup> )	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	N/A	Yes
B1 Wall Height	No	Yes
B3 Side Boundary Envelope	No	Yes
R2 Side boundary envelope exceptions	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
Side setbacks - R2	Yes	Yes
Side Setback Exceptions – R2	N/A	N/A
R2 – All other land in R2 zone	Yes	Yes
B7 Front Boundary Setbacks	N/A	N/A
R2 – all other land in R2	Yes	Yes
Front Boundary Setbacks exemptions - R2	N/A	N/A
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and sedimentation	Yes	Yes
C7 Excavation and landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped open space and bushland setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree management	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

## Detailed Assessment

### **B1 Wall Height**

#### Description of Non-compliance

The proposed wall height exceeds the control (7.2m) by only 0.7m on the western elevation where the new bedroom 3 is proposed.

#### Merit consideration

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

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

#### Comment:

The proposed development has minimally varied to the control through the inclusion of a second storey above an existing single storey structure on a sloping site. The small length of 4.5 metres essentially complies at the street frontage and drops away as the site falls resulting in a small noncompliance at the southern end of the addition. Given the above it is considered the proposal will ensure the visual impact of the development is minimal and appropriate ensuring compliance with this merit consideration.

- *To ensure development is generally beneath the existing tree canopy level*

#### Comment:

The proposed development sits well below the existing tree canopy level. Given the above it is considered that the proposal will demonstrate compliance with this merit consideration.

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

#### Comment:

The proposed development is consistent with the adjoining and surrounding dwellings in relation to height (overall) and bulk and scale ensuring reasonable sharing of views are maintained. Given the above it is considered that the proposal will demonstrate compliance with this merit consideration.

- *To minimise the impact of development on adjoining or nearby properties.*

#### Comment:

The proposed development is consistent with the adjoining and surrounding dwellings in relation to height (overall) and bulk and scale ensuring reasonable sharing of views are maintained. Given the above it is considered that the proposal will demonstrate compliance with this merit consideration.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

#### Comment:

The proposed development is above an existing single storey element of the dwelling and has been designed to complement the existing dwelling, form and roof line. Given the above it is considered that the proposal will demonstrate compliance with this merit consideration.

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

Comment:

The proposed new roof is consistent with the existing dwelling which ensures consistency with this merit consideration.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

**B3 Side Boundary Envelope Description of non-compliance**

The proposal exceeds the envelope control on the side boundary envelope through the inclusion of a second storey above an existing single storey structure on a sloping site. The length of 4.5 metres essentially complies at the street frontage, with eaves only outside the envelope, and drops away as the site falls resulting in a small noncompliance at the southern end of the addition of 0.6m.

Merit consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

It is considered that the resultant development is consistent with the surrounding residential development within the vicinity with neighbours primarily presenting as 2 storey dwellings. The design demonstrates sufficient articulation and demonstrates good setbacks to all boundaries ensuring compliance with this merit consideration.

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

Comment:

The design is sufficiently setback to all boundaries and oriented ensuring adjoining properties will enjoy adequate light, solar access and privacy. Given the above it is considered that the proposal will demonstrate compliance with this merit consideration.

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

Comment:

The proposed development is above an existing single storey element of the dwelling and has been designed to complement the existing dwelling, form and roof line. Given the above it is considered that the proposal will demonstrate compliance with this merit consideration.

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

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

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

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

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Development Contribution Plan 2019**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019. A monetary contribution of \$720 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$72,000.

### **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;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application, and

does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2011, Warringah Development Control Plan and the relevant codes and policies of Council. In consideration of the proposal and the merit consideration 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 of the relevant EPI's
- Consistent with the objects specified in S.5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979

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

#### **RECOMMENDATION**

THAT Northern Beaches Local Planning Panel as the consent authority APPROVE Development Consent to DA2019/0739 for alterations and additions to an existing dwelling house Lot 3 DP16078, 193 Headland Rd, North Curl Curl, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Survey Plan	Undated	DA Surveys
DA 1003 Site Plan	28/06/2019	Rapid Plans
DA1004 Existing Lower Ground Floor Plan	28/06/2019	Rapid Plans
DA1005 Existing Ground Floor Plan	28/06/2019	Rapid Plans
DA1006 Existing First Floor Plan	28/06/2019	Rapid Plans
DA1007 Demolition Lower Ground Floor Plan	28/06/2019	Rapid Plans
DA1008 Demolition Ground Floor Plan	28/06/2019	Rapid Plans
DA1009 Demolition First Floor	28/06/2019	Rapid Plans
DA1010 Landscape Open Space Plan	28/06/2019	Rapid Plans
DA1011 Landscape Plan	28/06/2019	Rapid Plans
DA1012 Sediment & Erosion Control Plan	28/06/2019	Rapid Plans
DA1013 Waste Management Plan	28/06/2019	Rapid Plans
DA1014 Stormwater Plan	28/06/2019	Rapid Plans
DA2001 Basement/ Lower Ground Floor Plan	28/06/2019	Rapid Plans
DA2002 Ground Floor Plan	28/06/2019	Rapid Plans
DA2003 First Floor Plan	28/06/2019	Rapid Plans
DA2004 Roof Plan	28/06/2019	Rapid Plans
DA3001 Section 1	28/06/2019	Rapid Plans
DA3002 Section 2	28/06/2019	Rapid Plans
DA4001 Elevations 1	28/06/2019	Rapid Plans
DA4002 Elevations 2	28/06/2019	Rapid Plans
DA4003 Elevations 3	28/06/2019	Rapid Plans
DA5001 Perspective	28/06/2019	Rapid Plans
DA5002 Materials & Colour Sample Board	28/06/2019	Rapid Plans

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Hydraulic Engineering Plan1	10/09/2018	Civil & Structural Engineering Design Services Pty Ltd



<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Preliminary Geotechnical Assessment	06/06/2019	White Geotechnical Group
Statement of Environmental Effects	28/06/2019	Rapid Plans

- b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- c) The development is to be undertaken generally in accordance with the following:

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	09/07/2019	Rapid Plans

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

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

## 2. Prescribed Conditions

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



- (ii) in the case of work to be done by an owner-builder:
- A. the name of the owner-builder, and
  - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

### 3. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.



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

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

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

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2008
    - (iv) Australian Standard AS1926 Swimming Pool Safety



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

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

#### FEES / CHARGES / CONTRIBUTIONS

##### 4. Security Bond

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

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

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

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

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

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

##### 5. Stormwater Disposal from Low Level Property

The Applicant is to demonstrate stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Warringah Water Management Policy PL 850 in particular the Stormwater Drainage from Low Level Properties Technical Specification. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern



Beaches Council's Warringah Water Management Policy PL 850 are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

6. **Compliance with Standards**

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

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

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

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

7. **Road Reserve**

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

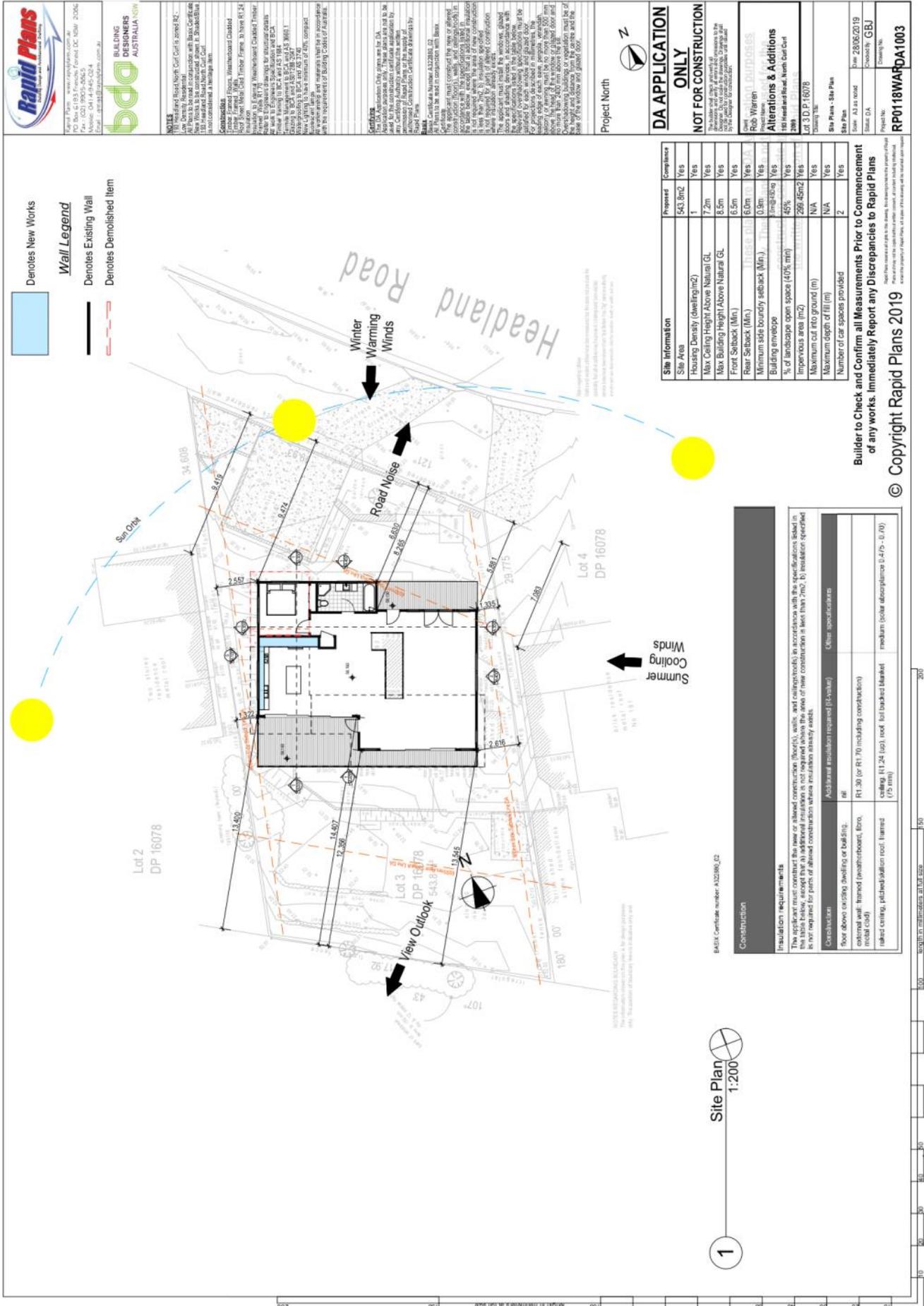
Reason: Public Safety.

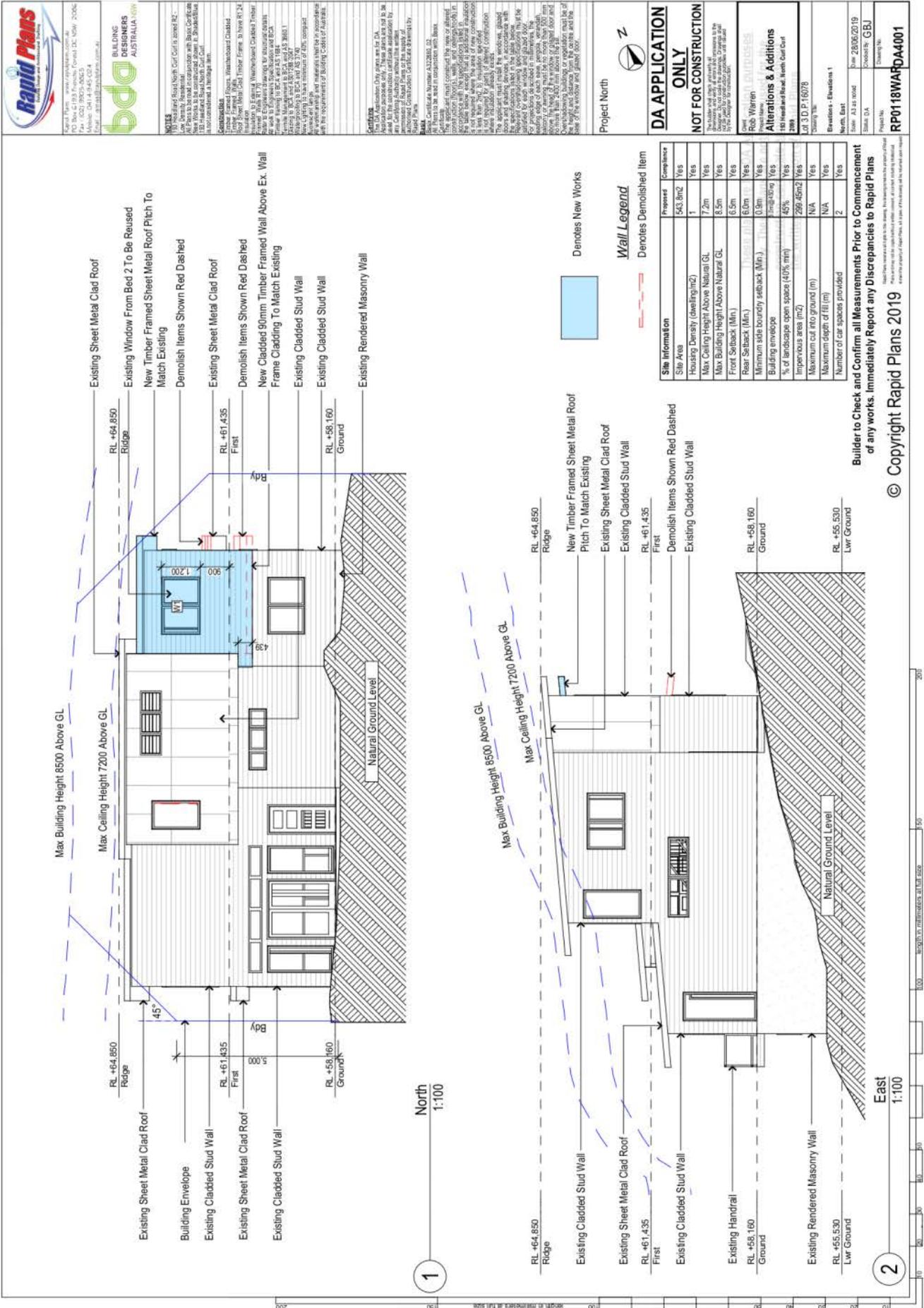
**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**

8. **Stormwater Disposal**

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

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





**Rapid Plans**  
Building Designers & Drafters  
170 Bayswater Road, Bayswater, Vic 3105  
Ph: 03 9493 4000 Fax: 03 9493 4005  
Mobile: 041 4345 004  
www.rapidplans.com.au

**bda BUILDING DESIGNERS AUSTRALIA**

**NOTES**

1. All work to be done in accordance with the requirements of the Building Code of Australia.

2. All work to be done in accordance with the requirements of the Building Code of Australia.

3. All work to be done in accordance with the requirements of the Building Code of Australia.

4. All work to be done in accordance with the requirements of the Building Code of Australia.

5. All work to be done in accordance with the requirements of the Building Code of Australia.

**Project North**

**DA APPLICATION ONLY**

**NOT FOR CONSTRUCTION**

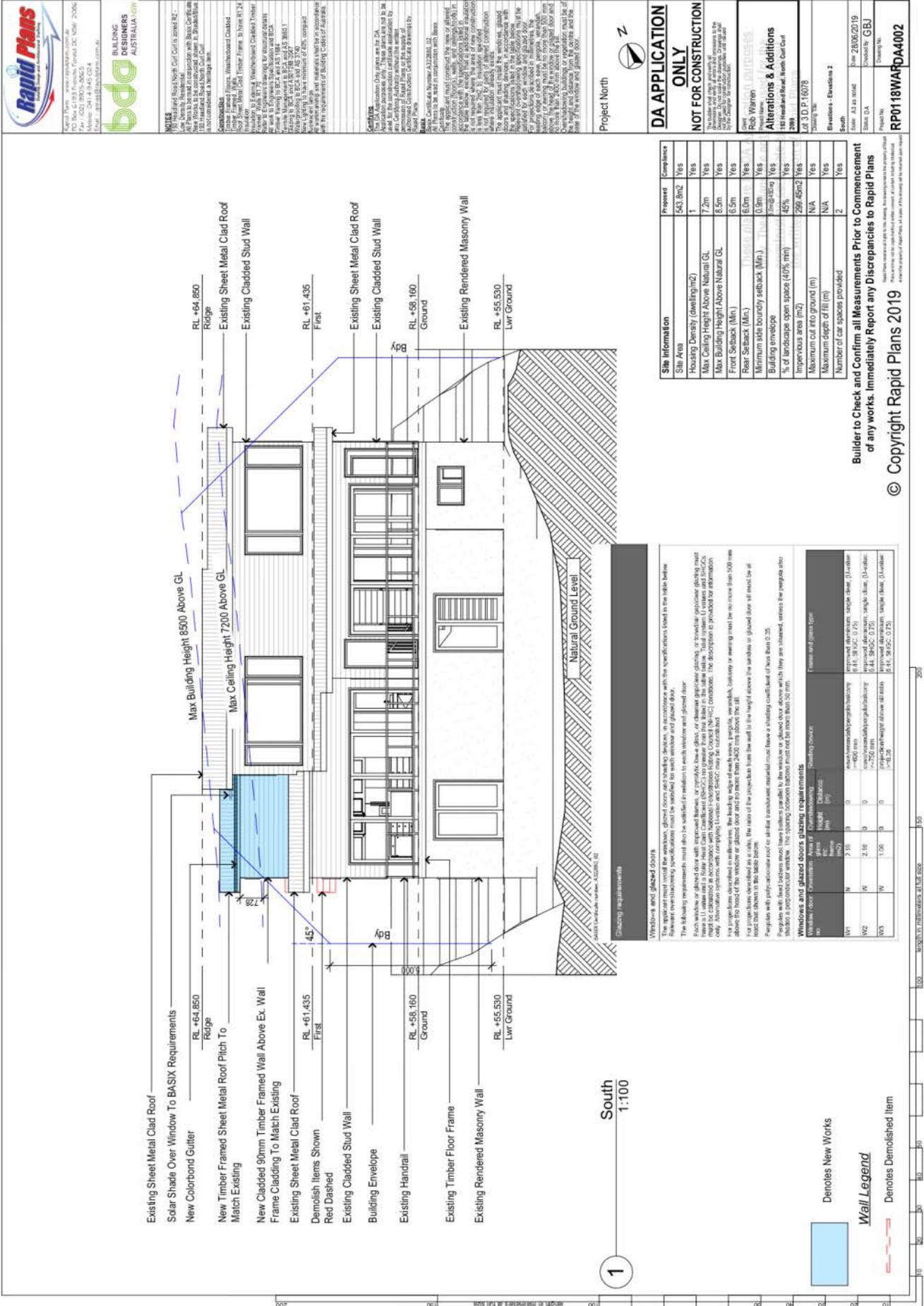
These drawings are for DA purposes only. They are not to be used for construction. The contractor is responsible for checking the drawings against the DA and the relevant legislation. The contractor is responsible for obtaining all necessary permits and approvals. The contractor is responsible for ensuring that all work is done in accordance with the requirements of the Building Code of Australia.

**Alterations & Additions**

180 Heald Road, North Coast  
Lot 3 D P 16078

North Coast Council  
North Coast Council  
North Coast Council

Drawn: AT as noted Date: 28/06/2019  
Checked by: GBJ  
Project No: RP0118WARDA4001



Site Information	Proposed	Compliance
Site Area	543.8m <sup>2</sup>	Yes
Housing Density (dwelling/m <sup>2</sup> )	1	Yes
Max Ceiling Height Above Natural GL	7.2m	Yes
Max Building Height Above Natural GL	8.5m	Yes
Front Setback (Min.)	6.5m	Yes
Rear Setback (Min.)	6.0m	Yes
Minimum side boundary setback (Min.)	0.3m	Yes
Building envelope	299.43m <sup>2</sup>	Yes
% of landscaped open space (40% min)	45%	Yes
Impervious area (m <sup>2</sup> )	299.45m <sup>2</sup>	Yes
Maximum cut into ground (m)	N/A	Yes
Maximum depth of fill (m)	N/A	Yes
Number of car spaces provided	2	Yes

**Builder to Check and Confirm all Measurements Prior to Commencement of any works. Immediately Report any Discrepancies to Rapid Plans**

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Window / door	Orientation	Area of Glazing (m <sup>2</sup> )	Area of Extrusions (m <sup>2</sup> )	Sliding device	Frame and glass type
W01	N	7.18	0	max. vertical height 2000mm	improved aluminium, single glaze, (U-value 0.15)
W02	W	2.16	0	max. vertical height 2000mm	improved aluminium, single glaze, (U-value 0.15)
W03	W	1.06	0	max. vertical height 2000mm	improved aluminium, single glaze, (U-value 0.15)

**Windows and glazed doors**  
The applicant must install the windows, glazed doors and sliding devices, in accordance with the specifications listed in the table below. The following performance criteria must be satisfied by windows and glazed doors:  
Each window and glazed door must be constructed in accordance with the Australian Standard AS/NZS 4200:2001. The glazing must be installed in a U-value and a Solar Heat Gain Coefficient (SHGC) no greater than that stated in the table below. Total system U-value and SHGCs must be certified in accordance with National Performance Rating Council (NPRC) compliance. The description is provided for information only and does not constitute a warranty. The applicant must ensure that the glazing is installed in accordance with the manufacturer's instructions. The height of the window or glazed door must not exceed 2400 mm above the sill. For projections described as a cant, the ratio of the projection from the wall to the height above the window or glazed door will need to be at least that shown in the table below.  
Fragile or polycarbonate roof or skylight translucent material must have a slanting coefficient of less than 0.20.  
Fragile or polycarbonate roof or skylight translucent material must have a slanting coefficient of less than 0.20.  
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**Chasing requirements**

**Windows and glazed doors**

**Wall Legend**

- Denotes New Works
- Denotes Demolished Item

**Rapid Plans**  
BUILDING DESIGNERS AUSTRALIA 100%

100% Building Designers Australia 100%  
100% Building Designers Australia 100%  
100% Building Designers Australia 100%

**NOTES**  
1. All work to be done in accordance with the requirements of BASIX and BASIX 2006.  
2. All work to be done in accordance with the requirements of BASIX and BASIX 2006.  
3. All work to be done in accordance with the requirements of BASIX and BASIX 2006.  
4. All work to be done in accordance with the requirements of BASIX and BASIX 2006.  
5. All work to be done in accordance with the requirements of BASIX and BASIX 2006.  
6. All work to be done in accordance with the requirements of BASIX and BASIX 2006.  
7. All work to be done in accordance with the requirements of BASIX and BASIX 2006.  
8. All work to be done in accordance with the requirements of BASIX and BASIX 2006.  
9. All work to be done in accordance with the requirements of BASIX and BASIX 2006.  
10. All work to be done in accordance with the requirements of BASIX and BASIX 2006.

**DA APPLICATION ONLY**  
**NOT FOR CONSTRUCTION**

**Alterations & Additions**

**RP0118WARD04002**



**ITEM 3.3****DA2018/1669 - 21 WHISTLER STREET, MANLY - DEMOLITION  
WORKS AND CONSTRUCTION OF A SHOP TOP HOUSING  
DEVELOPMENT INCLUDING STRATA SUBDIVISION****AUTHORISING MANAGER** RODNEY PIGGOTT**TRIM FILE REF** 2019/574584**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 development to which *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* applies and is 4 or more storeys in height.

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2018/1669 for demolition works and construction of a shop top housing development including strata subdivision at Lot B DP 368451, 21 Whistler Street, Manly subject to the conditions and for the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/1669
----------------------------	-------------

<b>Responsible Officer:</b>	Benjamin Price
<b>Land to be developed (Address):</b>	Lot B DP 368451, 21 Whistler Street MANLY NSW 2095
<b>Proposed Development:</b>	Demolition works and construction of a shop top housing development including strata subdivision
<b>Zoning:</b>	Manly LEP2013 - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Pavillion Residences (No.3) Pty Ltd
<b>Applicant:</b>	Urban Partners

<b>Application Lodged:</b>	11/10/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	31/10/2018 to 17/11/2018
<b>Advertised:</b>	03/11/2018
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 14.6%
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 2,875,000.00
---------------------------------	-----------------

The application seeks approval for demolition of the existing building and construction of a shop top housing development and strata subdivision. During the Assessment of the DA the heritage significance of the property was assessed and Council formed the view that the significance was such to warrant the making of an Interim Heritage Order (IHO). This order was issued on 27 September 2019. The IHO has significant implications for the current DA in that the proposal seeks approval to the demolition of all structures. Whilst some merit aspects of the application are acceptable, the recommendation is to refuse the application as the proposal would include the demolition of the existing building. An assessment of the application has been carried out and the proposal is not suitable nor appropriate for the subject site for the following reasons:

- The site is subject to an IHO gazetted on 27 September 2019. The proposed development involves the demolition of all on-site structures and will result in a significant loss of cultural heritage in Manly.

- The proposal includes a significant non-compliance with the parking controls of the Manly DCP 2013. The proposal also relies on a car lift, turntable and car stacker to provide on-site parking. The proposed parking numbers and design is inadequate and is not supported by Council.
- The proposed waste storage area is not consistent with the Waste Management Guidelines.
- The proposal relies upon a clause 4.6 application to vary clause 4.3 Height of Buildings and clause 6.16 Gross floor area in Zone B2. The request does not adequately demonstrate that there are sufficient environmental planning ground to justify contravening the development standard.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal includes the demolition of the existing buildings and construction of a five storey shop top housing development with eight residential units and basement parking. The development will include the following:

### Basement

- 11 standard parking spaces in a car staker
- Two accessible parking spaces in a car stacker
- Turntable and car lift
- Lift and stair access
- Retail and residential storage
- Bike racks
- Seven 3.53m<sup>3</sup> and one 3.37m<sup>3</sup> of unit storage

### Ground Floor

- Two retail tenancies totaling 157sqm of gross floor area
- Vehicle access including car lift and waiting bay
- Waste storage area

### Level 1

- Two x two Bedroom units with balcony and courtyard

### Level 2

- Two x two Bedroom units with balcony

### Level 3

- Two x two Bedroom units with balcony

### Level 4

- Two x two Bedroom units with balcony

It is noted that the application proposes screening devices, window openings and awnings on levels 1, 2 and 3 overhanging the road reserve. No owners consent has been provided for such structures. This

has been included as a reason for refusal.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Local Environmental Plan 2013 - 5.10 Heritage conservation  
 Manly Development Control Plan - 3.2 Heritage Considerations  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 3.8 Waste Management  
 Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor  
 Manly Development Control Plan - 4.2.5.4 Car Parking and Access  
 Manly Development Control Plan - 4.4.1 Demolition

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot B DP 368451 , 21 Whistler Street MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Whistler Street.</p> <p>The site is regular in shape with a frontage of 17.75m along Whistler Street and a depth of 15.8m. The site has an area of 278m<sup>2</sup>.</p> <p>The site is located within the B2 Local Centre zone and accommodates a one and two storey residential development.</p> <p>The site is generally flat and does not contain any significant landscape features.</p>

**Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is predominantly characterised by two to four storey shop top housing developments and four to six storey residential flat buildings.

Map:



**SITE HISTORY**

The site has an extensive history that has been detailed within the report *Further Investigation & Comparative Review 21 Whistler Street, Manly* prepared by Robertson and Hindmarsh Pty Ltd dated 1 July 2019. With regards to the more recent history of the site a search of Council’s records has revealed the following relevant history:

**DA2018/1669 (current application)** - Demolition works and construction of a shop top housing development. Council wrote to the applicant on the 6 February 2019 advising that the application was unable to be supported due to issues with heritage, traffic and access, stormwater engineering, urban design and waste management. Amended plans were received on the 16 June 2019 that addressed issues with stormwater engineering and urban design. The amended plans differed in only minor respects and will not result in any greater environmental impacts. As such re-notification/advertising was not necessary.

Following a detailed investigation of the heritage value of the site a recommendation for an IHO on this property was reported to the Council meeting on the 23 July 2019. In response the applicant submitted additional information. The motion was deferred to allow for further consideration of the information and to enable further discussions with Council staff and the applicant. Following further consideration and discussions, the application was reported to the Council meeting on the 24 September 2019 with the recommendation to place an IHO on the property. Council resolved the following:

*"A. Pursuant to section 25(2) of the Heritage Act 1977, make an Interim Heritage Order for 21 Whistler Street, Manly, being Lot B DP 368451 (the property) as the Council considers that a building on the*

*property may, on further inquiry or investigation, be found to be of local heritage significance and that it is likely to be harmed.*

*B. Delegate authority to the Chief Executive Officer to sign any necessary documentation to facilitate this action.*

*C. Is satisfied that the building meets all conditions outlined in Schedule 2 of the Ministerial Order dated 22 April 2013.*

*D. Publish the Order in the NSW Government Gazette.*

*E. Following the publishing of the Interim Heritage Order in the Government Gazette:*

*a. notify the Chairperson of the Heritage Council of the making of the Order*

*b. notify the owner of the making of the Order, the reasons for making the Order and its effect*

*c. place a public notice in the Manly Daily, within 7 days of publication, informing the public of the making of the Order.*

*F. Note this Interim Heritage Order will lapse after six months from the date it is made, unless Council has resolved to place the item on the heritage schedule of Manly Local Environmental Plan 2013.*

*G. Advise the applicant for DA2018/1669 of this resolution."*

Accordingly, the interim heritage order was gazetted on the 27 September 2019.

The application was the subject of a pre-lodgement meeting (PLM2018/0157, see below) with Council staff prior to the lodgement of this DA. With regard to the advice given, the following comments are made:

- Evidence of attempts to consolidate the sites was provided. This is satisfactory and consistent with the Land & Environment Court Planning Principle.
- The development includes a variation to the building height of up to 14.6%. A comprehensive streetscape/view analysis from surrounding properties and the public domain was provided.
- A traffic and parking report was submitted to justify the parking shortfall. The Manly S94 Contribution Plan 2004 has been repealed. The Northern Beaches Section 7.12 Contributions Plan 2019 does not include contributions for parking. Therefore, no contribution for parking is applicable.
- The parking access and arrangement remains the same as that presented at the PLM.
- The waste storage area is inconsistent with the advice provided.

**PLM2018/0157** - Demolition works and construction of a shop top housing development - The minutes included:

- Councils preference is for the consolidation of nearby sites to avoid site isolation
- The variation to the building height of 6.5% could be supported subject to a comprehensive streetscape/view analysis from surrounding properties and the public domain.
- The provision of no parking to the commercial premises could be supported subject to adequate justification in accordance with the requirements of cl 4.2.5.4. In the event that adequate justification is provided, a monetary contribution for a total of 5 spaces will be required to be paid.
- Councils traffic engineer raised significant issue with the use of a vehicle lift, turntable and car

stackers with regard to the efficiency, safety and convenience of the parking. It was advised that the parking design could not be supported.

- No details of the waste storage were provided in the meeting. Councils waste officer advised of the requirements for waste storage.

#### 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&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters may be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in accordance with this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition</p>

Section 4.15 Matters for Consideration'	Comments
	<p>of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be addressed via a condition of consent.</p> <p>Clause 143A of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The development involves the demolition of a building of heritage significance. This is discussed in detail below. It is considered that the loss of a significant part of the areas history will have a detrimental social impact in the locality.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>The demolition of a building with the heritage significance as the existing building will result in a development that will erode the heritage significance of the area such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.</p>

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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

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

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

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p><b>General Comments</b></p> <p>The site is located within Class 4 Acid Sulfate designated lands. A detailed report by Crozier Geotechnical Consultants Project 2018-141 advises :</p> <p>"The site investigation results indicate there is a low probability of intersecting Acid Sulfate Soils below the site within the depth of the proposed works, whilst the proposed works should have no impact on the water table external to the site provided the recommendations of this report are implemented."</p> <p>We have no objection to approval .</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>Environmental Health only have the following issues which can be dealt with by conditions.</p> <p>Noise to internal and external receivers.</p> <p>The acoustic report deals with these matters - please see conditions for compliance.</p> <p>We note the retail units will be subject to DA's if food retailing is proposed in future</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
NECC (Development Engineering)	<p>2nd Development Engineering referral</p> <p>The submitted stormwater plan has been assessed. However, it is considered to be unsatisfactory.</p> <p>First, the permissible site discharge of the post development is larger than that of the pre-development.</p> <p>And then the total by pass areas of the OSD is greater than 20% of the total site areas.</p> <p>As the above, the proposed OSD does not comply with Council's Manly Specification for on site stormwater Management 2003.</p>

Internal Referral Body	Comments
	<p>A condition has been placed to address the above design issues. As such, Development Engineering has no objection to the application subject to the following conditions of consent.</p> <p>1st Engineering referral Development Engineer has assessed the application. However, Development Engineering cannot support the application as the following items:</p> <p>1 ) stormwater/ On site stormwater detention system (OSD). The applicant proposed an OSD system on the roof of the building. However, the submitted details are insufficient for assessment.</p> <p>Development Engineer cannot provide an appropriate assessment of the design. For instance, the dimension and volume of the OSD , location of the overflow weir and discharge rate of the OSD have not been provided. And 1/3 of the building areas (western side of the building), which the details of drainage is missing..</p> <p>The applicant must submit the stormwater management plan in accordance with Council's Manly Specification for on site stormwater management 2003 for assessment, in particular the section 11.</p> <p>2 ) car lift The applicant must provide an appropriate waiting areas of car lift within the property. It prevents any traffic delay/ congestion on Whistler Street when any vehicle entry/ exit the property.</p> <p>3 ) Underground water and Sub Soil drainage Council was notified by another development on Whistler street. A steady groundwater table has been found at RL 1.5 m which is similar to the proposed basement Level in this development. Please be advised that Council does not permit any direct discharge from the rising main to the street kerb. The applicant shall consider alternative method to manage the underground water and subsoil drainage.</p> <p>As the above, Development Engineer cannot support the application due to lack of information.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed development is partly affected by the medium flood risk precinct however, the building's openings are not flood affected. Therefore the development generally complies with Councils LEP & DCP and is recommended for approval subject to no conditions.
Strategic and Place Planning (Heritage Officer)	During Council's assessment of the DA, the building was identified as having potential heritage significance and independent heritage advice was sought from two heritage consultants. Full Circle Heritage carried out an initial independent heritage assessment in April 2019 and determined that the building potentially met the

Internal Referral Body	Comments
	<p>threshold for local heritage listing, but that further comparative research was required to substantiate this. Robertson &amp; Hindmarsh was then engaged in June 2019 to provide further heritage advice and a comparative assessment report. This report concluded that the building on the site definitely met the criteria for local heritage listing, stating that it met four of the seven established listing criteria, being:</p> <ul style="list-style-type: none"> <li>• Criterion (a) Historical significance</li> <li>• Criterion (b) Associative significance</li> <li>• Criterion (c) Aesthetic/ Technical significance</li> <li>• Criterion (f) Rarity.</li> </ul> <p>The existing building on site was considered significant due to its association with the first Mayor of Manly, Thomas Rowe and because the building formed part of the outbuilding complex of a large villa designed for his family that faced Belgrave Street. In addition to being the first Mayor of Manly, Thomas Rowe was one of the founders of the Institute of Architects. Very little survives of Rowe's body of work (between c 1868 and 1890) in Manly.</p> <p>This matter was reported to Council on 23 July 2019 and 24 September 2019, with a recommendation to place an Interim Heritage Order (IHO) over the property, to protect it from demolition during consideration of the statutory listing process. Council, at its meeting of 24 September 2019, resolved to place an Interim Heritage Order on the subject property, to protect it from harm for an initial period of 6 months, while further investigations are carried out and to enable Council to proceed with a statutory heritage listing, if appropriate, to protect the building from demolition.</p> <p>This Interim Heritage Order is due to be published in the Government Gazette on Friday 27 September 2019.</p> <p><b>As a result, this application cannot be supported on heritage grounds, as it proposes the demolition of a building which has been identified as being of heritage significance, meeting 4 of the 7 criteria for local heritage significance. Additionally, Council has resolved to protect this building from harm by the placing of an Interim Heritage Order on the site, to enable further investigation and possible heritage listing of the site.</b></p> <p><b>Consider against the provisions of CL5.10 of MLEP2013</b> Is a Conservation Management Plan (CMP) Required? NO Has a CMP been provided? N/A Is a Heritage Impact Statement required? NO Has a Heritage Impact Statement been provided? N/A</p>
	Further Comments
	<b>COMPLETED BY: Janine Formica, Heritage Planner</b>

Internal Referral Body	Comments
	<p><b>DATE: 26 September 2019</b></p> <hr/> <p><u>Planning Comment</u></p> <p>This has been included as a reason for refusal.</p>
Strategic and Place Planning (Urban Design)	<p><b>CURRENT COMMENTS</b></p> <p><b>MDCP 2013</b>  <b>3.3.1 Design Principles</b>  Amendments to the drawings; recessing the entrance porte cochere to Details in the revisions to the treatment of the facade can be supported materials.  Preference is for a natural material; face masonry for instance at the gr of time rather than cladding elements which over time have a tendency</p> <p>Overhanging balconies on the whistler street elevation should not encro Detailing of deep reveals to the windows/doors or recessing the balcon This detail can be conditioned.</p> <p>END</p> <hr/> <p><b>PREVIOUS COMMENTS</b>  The proposed development in its current form cannot be supported;</p> <p><b>1. Built Form Controls</b></p> <p><b>MLEP 2013</b>  <b>4.3 Height of buildings</b>  (1) <i>The objectives of this clause are as follows:</i>  (a) <i>to provide for building heights and roof forms that are consistent wit future streetscape character in the locality,</i>  (b) <i>to control the bulk and scale of buildings,</i>  (c) <i>to minimise disruption to the following:</i>  (i) <i>views to nearby residential development from public spaces (includir</i>  (ii) <i>views from nearby residential development to public spaces (includi</i>  (iii) <i>views between public spaces (including the harbour and foreshores</i>  (d) <i>to provide solar access to public and private open spaces and main habitable rooms of adjacent dwellings,</i>  . . .</p> <p>(2) <i>The height of a building on any land is not to exceed the maximum i</i></p> <p><b>COMMENTS</b>  The height of the proposed development represents a breach of the nu approximately. Although the drawings demonstrate that the top storey i additional height, such that when viewed from aspects up Raglan Stree development and raises potential view obstruction /loss to residents fur</p> <p>With a height datum of approximately 23.20 (documented on the drawii elements of the top level measured off the drawings at approx. 1m) me</p>

Internal Referral Body	Comments
	<p>demonstrating a 2.47 metre height breach.</p> <p>In this regard the upper storey cannot be supported. Deletion of the upper storey is recommended.</p> <p><i>6.13 Design excellence</i>  <i>(1) The objective of this clause is to deliver in Manly the highest standard of architectural and urban design of buildings and public spaces.</i>  <i>(2) This clause applies to development involving the erection of a new building or external alterations to an existing building:</i>  <i>(a) on land in Zone B2 Local Centre, and</i>  <i>(b) on land to which clause 6.19 applies.</i>  <i>(3) Development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence.</i>  <i>(4) In considering whether development exhibits design excellence, the consent authority must give consideration to whether the development:</i>            ...  <i>(c) clearly defines the edge of public places, streets, lanes and plazas through separation, setbacks, amenity, and boundary treatments, and</i>  <i>(d) minimises street clutter and provides ease of movement and circulation of pedestrian, cycle, vehicular and service access, and</i>            ...  <i>(f) is sympathetic to its setting, including neighbouring sites and existing or proposed buildings, and</i>            ...  <i>(h) promotes vistas from public places to prominent natural and built landmarks, and</i>  <i>(i) uses high standards of architectural design, materials and detailing appropriate to the building type and location, and</i>            ...</p> <p>COMMENTS            The site is adjacent a one way street which is activated at ground level by several businesses fronting the street. Enhancing of the fine grain detail at the public/private interfaces should be further developed. Refer design principles comments below.</p> <p><b>MDCP 2013</b></p> <p><i>3.1.3 Townscape (Local and Neighbourhood Centres)</i>  <i>3.1.3.1 Design Principles</i>  <i>The following design principles and requirements at paragraphs 3.1.3.1.a) to i) should be achieved in all development involving the erection of a new building or external alterations to an existing building in order to:</i>  <ul style="list-style-type: none"> <li>• <i>maintain and enhance the townscape of the former Manly Council area's LEP Business Zones:</i></li> <li>• <i>achieve the townscape objectives of this plan; and</i></li> </ul> </p>

Internal Referral Body	Comments
	<p>• <i>consider that the development exhibits design excellence in accordance with considerations of LEP clause 6.13(4) (as a statutory consideration for land in Zone B2 Local Centre and as a DCP consideration in other zones)</i></p> <p><i>A scale and design of building appropriate to this local role should then be achieved.</i></p> <p><i>Local role of the site</i></p> <p><i>a) The local role of the site and existing buildings should be determined, viewed from the following perspectives:</i></p> <p><i>(i) from a distance and along routes and from viewpoints leading towards the locality; (see Figure 3a)</i></p> <p><i>(ii) in relation to the adjacent spaces it borders and the need to define those spaces; (see Figure 3b)</i></p> <p><i>Design Details</i></p> <p><i>c) Design details of proposed developments must complement adjacent building in the locality with particular reference to:</i></p> <p><i>(i) the scale, proportion and line of visible facades;</i></p> <p><i>(ii) the pattern of openings and the visual pattern of solids to voids on facades;</i></p> <p><i>(iii) both the overall wall and parapet height and the height of individual floors in relation to adjoining development and important corner buildings and the height of awnings. See also paragraph 4.4.4; and</i></p> <p><i>(iv) materials, textures and colours;</i></p> <p><b>COMMENTS</b></p> <p>The entrance to the apartment block, whilst under full cover for the length of building frontage, demonstrates there is little depth/space to the entrance/porte cochere for a resident waiting; no setdown space for prams, shopping or other such that it becomes a somewhat redundant articulation.</p> <p>A deeper entrance porte cochere that reasonably accommodates several people needs to be addressed. The building line of enclosure at the frontage should be recessed further into the building to provide relief from the pedestrian footpath; a place for pause and retreat from the pedestrian flows and movement on the footpath. Currently there is less than 500mm for this area. This should be increased to a minimum 2 m from the boundary to allow for adequate circulation for residents including those with disabilities (DDA requirements).</p> <p>Similarly the building façade aligns with the existing line of buildings fronting this street. However, the tenancies' glazed façade walls provide little articulation or relief from the zero lot alignment to the frontage. Consideration as to the commercial tenancies and the patronage/uses should be considered; is there an opportunity to provide further articulation, returning back into the buildings to provide niches for street occupation and street activation, or splaying of the orthogonal corners of the entrance or continuation of glazing around the corner to return into the entrance walls of the building, to provide further street wall relief at the pedestrian level demonstrating a more</p>

Internal Referral Body	Comments
	<p>fine grain public/commercial interface. Further design development of the façade and entry sequence into the residential element of the building should be considered more thoroughly by the applicant.</p> <p><b>Building Materials</b> The proposed development notes the rendered block finish as part of the suite of materials of the architectural design . Colour selections should consider the whole of life and maintenance requirements for the building, particularly consideration to the selection of lighter colours that age and deteriorate very quickly with weather and traffic pollution .</p> <p><i>3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) Relevant DCP objectives to be met in relation to these paragraphs include the following:</i></p> <p><i>Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.</i></p> <p><i>Objective 2) To maximise the provision of open space for recreational needs of the occupier and provide privacy and shade.</i></p> <p><i>Designing for Amenity</i></p> <p><i>a) Careful design consideration should be given to minimise loss of sunlight, privacy, views, noise and vibration impacts and other nuisance (odour, fumes etc.) for neighbouring properties and the development property. This is especially relevant in higher density areas, development adjacent to smaller developments and development types that may potentially impact on neighbour's amenity such as licensed premises.</i></p> <p><i>b) Development should not detract from the scenic amenity of the area. In particular, the apparent bulk and design of a development should be considered and assessed from surrounding public and private viewpoints.</i></p> <p><i>c) The use of material and finishes is to protect amenity for neighbours in terms of reflectivity. The reflectivity of roofs and glass used on external walls will be minimal in accordance with industry standards. See also Council's Administrative Guidelines regards DA lodgement requirements for materials and finishes.</i></p> <p><b>COMMENTS</b> The Pre Lodgement meeting notes request the applicant provide documentation demonstrating perspective views, rigorous assessment of view corridors of the development from up the escarpment. It is difficult to assess this view aspect in accordance with the control as no view analysis has been presented. See also Height of Buildings Comment above.</p> <p><b>2. Apartment Design Guide (ADG)</b></p>

Internal Referral Body	Comments
	<p><b>3G-1 Building Entries</b> Whilst the applicant has noted the façade articulation provided at the point of entry to the building, this is less than would be comfortable in terms of circulation to access the building and the immediately adjacent (500 or less) proximity to the pedestrian footpath. This should be increased to provide a generous entry point and waiting area as discussed above.</p> <p><b>4A Solar and Daylight Access</b> Loss of solar gain to the adjacent habitable rooms to the building to the south is not an optimal outcome. The building separation and setback that has been provided is more a commitment to the access laneway to the site with a minimal width to allow for access to the rear. The separation provided (less than a metre) and by virtue of the adjacent properties' wall with varying heights of fenestration and the proposed building will cut all solar amenity to the southern property. A minimum distance recommended from blank room to habitable room is 3m. Additionally, the requirement for separation under the BCA/NCC will also determine the required building separation for fire requirements from habitable windows to the blank wall of the proposed development. The applicant is encouraged to further develop the design in line with the above mentioned comments, statutory and regulatory constraints of the site.</p>
Traffic Engineer	<p>The application proposes the demolition of existing site structures and the construction of a 5 storey shop top housing development incorporating:</p> <ul style="list-style-type: none"> <li>• 2 x Ground floor retail spaces;</li> <li>• 8 x 2 Bedroom apartments;</li> <li>• Basement car park for 13 vehicles accessed via a car lift from Whistler Street;</li> </ul> <p><b><u>Parking and Access:</u></b></p>

Internal Referral Body	Comments
	<p>In accordance with the Manly DCP, the following is noted;</p> <ol style="list-style-type: none"> <li>1. The applicant has assessed the parking provisions in accordance with 'Town Centre Business Zone'. Therefore the adopted parking rates are</li> <li>2. The provision of 13 spaces onsite is deemed inadequate. The site requires:             <ul style="list-style-type: none"> <li>- 13 Resident Spaces (Including at least 1 accessible space)</li> <li>- 2 Visitor Spaces</li> <li>- 3 Retail Spaces (DCP requires 5 spaces, however clause 4.2.4.3)</li> </ul> </li> <li>3. The offset of retail and visitor spaces to the adjacent public car park covers the permissible offset allowance. Therefore the amounts referred to are acceptable.</li> <li>4. The aisle width requirements for 2.5m wide spaces is 6.7m. The available aisle width is 6.7m. The applicant has provided a 'Shared Space' Particularly near the Disabled Parking 'Shared Space'.</li> <li>5. The 'Shared Space' is not sufficient in width being only 1.2m. In accordance with the DCP, the 'Shared Space' does not allow for adequate movement of the turntable, and further regard to disabled patrons using the shared space.</li> <li>6. The arrangement of all vehicles in a single stacker (11 vehicles in the stacker) can be allocated to a single unit with multiple rooms. In doing so, only the applicant is having all tenants exposed to the same inconvenience is deemed unsuitable parking.</li> <li>7. In accordance with section 4.2.4.3 of the Manly DCP, the applicant has provided for retail tenants.</li> <li>8. The requirement for a vehicle to stand on Whistler Street whilst waiting provides for only one vehicle to travel through, no overtaking opportunities to occur for vehicles waiting for others to ingress the site.</li> <li>9. The narrow footpath and the lack of viability of vehicles exiting the site requires the applicant to incorporate a splay in accordance with AS2890.1:2004 which requires a minimum of 3.0m.</li> </ol> <p><b><u>Traffic:</u></b> The site is anticipated to generate approximately 8 vehicles in the peak hour. In this regard, Council's Traffic Team cannot support the application.</p> <p>Based on the above, Council's Traffic Team cannot support the application.</p> <p><b><u>Comments - 26/09/19</u></b> The applicant's amended Traffic report has not satisfactorily addressed the concerns raised. As such, Council's Traffic Team are unable to support the application in its current form.</p> <p><b><u>Planning Comments</u></b> This has been included as a reason for refusal.</p>

Internal Referral Body	Comments
Waste Officer	<p>Waste Services Referral</p> <p>The proposal is not acceptable for the following reasons and does not comply with the Northern Beaches Council Waste Management Guidelines.</p> <ul style="list-style-type: none"> <li>- There is inadequate waste storage. The required number of bins for 8 residential units is 7 x 240 litre bins - there must also be appropriate storage for commercial waste - refer Northern Beaches Council Waste Management Guidelines</li> <li>- There must be separate waste storage areas for residential and commercial waste - refer Northern Beaches Council Waste Management Guidelines</li> <li>- The bin holding area does not appear to be wide enough to maneuver the bins for collection.</li> <li>- There is a storm water pit in the bin holding area is not acceptable as waste water may drain into the pit.</li> <li>- The bulky waste room for the storage of items awaiting disposal through Council's Clean Up such as fridges, lounges and white goods should be located adjacent to the bin holding area on the ground floor.</li> </ul> <p><u>Planning Comments</u></p> <p>This has been included as a reason for refusal.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. Ausgrid raised no objection subject to conditions.
NSW Police - Local Command (CPTED)	The application was referred to the NSW Police on the 22 October 2018. No objection to the application was received.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As previously outlined the proposed development is for the erection of a five storey shop top 'housing' development plus basement car parking for the provisions of eight self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

principles, and  
(c) the Apartment Design Guide.

## DESIGN REVIEW PANEL

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

## DESIGN QUALITY PRINCIPLES

### Principle 1: Context and Neighbourhood Character

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

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

#### Comment:

The development is located on the northern edge of the Manly Town Centre. This area is predominantly developed with commercial premises, shop top housing and residential flat buildings. The shop top housing and commercial premises are developed to provide active street frontages whereas the residential flat buildings generally provide greater relief to the street. The scale and design of nearby development varies considerably and is reflective of the long and varied history of the area. The development to the north is one and two storey commercial and shop top housing premises. To the south is a narrow three storey residential flat building and a four storey shop top housing development. Other notable development within the area includes the three storey heritage listed substation opposite and the six storey residential flat building opposite and to the south. More recently Council approved the construction of a five storey shop top housing development on the corner of whistler street and Sydney Road.

The proposed development, a five storey shop top housing development, includes an articulated active street frontage that incorporates varied materials that will provoke interest to passers by. The upper levels includes three levels of units constructed to the front boundary and modulated with balconies to provide relief from the street frontage. The fifth storey is further setback from the street and incorporates lightweight pergolas over the balcony areas. This design will limit this storeys visibility from the street level and ensure it does not impose on the street or nearby development. The proposal is of a design that is sympathetic to the scale of adjacent development but reflects the scale emerging in newer developments. The development is of an appropriate design and siting within this context.

### Principle 2: Built Form and Scale

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

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

#### Comment:

As discussed above, the development is of a built form that is representative of the emerging development within the area yet is designed to provide relief and respect to the smaller scale nearby developments. The proposed street frontage includes varied materials and articulation to provoke the interest and activation of this area. The upper levels include three levels of units constructed to the front boundary and modulated with balconies to provide relief from the street frontage. These levels will reflect the shop top housing within the locality but provide a greater degree of amenity to the occupants. The fifth storey is further setback from the street and incorporates lightweight pergolas over the balcony areas. This design will limit this additional storeys visibility from the street level and ensure it does not impose on the street or nearby development. The proposal is of design that is sympathetic to the scale of adjacent development but reflects the scale emerging in newer developments within the locality. The development is of a built form and scale that is appropriate for the public domain and will contribute to the existing and desired streetscape of the locality.

### **Principle 3: Density**

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

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

#### Comment:

The subject site is located within the Manly Town Centre and has good access to services, public transport and community facilities. The units proposed will have good access to light, ventilation and are of an appropriate size to ensure the amenity of the occupants. The proposed density is able to be effectively accommodated on the site and within the area.

### **Principle 4: Sustainability**

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

#### Comment:

The proposed units are orientated to the east and incorporate western facing bedroom windows and doors. The development will achieve good solar access and natural cross ventilation. The proposal was also accompanied by a BASIX certificate to ensure the development meets the appropriate level of sustainability. The commercial uses on the ground floor are constructed boundary to boundary. As a result, there is no ability to provide deep soil zones within the locality.

### **Principle 5: Landscape**

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

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar

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

Comment:

The development is located within the Manly Local Centre. As such, opportunities for landscaping are limited. However, the level 1 western facing courtyards incorporate planter boxes the will provide effective screening for privacy and amenity to the units.

**Principle 6: Amenity**

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

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

Comment:

The proposal incorporates appropriate room sizes and dimensions to provide an effective and functional living environment for the residents. This is evidenced by the developments consistency with the development controls below.

The development is orientated to the east to Whistler Street and also has western facing windows. This orientation will provide good solar access and natural cross ventilation.

The eastern elevation gains physical separation from nearby properties due to the Whistler Street. It also relies on screening devices to ensure no unreasonable overlooking of the neighbouring properties. It is noted that the screening devices do not have owners consent to encroach on Council land. The removal of these features without replacement of alternative modes of screening is not supported. The development includes a blank wall on the southern side and windows to the balconies on the northern side. The northern facing windows to the balconies boundaries will result in overlooking of the neighbouring properties and will be prohibitive to further development on the sites to the north. The circulation core is to the west of the site and is stepped in from the side boundaries. The following issues are raised with the design:

- The window to the foyer adjacent to the lift on all levels will allow direct viewing of the property to the rear. This is not supported.
- The entrances to the units, particularly on the northern side allows direct viewing of the neighbouring properties and the courtyard of the units on the bottom level. This is not supported.

The proposal does not incorporate an appropriate design to preserve privacy within the locality. This has been included as a reason for refusal.

The proposal incorporates a design able to be adapted to meet the needs of people of all levels of mobility.

The service areas have been determined to not be efficient. In particular the access to waste storage area via the street and the parking are via multiple modes of mechanical systems. This is discussed in detail in the relevant referral comments.

**Principle 7: Safety**

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

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

Comment:

The proposal will provide a clear well lit entrance to the building. The orientation of the units will also allow for good passive surveillance of the streetscape. The proposal is of an appropriate design to optimise safety and security within the development site and to the locality.

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

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

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

Comment:

The development includes eight two bedroom units with two capable of being adapted to meet the needs of those less mobile. The development incorporates a suitable level of diversity for the demand for residential accommodation within the area.

**Principle 9: Aesthetics**

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

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

Comment:

The proposed design incorporates a variety of materials and design elements to reflect the existing and desired context. The proposal is consistent with this principle.

**APARTMENT DESIGN GUIDE**

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

Development Control	Criteria / Guideline	Comments
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Part 3 Siting the Development								
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	<b>Complies</b> The proposal is of a design that is sympathetic to the scale of adjacent development but reflects the scale emerging in newer developments. The development is of an appropriate design and siting to relate well to its context.						
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<b>Complies</b> The development includes an eastern orientation that will maximise solar access to the units. The proposal also focuses the built form on the eastern boundary allowing solar access to the building to the south during the afternoons of the winter solstice. The proposed orientation and siting will maximum solar access within the development and to neighbouring properties.						
<b>Public Domain Interface</b>	Does the development transition well between the private and public domain without compromising safety and security?  Is the amenity of the public domain retained and enhanced?	<b>Complies</b> The development includes a clearly defined public-private interface that will protect the safety and security of the neighbouring properties.						
<b>Communal and Public Open Space</b>	Appropriate communal open space is to be provided as follows:  1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	<b>Does not Comply</b> Due to the site constraints there is no ability to provide communal open space. The development is in close proximity to public facilities within the Manly Local Centre. The proposal is satisfactory in this circumstance.						
<b>Deep Soil Zones</b>	Deep soil zones are to meet the following minimum requirements: <table border="1" data-bbox="491 1861 1023 1973"> <thead> <tr> <th>Site area</th> <th>Minimum dimensions</th> <th>Deep soil zone (% of site area)</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)				<b>Does not Comply</b> The apartment design guide provides the following guidance in relation to this requirement <i>Achieving the design</i>
Site area	Minimum dimensions	Deep soil zone (% of site area)						

	<table border="1"> <tr> <td>Less than 650m<sup>2</sup></td> <td>-</td> <td>7%</td> </tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td> <td>3m</td> <td></td> </tr> <tr> <td>Greater than 1,500m<sup>2</sup></td> <td>6m</td> <td></td> </tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td> <td>6m</td> <td></td> </tr> </table>	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m		Greater than 1,500m <sup>2</sup>	6m		Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m		<p><i>criteria may not be possible on some sites including where:</i></p> <ul style="list-style-type: none"> <li><i>the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres)</i></li> <li><i>there is 100% site coverage or non-residential uses at ground floor level</i></li> </ul> <p>The retail premises at ground floor extend to the rear boundaries and the development is located within the Manly Town Centre. The design criteria is not possible on this site.</p>
Less than 650m <sup>2</sup>	-	7%												
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m													
Greater than 1,500m <sup>2</sup>	6m													
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m													
<p><b>Visual Privacy</b></p>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p><b>Complies</b></p> <p>The eastern elevation gains physical separation from nearby properties due to the Whistler Street. It also relies on screening devices to ensure no unreasonable overlooking of the neighbouring properties. It is noted that the screening devices do not have owners consent to encroach on Council land. The removal of these features without replacement of alternative modes of screening is not supported. The development includes a blank wall on the southern side and windows to the balconies on the northern side. The northern facing windows to the balconies boundaries will result in overlooking of the neighbouring properties and will be prohibitive to further development on the sites to the north.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

		<p>The circulation core is to the west of the site and is stepped in from the side boundaries. The following issues are raised with the design of the circulation core:</p> <ul style="list-style-type: none"> <li>• The window to the foyer adjacent to the lift on all levels will allow direct viewing of the property to the rear. This is not supported.</li> <li>• The entrances to the units, particularly on the northern side allows direct viewing of the neighbouring properties and the courtyard of the units on the bottom level. This is not supported.</li> </ul> <p>The proposal does not incorporate an appropriate design to preserve privacy within the locality. This has been included as a reason for refusal.</p>
<b>Pedestrian Access and entries</b>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p><b>Complies</b> The building entries are of a suitable design to connect to and address the public domain.</p>
<b>Vehicle Access</b>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p><b>Complies</b> The vehicle access minimises interference with the streetscape and pedestrian activity within the locality</p>
<b>Bicycle and Car Parking</b>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>• On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>• On land zoned, and sites within 400m of</li> </ul>	<p><b>Does not Comply</b> The development does not provide adequate or efficient parking to service the development site. See discussion by Councils</p>

	<p>land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</p> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Traffic Engineer and comments under the Manly DCP 2013 below. This has been incorporated as a reason for refusal. .</p>		
<b>Part 4 Designing the Building</b>				
<b>Amenity</b>				
<b>Solar and Daylight Access</b>	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	<p><b>Complies</b> All apartments will receive a minimum of 2 hours direct sunlight to the habitable rooms and private open spaces during the mornings of the winter solstice.</p>		
	<ul style="list-style-type: none"> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	N/A		
<b>Natural Ventilation</b>	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> <li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</li> </ul>	<p><b>Complies</b> All apartments will receive natural cross ventilation.</p>		
	<ul style="list-style-type: none"> <li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li> </ul>	<p><b>Complies</b> The maximum apartment depth is 11m.</p>		
<b>Ceiling Heights</b>	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1" data-bbox="491 1908 1023 1975"> <tr> <td><b>Minimum ceiling height</b></td> </tr> <tr> <td> </td> </tr> </table>	<b>Minimum ceiling height</b>		<p><b>Complies</b> The units incorporate 2.7m ceiling height and the commercial ground floor incorporate 3.3m ceiling</p>
<b>Minimum ceiling height</b>				

	<table border="1"> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>For 2 storey apartments</td> <td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td>Attic spaces</td> <td>1.8m at edge of room with a 30 degree minimum ceiling slope</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use areas</td> </tr> </table>	Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use areas	heights.
Habitable rooms	2.7m											
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For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area											
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope											
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use areas											
<b>Apartment Size and Layout</b>	<p>Apartments are required to have the following minimum internal areas:</p> <table border="1"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m<sup>2</sup></td> </tr> <tr> <td>1 bedroom</td> <td>50m<sup>2</sup></td> </tr> <tr> <td>2 bedroom</td> <td>70m<sup>2</sup></td> </tr> <tr> <td>3 bedroom</td> <td>90m<sup>2</sup></td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p><b>Complies</b> The proposed two bedroom units with an additional bathroom have a minimum area of 77sqm</p>
	Apartment type	Minimum internal area										
	Studio	35m <sup>2</sup>										
	1 bedroom	50m <sup>2</sup>										
	2 bedroom	70m <sup>2</sup>										
	3 bedroom	90m <sup>2</sup>										
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	<b>Complies</b>										
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	<b>Complies</b>										
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	<b>Complies</b>											
Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space).	<b>Complies</b>											
Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for free-standing wardrobes, in addition to the 3.0m minimum dimension.	<b>Complies</b>											

	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments</li> <li>• 4m for 2 and 3 bedroom apartments</li> </ul>	<p><b>Does not Comply</b> The proposed two bedroom units have a living/dining width of 3.8m-4m. The non-compliance is considered to be minor and will not result in any significant impact on the amenity of the occupants.</p>															
	<p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	<p><b>Complies</b></p>															
<b>Private Open Space and Balconies</b>	<p>All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling Type</th> <th>Minimum Area</th> <th>Minimum Depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m<sup>2</sup></td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m<sup>2</sup></td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m<sup>2</sup></td> <td>2.4m</td> </tr> </tbody> </table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	<p><b>Complies</b> All apartments have a balcony of at least 10sqm with a minimum width of 2m.</p>
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m <sup>2</sup>	-														
1 bedroom apartments	8m <sup>2</sup>	2m															
2 bedroom apartments	10m <sup>2</sup>	2m															
3+ bedroom apartments	12m <sup>2</sup>	2.4m															
	<p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m<sup>2</sup> and a minimum depth of 3m.</p>	<p><b>Complies</b> The Level 1 apartments include a 15sqm and 17sqm courtyard as well as 10sqm eastern facing balconies.</p>															
<b>Common Circulation and Spaces</b>	<p>The maximum number of apartments off a circulation core on a single level is eight.</p>	<p><b>Complies</b></p>															
	<p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p><b>N/A</b></p>															
<b>Storage</b>	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table border="1"> <thead> <tr> <th>Dwelling Type</th> <th>Storage size volume</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m<sup>3</sup></td> </tr> <tr> <td>1 bedroom apartments</td> <td>6m<sup>3</sup></td> </tr> <tr> <td>2 bedroom apartments</td> <td>8m<sup>3</sup></td> </tr> <tr> <td>3+ bedroom apartments</td> <td>10m<sup>3</sup></td> </tr> </tbody> </table> <p>At least 50% of the required storage is to be</p>	Dwelling Type	Storage size volume	Studio apartments	4m <sup>3</sup>	1 bedroom apartments	6m <sup>3</sup>	2 bedroom apartments	8m <sup>3</sup>	3+ bedroom apartments	10m <sup>3</sup>	<p><b>Does not Comply</b> The apartments are required to provide 8m<sup>3</sup> of storage. The apartments 101 and 102 provide 7.65m<sup>3</sup> of storage, all others comply. The non-compliance is considered to be minor and will not result in any significant impact on the amenity of the occupants.</p>					
	Dwelling Type	Storage size volume															
Studio apartments	4m <sup>3</sup>																
1 bedroom apartments	6m <sup>3</sup>																
2 bedroom apartments	8m <sup>3</sup>																
3+ bedroom apartments	10m <sup>3</sup>																

	located within the apartment.											
<b>Acoustic Privacy</b>	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	<b>Does not Comply</b> Apartment 101 is located above the driveway. The application was supported by an acoustic report. Compliance with this report and the BCA will ensure appropriate noise mitigation.										
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	<b>Complies</b> The development is adequately sited and designed to mitigate impact of external noise.										
<b>Configuration</b>												
<b>Apartment Mix</b>	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	<b>Complies</b> The development proposes two bedroom apartments with two adaptable units. The proposal includes an adequate mix of units.										
<b>Ground Floor Apartments</b>	Do the ground floor apartments deliver amenity and safety for their residents?	<b>N/A</b>										
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<b>Complies</b> The proposal incorporates articulation and varied building materials to provoke visual interest along the street.										
<b>Roof Design</b>	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	<b>Complies</b>										
<b>Landscape Design</b>	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<b>Complies</b>										
<b>Planting on Structures</b>	When planting on structures the following are recommended as minimum standards for a range of plant sizes: <table border="1" data-bbox="475 1771 1038 1973"> <thead> <tr> <th>Plant type</th> <th>Definition</th> <th>Soil Volume</th> <th>Soil Depth</th> <th>Soil Area</th> </tr> </thead> <tbody> <tr> <td>Large Trees</td> <td>12-18m high, up to 16m crown</td> <td>150m<sup>3</sup></td> <td>1,200mm</td> <td>10m x 10m or equivalent</td> </tr> </tbody> </table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent	<b>Complies</b> The proposed planter boxes include a soil depth of 0.9m.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area								
Large Trees	12-18m high, up to 16m crown	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent								

	spread at maturity				
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent	
Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent	
Shrubs			500-600mm		
Ground Cover			300-450mm		
Turf			200mm		
<b>Universal Design</b>	Do at least 20% of the apartments in the development incorporate the Liveable Housing Guideline's silver level universal design features				<b>Complies</b> Two (20%) of the apartments are designed to be adaptable housing. The proposal exceeds this requirement.
<b>Adaptable Reuse</b>	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				<b>N/A</b>
<b>Mixed Use</b>	Can the development be accessed through public transport and does it positively contribute to the public domain?  Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.				<b>Complies</b> The area is well serviced by public transport. The proposal also includes commercial uses on the ground floor to support the activation of Whistler Street.
<b>Awnings and Signage</b>	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.  Signage must respond to the existing streetscape character and context.				<b>Complies</b>
<b>Performance</b>					
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?				<b>Complies</b>
<b>Water Management and Conservation</b>	Has water management taken into account all the water measures including water infiltration,				<b>Complies</b>

	potable water, rainwater, wastewater, stormwater and groundwater?	
<b>Waste Management</b>	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	<b>Does not Comply</b> See discussion by Councils Waste Officer
<b>Building Maintenance</b>	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	<b>Complies</b>

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

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

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

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

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

Comment:

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

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

(3) To remove doubt:

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

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

Comment:

The development is inconsistent with the design quality principles and Apartment Design Guide due to the waste storage area design, parking and visual privacy. The proposal is recommended for refusal for these reasons.

### SEPP (Infrastructure) 2007

#### Ausgrid

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

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

#### Comment:

The proposal was referred to Ausgrid. Ausgrid raised no objections subject to conditions.

### 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?	No
zone objectives of the LEP?	Yes

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	15m	16.5m-17.2m	14.6%	No
Floor Space Ratio	FSR: 3:1 (834sqm)	FSR: 2.93:1 (815.6sqm)	N/A	Yes
Gross floor area in Zone B2	min 25% Commercial GFA, maximum 1000sqm per premises (203.6sqm)	Commercial GFA: 25% (185sqm) (previously 211sqm)	9.1%	No

#### Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	No
5.10 Heritage conservation	No
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	No

#### Detailed Assessment

#### **4.6 Exceptions to development standards**

##### **Description of non-compliance:**

Development standard:	Height of buildings
Requirement:	15m
Proposed:	16.5m-17.2m
Percentage variation to requirement:	14.6%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

##### **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 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 applicants written request argues, in part:

*"We have also formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the proposed building height with the height and form of surrounding development, including the recently approved shop top housing development at No. 21 Belgrave Street, the development's compliance with the objectives of the height standard and the general paucity of adverse environmental impact."*

The applicants justification does not demonstrate the applications consistency with any of the objects of the act. Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

**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 B2 Local Centre zone. An assessment against these objectives is provided below.

### Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the 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:

Adjoining and surrounding development is characterised by a wide variety of development types and sizes. Nearby development includes two to six storey residential flat buildings and shop top housing developments.

The proposed development, a five storey shop top housing development, includes an articulated active street frontage that incorporates varied materials that will provoke interest to passers by. The upper levels includes three levels of units constructed to the front boundary and modulated with balconies to provide relief from the street frontage. The fifth storey is further setback from the street and incorporates lightweight pergolas over the balcony areas. This design will limit this storeys visibility from the street level and ensure it does not impose on the street or nearby development. The proposal is of design that is sympathetic to the scale of adjacent development but reflects the scale emerging in newer developments. The development is of an appropriate design and siting to relate well to its context.

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

Comment:

As discussed above, the proposal will not result in any unreasonable bulk or scale within the locality. The proposal complies with the Floor Space Ratio development standard. This standard is aimed to control the bulk and scale of buildings on development sites.

*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 proposal was accompanied by a view loss analysis that demonstrated that the development would not result in any unreasonable loss of views within the locality. A comprehensive site analysis was undertaken and found no indication that the development would result in any unreasonable loss of views within the locality.

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

Comment:

The proposal is suitably articulated to ensure appropriate solar access to the nearby properties is maintained. The massing of the development on the eastern boundary and the significant southern side setback of the circulation core will ensure property to the south will maintain solar access in the morning and afternoon of the winter solstice.

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

Comment:

Not applicable.

### **Zone objectives**

The underlying objectives of the B2 Local Centre zone are:

*To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment:

The proposal includes the provision of commercial uses on the ground floor. These uses will support the needs of people who live in, work in and visit the local area.

*To encourage employment opportunities in accessible locations.*

Comment:

The provision of commercial ground floor premises will encourage employment opportunities in accessible locations.

*To maximise public transport patronage and encourage walking and cycling.*

Comment:

The provision of residential accommodation and commercial premises within an accessible area will encourage public transport usage and walking/cycling.

*To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment:

The proposed land uses will not generate any conflict. The ground floor premises would be subject to a further application where issues such as noise, odour, delivery of materials and use of machinery can be considered.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone.

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

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

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

**Description of non-compliance:**

Development standard:	Gross Floor Area in Zone B2
Requirement:	min 25% Commercial GFA, (203.6sqm)
Proposed:	19.2% (157sqm)
Percentage variation to requirement:	22.8%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 6.16 - Gross floor area in Zone B2 has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

**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 6.16 - Gross floor area in Zone B2 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 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).

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

The objects of this Act are as follows:

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

The applicants written request does not include a justification against environmental planning grounds.

The applicant does not demonstrate the applications consistency with any of the objects of the act. Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

#### **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 Gross Floor Area in Zone B2 development standard and the objectives of the B2 Local Centre zone. An assessment against these objectives is provided below.

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

The underlying objectives of the standard, pursuant to Clause 6.16 Gross floor area in Zone B2 of the MLEP 2013 are:

(1) The objective of this clause is as follows:

*The objective of this clause is to provide for the viability of Zone B2 Local Centre and encourage the development, expansion and diversity of business activities, that will contribute to economic growth, retention of local services and employment opportunities in local centres.*

Comment:

The proposal provides two commercial tenancies adjoining the entry to the residential units. The commercial tenancies take up the area not essential to the function of the residential units above. The proposal will also provide an active street frontage which will assist in the activation of this area of Manly. The proposal will encourage the expansion of retail and business activities that will contribute to the economic growth and employment opportunities in the local centre.

**Zone objectives**

The underlying objectives of the B2 Local Centre zone are:

*To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment:

The proposal includes the provision of commercial uses on the ground floor. These uses will support the needs of people who live in, work in and visit the local area.

*To encourage employment opportunities in accessible locations.*

Comment:

The provision of commercial ground floor premises will encourage employment opportunities in accessible locations.

*To maximise public transport patronage and encourage walking and cycling.*

Comment:

The provision of residential accommodation and commercial premises within an accessible area will encourage public transport usage and walking/cycling.

*To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

Comment:

The proposed land uses will not generate any conflict. The ground floor premises would be subject to a further application where issues such as noise, odour, delivery of materials and use of machinery can be considered.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Gross floor area in Zone B2 may be assumed by the Local Planning Panel.

### 5.10 Heritage conservation

#### Merit Consideration

The development is considered under the objectives of the clause below:

*The objectives of this clause are as follows:*

- (a) to conserve the environmental heritage of Manly,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

#### Comment:

The application has undergone an extensive heritage assessment. This review has concluded that the existing building meets the criteria required to warrant heritage listing. For further details see Further Investigation & Comparative Review 21 Whistler Street, Manly prepared by Robertson and Hindmarsh Pty Ltd dated 1 July 2019. An interim heritage order for the property was gazetted on the 27 September 2019.

The proposed development involves the demolition of the existing building and does not allow for any conservation. As such, the development is not consistent with this objective as it does not retain or conserve the cultural significance of Manly. For detailed heritage assessment see referral comments under Strategic and Place Planning (Heritage Officer).

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

### Manly Development Control Plan

#### Built Form Controls

Built Form Controls	Requirement	Proposed	% Variation*	Complies
4.2.3 Setbacks in LEP Zones B1 and B2	Nil	Nil	N/A	Yes
Schedule 3 Parking and Access	In Manly Town Centre Business Zone (LEP Zone B2- Local Centre)	13 residential	N/A 100%	No

	0.6 resident parking space for each Studio or one bedroom dwelling, plus 1 resident parking space for each 2 bedroom dwelling, plus 2 resident parking spaces for each 3 or more bedroom dwelling, and plus 0.16 visitor parking space for each dwelling (irrespective of number of bedrooms). 8 residential 2 visitor	Nil visitor		
	1 per 40sqm Commercial 4 Commercial	Nil	100%	

**\*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
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	No	No
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	No
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	No	No
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	No
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	No	No
4.4.1 Demolition	No	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

#### Detailed Assessment

### **3.2 Heritage Considerations**

#### Merit consideration:

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

*Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:*

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

#### Comment:

The application has undergone an extensive heritage assessment. This review has concluded that the existing building meets the criteria required to warrant heritage listing. For further details see *Further Investigation & Comparative Review 21 Whistler Street, Manly* prepared by Robertson and Hindmarsh Pty Ltd dated 1 July 2019. An interim heritage order for the property was gazetted on the 27 September 2019.

The proposed development involves the demolition of the existing building and does not allow for any conservation. As such, the development is not consistent with this objective as it does not retain or conserve the cultural significance of Manly. For detailed heritage assessment see referral comments under Strategic and Place Planning (Heritage Officer).

*Objective 2) 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.*

#### Comment:

The proposal involves the demolition of a building of heritage significance. The proposal is not of an appropriate design to ensure that it does not adversely impact the significance of the item and the locality.

*Objective 3) 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.*

Comment:

As discussed above, the proposal will result in a significant adverse impact on the significance of the existing building.

*Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.*

Comment:

Not applicable.

*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.*

Comment:

The proposed demolition of the existing building is not supported. The proposal will not have any unreasonable impact on the neighbouring or nearby heritage items.

*Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.*

Comment:

Heritage management has been incorporated into the planning process and found the development to result in a significant impact on the cultural heritage of Manly.

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

### 3.4.2 Privacy and Security

Merit consideration:

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

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

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

Comment:

The eastern elevation gains physical separation from nearby properties due to the Whistler Street. It also relies on screening devices to ensure no unreasonable overlooking of the neighbouring properties. It is noted that the screening devices do not have owners consent to encroach on Council land. The removal of these features without replacement of alternative modes of screening is not supported.

The development is built to the boundary with a blank wall on the southern side and windows to the balconies on the northern side. The northern facing windows to the balconies boundaries will result in overlooking of the neighbouring properties and will be prohibitive to further development on the sites to the north.

The circulation core is to the west of the site and is stepped in from the side boundaries. The following issues are raised with this design:

- The window to the foyer adjacent to the lift on all levels will allow direct viewing of the property to the rear. This is not supported.
- The entrances to the units, particularly on the northern side allows direct viewing of the neighbouring properties and the courtyard of the units on the bottom level. This is not supported.

The proposal does not incorporate an appropriate design to preserve privacy within the locality. This has been included as a reason for refusal.

*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:

As discussed above, the proposal does not incorporate an appropriate design for privacy and will result in any significant overlooking of neighbouring properties.

*Objective 3) To encourage awareness of neighbourhood security.*

Comment:

The proposal will result in passive surveillance of the neighbourhood and encourage an awareness of neighbourhood security.

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

### 3.8 Waste Management

Description of Non-compliance

The proposal does not comply with the Northern Beaches Council Waste Management Guidelines. In particular, Council's waste officer has raised the following issues:

- There is inadequate waste storage. The required number of bins for 8 residential units is 7 x 240 litre bins - there must also be appropriate storage for commercial waste - refer Northern Beaches Council Waste Management Guidelines
- There must be separate waste storage areas for residential and commercial waste - refer Northern Beaches Council Waste Management Guidelines
- The bin holding area does not appear to be wide enough to maneuver the bins for collection.
- There is a storm water pit in the bin holding area is not acceptable as waste water may drain into the pit.
- The bulky waste room for the storage of items awaiting disposal through Council's Clean Up such as fridges, lounges and white goods should be located adjacent to the bin holding area on the ground floor.

In addition to this, the waste management plan details that storage of residential waste will be within a designated garbage and recycling area located within the basement garage. This is not detailed on the plans.

#### Merit Consideration

With regard to the consideration of the variation, the development is considered under the objectives of the control below.

*Objective 1) To facilitate sustainable waste management in a manner consistent with the principles of Ecologically Sustainable Development (ESD).*

#### Comment:

The proposed ongoing management of waste is inconsistent with Council policy and will not facilitate the effective and sustainable management of waste on this site.

*Objective 2) Encourage environmentally protective waste management practices on construction and demolition sites which include:*

- *sorting of waste into appropriate receptors (source separation, reuse and recycling) and ensure appropriate storage and collection of waste and to promote quality design of waste facilities;*
- *adoption of design standards that complement waste collection and management services offered by Council and private service providers;*
- *building designs and demolition and construction management techniques which maximises avoidance, reuse and recycling of building materials and which will minimise disposal of waste to landfill; and*
- *appropriately designed waste and recycling receptors are located so as to avoid impact upon surrounding and adjoining neighbours and enclosed in a screened off area.*

#### Comment:

The proposed waste management plan incorporates adequate practices to manage waste during construction and demolition.

*Objective 3) Encourage the ongoing minimisation and management of waste handling in the future use of premises.*

Comment

The proposed ongoing management of waste is inconsistent with Council policy and will not facilitate the effective and sustainable management of waste on this site.

Objective 4) To ensure waste storage and collection facilities complement waste collection and management services, offered by Council and the private service providers and support on-going control for such standards and services.

Comment:

The proposed waste collection facilities do not meet the the standards required by Council and its service providers.

Objective 5) To minimise risks to health and safety associated with handling and disposal of waste and recycled material, and ensure optimum hygiene.

Comment:

As discussed by Councils waste officer, the waste storage area incorporates a stormwater drain. This will allow any run-off to enter Councils stormwater system. The proposal does not meet this objective.

*Objective 6) To minimise any adverse environmental impacts associated with the storage and collection of waste.*

Comment:

The proposal includes a stormater drain within the waste storage area. The proposal is of an inappropriate design to minimise any adverse environmental impacts.

Objective 7) To discourage illegal dumping.

Comment:

The proposed bulky goods storage area and the ineffective waste storage area are inadequate to discourage illegal dumping.

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

#### **4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor**

Description of Non-compliance

The Manly DCP 2013 requires the provision of 2 visitor parking spaces and 4 Commercial parking space. The proposal does not provide any visitor or commercial parking spaces. Councils Traffic Engineer has also raised issues with the adequacy and accessibility of the parking in the referral

comments above. The Manly DCP 2013 also requires the provision of a loading bay on the site.

#### Merit Consideration

With regard to the variation, the development is considered under the objectives of the control below.

*Objective 1) To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.*

#### Comment:

The proposal provides a shortfall of six parking spaces. With regards to the visitor parking spaces the applicants traffic report specifies the following:

*"is not considered necessary due to the large adjacent public car park and the convenience of the nearby public transport services."*

There is no justification provided for the provision of commercial parking with the exception of the applicant advising they would accept a condition requiring a contribution for parking. The Manly DCP 2013 requires 50% of the parking to be provided on site and 50% provided by way of contribution. Furthermore, the Manly S94 Contribution Plan has now been repealed and the current contribution plan does not make provision for parking contributions.

Insufficient justification has been provided to demonstrate adequate parking has been provided for on-site and can be accommodated within the surrounding area.

Councils Traffic Engineer has also raised concern over the accessibility and functionality of the parking arrangement as follows:

- *The aisle width requirements for 2.5m wide spaces is 6.7m. The available width between the parking spaces and obstructions is less than 6.0m. Particularly near the Disabled Parking 'Shared Space'.*
- *The 'Shared Space' is not sufficient in width being only 1.2m. In accordance with AS2890.1:2004, the 'Shared Space' must be 2.4m. A 2.4m 'Shared Space' does not allow for adequate movement of the turntable, and further becomes unprotected from moving cars. This creates a safety concern with regard to disabled patrons using the shared space.*
- *The arrangement of all vehicles in a single stacker (11 vehicles in the one stacker [Puzzle-like]) further creates an inconvenience. Generally a stacker can be allocated to a single unit with multiple rooms. In doing so, only the tenant of a particular unit will be inconvenienced by the wait times. However, having all tenants exposed to the same inconvenience is deemed unsuitable and in contradiction to Council's vision of convenient and easily accessible parking.*
- *In accordance with section 4.2.4.3 of the Manly DCP, the applicant has failed to provide any loading facilities onsite to meet the requirements of the retail tenants.*
- *The requirement for a vehicle to stand on Whistler Street whilst waiting for a vehicle to egress from the site raises concern. As the street is narrow and provides for only one vehicle to travel through, no overtaking opportunities exist. This process is likely to lead to queuing. Further, queuing is again likely to occur for vehicles waiting for others to ingress the site.*

The proposed parking design does not provide adequate access to parking within the site.

The proposal also does not provide any provision for a loading bay on the site nor is there any

availability of any loading nearby the site. The proposal does not provide adequate loading for the future development.

*Objective 2) To minimise conflicts between pedestrian and vehicular movement systems within the business areas.*

Comment:

Councils Traffic Engineer has provided the following comment:

- *The narrow footpath and the lack of viability of vehicles exiting the site is anticipated to cause pedestrian/vehicular conflicts. The design must incorporate a splay in accordance with AS2890.1:2004 which requires a 2.5 x 2.0m clear sight line.*

The proposal is not of an appropriate design to minimise conflicts between pedestrian and vehicular movement systems.

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

#### **4.2.5.4 Car Parking and Access**

This clause has been addressed in detail under Clause 4.2.4 Car Parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor of the Manly DCP 2013. There are no objectives under clause 4.2.5.4 Car Parking and Access to address.

#### **4.4.1 Demolition**

Description of Non-compliance

This clause requires the following:

*Conserve the cultural heritage of the existing building and that of the locality. An appropriate assessment of potential heritage significance must accompany any DA in relation to demolition. If the property has merit as a potential heritage item, the heritage controls and considerations in this plan apply, and*

This assessment has been undertaken and determined that the existing building is of heritage value. An interim heritage order was resolved by Council on the 24 September 2019 and gazetted on 27 September 2019.

Merit Consideration

With regard to the consideration of the variation the development is considered under the objectives as follows:

*Objective 1) To protect the environment during demolition, site works, and construction phases of development.*

Comment:

This objective is not relevant to the control. Standard conditions of consent would ensure the development complies with this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objective of MDCP. Accordingly, this has not been included as a reason for refusal.

#### **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
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

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

- Heritage - The assessment has found the development to be inappropriate for the heritage value of the site
- Parking - The assessment found the parking numbers and design to be inadequate to service the development site
- Waste - The waste storage areas are inconsistent with the Waste Management Guidelines and inadequate to service the development site.
- Owners Consent - No owners consent is provided for screens and windows to overhang Council land.

- Clause 4.6 Justification - The clause 4.6 for 4.3 Height of buildings and 6.16 Gross floor area in Zone B2 does not demonstrate sufficient environmental planning grounds to justify the contravention of the development standard.

On this basis the application is recommended for refusal.

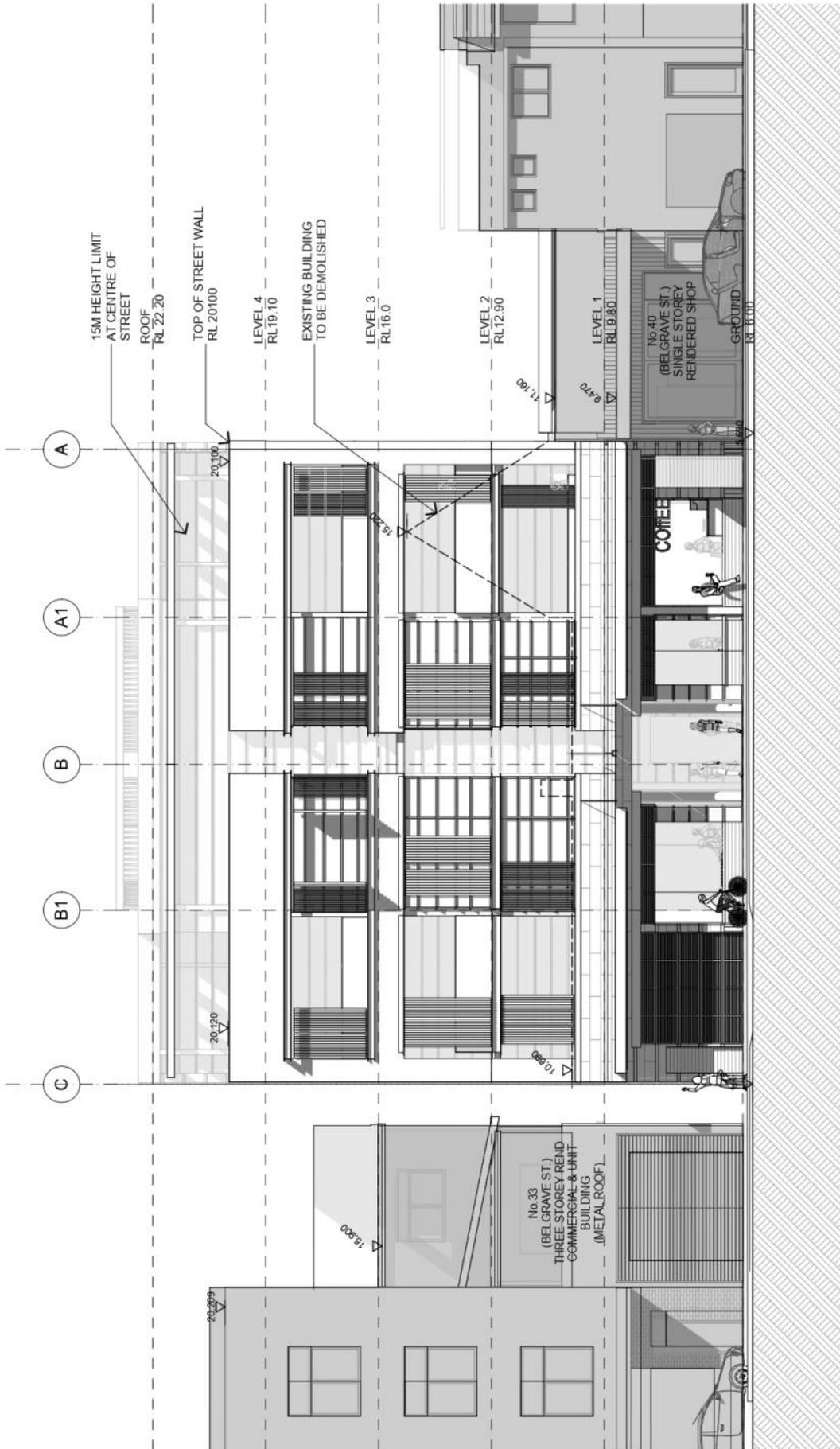
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

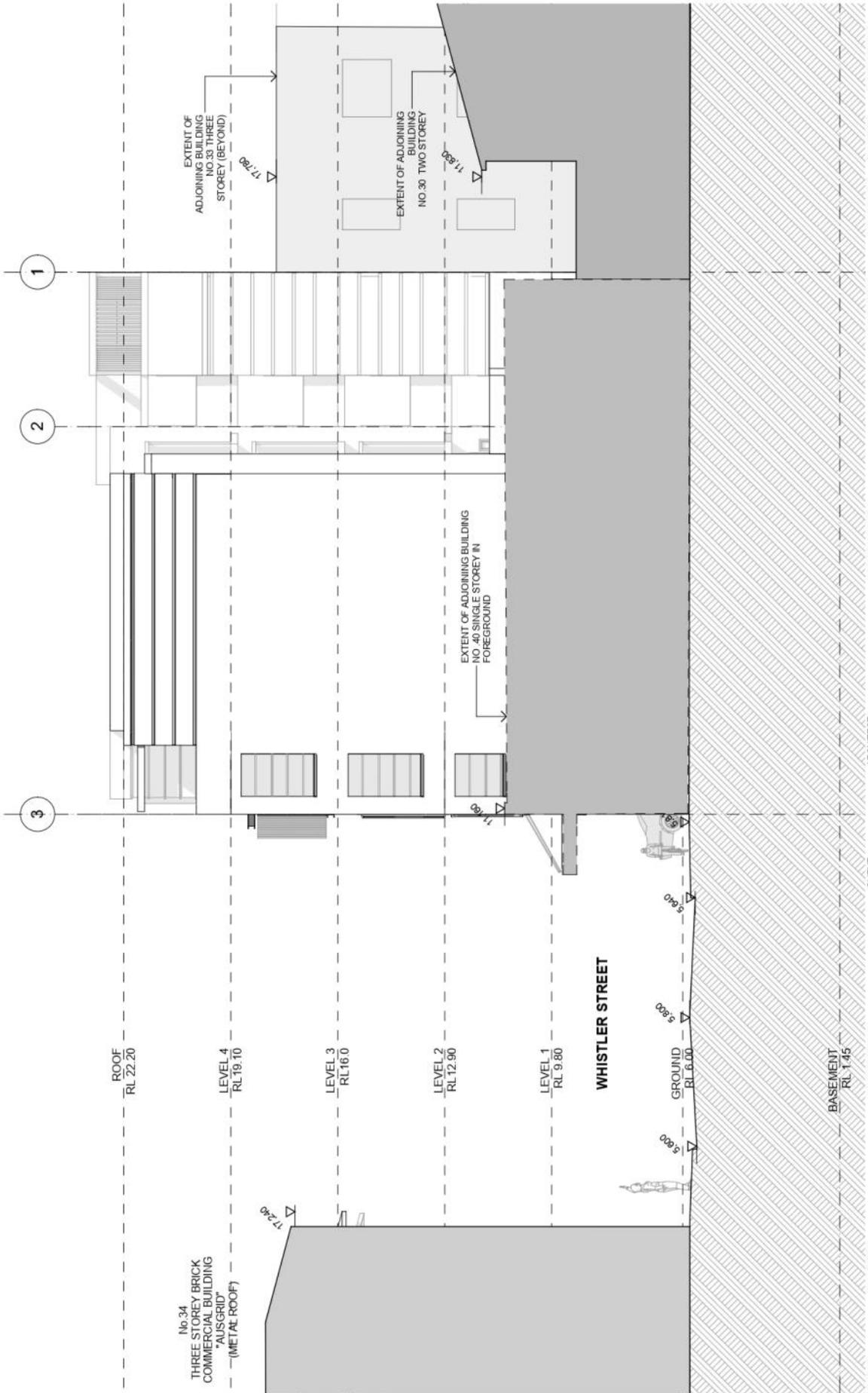
THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2018/1669 for the Demolition works and construction of a shop top housing development including strata subdivision on land at Lot B DP 368451,21 Whistler Street, MANLY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 the demolition of a building with heritage significance will result in a significant social impact within the locality.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed parking, waste storage area and design for privacy is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 5.10 Heritage conservation of the Manly Local Environmental Plan 2013.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.2 Heritage Considerations of the Manly Development Control Plan .
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan .
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.8 Waste Management of the Manly Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor of the Manly Development Control Plan.
10. Pursuant to Section 4.12(9) of the Environmental Planning and Assessment Act 1979, no owners consent is granted for screening devices, window openings and awnings to levels 1, 2 and 3 to encroach on Council Land.
11. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.





NOTES: NO CONSTRUCTION TO BE TAKEN IN RESPECT OF THIS DRAWING UNLESS SPECIFICALLY NOTED OTHERWISE. THE CONTRACTOR IS TO CONSULT WITH THE ARCHITECT FOR ANY CHANGES TO THE DRAWING. THIS DRAWING IS COPYRIGHT AND THE PROPERTY OF WOLSKI COPPIN ARCHITECTURE.	REVISIONS:	PROJECT TITLE:	ARCHITECT:	CLIENT:	PROJECT TITLE:	DRAWING TITLE:	DRAWING No.:	PROJECT No.:	REVISION:	NORTH POINT:
	DATE: 04/06/19 BY: [Signature]	RESIDENTIAL DEVELOPMENT 21 WHISTLER ST MANLY	WOLSKI . COPPIN ARCHITECTURE SUITE LEVEL 1, 157 WHEATY ROAD EPPING NSW 1503 TEL: 02 9370 4000 WWW.WOLSKICOPPIN.COM.AU	Urban Partners	RESIDENTIAL DEVELOPMENT 21 WHISTLER ST MANLY	EAST ELEVATION	DA10	21806	A	
									SCALE: 1:100 @ A3	DATE: 4/06/2019



No. 34  
THREE STOREY BRICK  
COMMERCIAL BUILDING  
"AUSGRID"  
(METAL ROOF)

NOTES:  
 1. ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE STATED.  
 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL COUNCIL AND ANY OTHER RELEVANT AGENCIES.  
 3. THIS DRAWING IS A PRELIMINARY DESIGN AND SHALL BE SUBJECT TO CHANGE WITHOUT NOTICE.  
 4. THE CLIENT ACCEPTS RESPONSIBILITY FOR THE ACCURACY OF ALL INFORMATION PROVIDED TO THE ARCHITECT.

REVISIONS:

DATE	REVISION	DESCRIPTION
04/06/19	A	ISSUE FOR PERMIT APPLICATION

CLIENT: **Urban Partners**

ARCHITECT: **WOLSKI · COPPIN ARCHITECTURE**  
 3 FLOOR SUITE 1.107 WHEATBERRY ROAD · MOSMAN NSW 2088  
 PHONE: 02 9550 1000 FAX: 02 9550 1001  
 WWW.WOLSKICOPPIN.COM.AU

PROJECT TITLE: **RESIDENTIAL DEVELOPMENT**  
 21 WHISTLER ST MANLY

DRAWING TITLE: **NORTH ELEVATION**

DRAWING No: **DA11**

PROJECT No: **21806**

REVISION: **A**

SCALE: **1:100 @ A3**

DATE: **4/06/2019**





#### 4.1.2 Height of Buildings – Exceptions to Development Standards

Pursuant to Clause 4.3 of MLEP 2013 the height of a building on the subject land is not to exceed 15 metres in height. The objectives of this control 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.*

Building height is defined as follows:

***building height (or height of building)*** means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

The development has a maximum building height of 16.6 metres measured to the roof parapet with a height of 17.2m measured to the lift overrun.

Such building heights exceed the 15 metre height standard by 1.6 and 2.2 metres respectively or between 10.6 and 14.6%. The extent of building height non-compliance is depicted in Figure 6 below.



**Figure 6** – Extent of building height non-compliance.

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

Pursuant to clause 4.6(2) 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.

This clause applies to the clause 4.3 Height of Buildings Development Standard.

Clause 4.6(3) states that 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.*

Clause 4.6(4) states 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 Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

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

### **Claim for Variation**

#### **Zone and Zone Objectives**

The proposals permissibility and consistency with the zoning of the land and associated zone objectives have been detailed at section 4.1.1 of this statement. There is no statutory impediment to the granting of the building height variation in this regard.

#### **Height of Buildings Standard and Objectives**

The development standard and associated objectives have been previously identified.

Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

This standard and the associated objectives have been previously identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- The areas of non-compliance are limited to the upper portion of the 5<sup>th</sup> floor element, roof form and lift overrun. In the context of the established/ approved height of development to the south of the site, and within the same street block, the variation is appropriately described as minor. The area/ extent of variation is depicted in Figures 6 of this of report.
- The height, bulk and scale of the development are entirely consistent with the built form characteristics established by the recently approved and currently under construction shop top housing development to the south of the site at No. 21 Belgrave Street as depicted in Figure 8 below. The non-compliant architectural roof elements contribute positively to the design quality of the building ensuring that it will be a landmark development within its context.



**Figure 8** – Comparative/ contextual height diagram

- Excavation is limited to that reasonably required to accommodate the basement parking, storage and waste storage areas.
- It has been determined that the shadowing impacts to the southern adjoining property are caused by the portion of the building that is fully compliant with the height standard. As such, it can be reasonably concluded that the building height non-compliance does not exacerbate the shadowing impact on this property.

- In relation to privacy we confirm that the building height non-compliance does not itself result in any unacceptable privacy impacts in relation to direct overlooking of adjoining properties.
- Having inspected the site and its surrounds and viewed the development site from various elevated vantage points to the west of the property, we have formed the considered opinion that the portion of the building exceeding the height standard will not give rise to any adverse public or private view affectation.
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.
- Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the harbour, foreshore areas, public domain and surrounding residential properties.
- Having regard to the matter of Veloshin v Randwick City Council [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.

We have also formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the proposed building height with the height and form of surrounding development, including the recently approved shop top housing development at No. 21 Belgrave Street, the development's compliance with the objectives of the height standard and the general paucity of adverse environmental impact.

A better environmental planning and urban design outcome is achieved through the facilitation of the building height variation proposed.

### **Conclusions**

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and

- (b) that the contextually responsive development is consistent with the objectives of the height of buildings standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and height of buildings standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such, we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

#### **4.1.10 Gross Floor Area in Zone B2**

Pursuant to clause 6.16 development consent must not be granted to the erection of a building on land in Zone B2 Local Centre unless the consent authority is satisfied that at least 25% of the gross floor area of the building will be used as commercial premises. The objective of this clause is to provide for the viability of Zone B2 Local Centre and encourage the development, expansion and diversity of business activities, that will contribute to economic growth, retention of local services and employment opportunities in local centres

The proposal has a total commercial floor space of 182m<sup>2</sup> representing 22.4% of the total gross floor area of the building and a non-compliance of 22.125 metres or 10.8%.

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

Pursuant to clause 4.6(2) 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.

This clause applies to the clause 6.16 Development Standard as unlike clause 6.15 this development standard is not expressly excluded from the operation of this clause.

Clause 4.6(3) states that 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.*

Clause 4.6(4) states 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 Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

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

## **Claim for Variation**

### **Zone and Zone Objectives**

The proposals permissibility and consistency with the zoning of the land and associated zone objectives have been detailed at section 4.1.1 of this statement. There is no statutory impediment to the granting of the building height variation in this regard.

### **Gross Floor Area in Zone B2 Standard and Objectives**

The development standard and associated objectives have been previously identified. Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reason:

- The ground floor retail offers 2 commercial spaces which provide activation of the street frontage;
- The retail uses occupy all available ground floor space not required to accommodate residential and vehicular access to the site and required vertical circulation;
- The small block size constrains the ability for strict compliance at ground level with little demand for first floor commercial space along this section of Whistler Street; and
- The variation will not impact the viability of the B2 Local Centre zone nor compromise the expansion and diversity of business activities that will contribute to economic growth, retention of local services and employment opportunities in the centre.

The constraints imposed by site geometry provide sufficient environmental planning grounds to justify the variation sought on this particular site.

### **Conclusions**

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the commercial floor space standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and

- (d) that having regard to (a), (b) and (c) above that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and commercial floor space objectives that approval would not be antipathetic to the public interest, and
- (g) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a commercial floor space variation in this instance.

**ITEM 3.4**

**MOD2019/0294 - 25 PITTWATER ROAD, MANLY -  
MODIFICATION OF DEVELOPMENT CONSENT DA2017/1217  
GRANTED FOR ALTERATIONS AND ADDITIONS TO AN  
EXISTING HERITAGE ITEM AND CONSTRUCTION OF A  
RESIDENTIAL FLAT BUILDING**

**AUTHORISING MANGER      RODNEY PIGGOTT**  
**TRIM FILE REF              2019/574591**  
**ATTACHMENTS              1 [↓](#) Assessment Report**

**PURPOSE**

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

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2019/0294 for Modification of Development Consent DA2017/1217 granted for alterations and additions to an existing heritage item and construction of a residential flat building at Lot 1 DP 1252275, 25 Pittwater Road, Manly subject to the conditions and for the reasons set out in the Assessment Report.

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2019/0294
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<b>Responsible Officer:</b>	Daniel Milliken
<b>Land to be developed (Address):</b>	Lot 1 DP 1252275, 25 Pittwater Road MANLY NSW 2095
<b>Proposed Development:</b>	Modification of Development Consent DA2017/1217 granted for alterations and additions to an existing heritage item and construction of a residential flat building
<b>Zoning:</b>	Manly LEP2013 - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Steadland Pty Ltd
<b>Applicant:</b>	BBF Town Planners

<b>Application Lodged:</b>	19/06/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New multi unit
<b>Notified:</b>	11/07/2019 to 25/07/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	4
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

On 21 December 2018 the Northern Beaches Local Planning Panel (NBLPP) approved a development for alterations and additions to an existing heritage item and construction of a residential flat building. The approval included a condition allocating car spaces, although this was not a contentious aspect of the original proposal (and was not mentioned in the minutes of the meeting).

This modification proposes the reallocation of the visitor parking space to an apartment. This would result in the seven spaces being allocated between the five apartments, with no visitor space provided.

The applicant argues that, because the spaces in the 2 x 2 car stackers cannot be allocated to different apartments (i.e. each 2 car stacker must be owned by one apartment), providing a visitor space would leave one apartment without any off-street parking.

This issue is discussed in detail under Part 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities), within this report.

There are no other changes to the development proposed as part of this modification and therefore, no further assessment against the any EPIs or the majority of the controls in the Manly DCP.

This modification application has been referred to the NBLPP for determination in accordance with the direction issued by the Minister for Planning on 23 February 2018, as the original application was approved by the NBLPP.

### **PROPOSED DEVELOPMENT IN DETAIL**

The modification seeks consent to alter the allocation of the parking spaces.

Specifically, the applicant proposes the modification of Condition 35 and the deletion of Condition 36.

The conditions read as follows:

#### **35. Allocation of Spaces**

*Car parking spaces provided shall be provided, made accessible and maintained at all times. The spaces shall be allocated as follows:*

*6 - Residential*

*1 - Residential - Visitors*

*Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.*

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

*Reason: To ensure that adequate parking facilities to service the development are provided on site.*

#### **36 Visitors Sign**

*A sign, legible from the street, shall be permanently displayed to indicate that visitor parking is available on the site and the visitor car parking spaces shall be clearly marked as such.*

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

*Reason: To ensure that visitors are aware that parking is available on site and to identify those spaces to visitors.*

The application proposes to modify Condition 35 to read as follows:

#### **35. Allocation of Spaces**

Car parking spaces provided shall be provided, made accessible and maintained at all times. The spaces shall be allocated to the residential apartments.

Each car stacker must be allocated to one apartment. They must not be shared between apartments.

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.

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

Reason: To ensure that adequate parking facilities to service the development are provided on site.

### **ASSESSMENT INTRODUCTION**

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

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

### **SUMMARY OF ASSESSMENT ISSUES**

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 1 DP 1252275 , 25 Pittwater Road MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of a single allotment located on the western side of Pittwater Road, Manly.</p> <p>The site is irregular in shape with a frontage of 11.11m along Pittwater Road, 11.46m along Kangaroo Lane and a depth of up to 40.7m. The site has a surveyed area of 411m<sup>2</sup>.</p> <p>The site is located within the B2 Local Centre zone and accommodates a single storey brick dwelling house. The existing dwelling house and the adjoining dwelling to the</p>

north are listed as a collective heritage item (Item No. 1198 'Pair of houses'). The subject site is located within the Pittwater Road Conservation Area pursuant to Manly Local Environmental Plan 2013 and located within the Manly Town Centre pursuant to Manly Development Control Plan 2013

The site is generally flat without any topographical constraint.

**Detailed Description of Adjoining/Surrounding Development**

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

To the north of the site is a single storey dwelling house that makes up one half of the heritage listed 'pair of houses'.

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

Map:



**SITE HISTORY**

**DA2017/1217**

This application was for alterations and additions to an existing heritage item and construction of a residential flat building. The application was approved by the Northern Beaches Local Planning Panel on 21 December 2018.

The consent imposed Conditions 35 and 36, relating to car parking allocation and signage for the visitor space, respectively. The proposed modification of these conditions have generated four submissions objecting to the change.

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

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2017/1217, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<b>Yes</b> The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2017/1217.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2013 and Manly Development Control Plan.

Section 4.55(1A) - Other Modifications	Comments
advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

### Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of</p>

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

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Ms Catherine Louise Reely	17/19-23 Pittwater Road MANLY NSW 2095
Mrs Ashley Correa	12 / 19 Pittwater Road MANLY NSW 2095
Ms Gladys May Dean	20/19-23 Pittwater Road MANLY NSW 2095
Jennifer Elizabeth Johnstone	16 / 19 Pittwater Road MANLY NSW 2095

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

- Parking
- Construction impacts
- Density

The matters raised within the submissions are addressed as follows:

- **Parking**

The submissions raised concerns that the removal of the visitor space will result in impacts to on-street parking, which, they state, is already extremely hard to find.

Comment:

It is agreed that on-street parking in Manly is at a premium, with spaces being very hard to find. This is an issue in many areas on the Northern Beaches but is particularly acute in Manly.

The applicant is correct to say that Council requires the spaces within one car stacker to be allocated to one apartment. As a result, it is appropriate for the two double car stackers to be allocated to two apartments.

This leaves the remaining three apartments with either one space each (if the visitor space is reallocated), or; two apartments with a space, one visitor space and one apartment with no parking.

It is considered that a space allocated to an apartment, particularly if that space is the only one owned by that apartment, will be used more often than a visitor space.

While it would clearly be much better to have seven residential spaces and one visitor space (or more), the size of the parking area makes this impractical.

This then leads to the conclusion that, given the circumstances, it would be a better outcome to allocate the visitor space to an apartment as it will be used more often and therefore be more likely to free up an on-street parking space.

- **Construction impacts**

The submissions raised concerns that the construction impacts of the development would be unreasonable.

Comment:

This modification does not propose any additional building works or any changes to the approved built form. As such, this application will not alter the construction impacts.

Therefore, this matter does not warrant the refusal of the application.

- **Density**

The submissions raised concerns that the density of the development is unreasonable.

Comment:

This matter was assessed in the original application. This modification does not propose any changes to the density of the development.

Therefore, this matter does not warrant the refusal of the application.

## REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	Development Engineering has no objection to the proposed modification of the approved consent.
Traffic Engineer	There are no traffic engineering concerns with respect to the deletion of condition 36 and the modification of condition No.35 to remove reference to visitor parking.

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

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

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

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

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

application hereunder.

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

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

The proposal does not alter the built form, internally or externally, of the development. In this regard, the assessment against SEPP 65 conducted under DA2017/1217 remains current for this modification.

**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

The modification does not seek consent for any works to the development. In this regard, no development standards are proposed to be altered and no further assessment is required.

Compliance Assessment

Clause	Compliance with Requirements
5.10 Heritage conservation	Yes

**Manly Development Control Plan**

Built Form Controls

The modification does not seek consent for any works to the development. In this regard, no built form controls are proposed to be altered and no further assessment is required.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes

Detailed Assessment

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

Description of non-compliance:

The development is required to provide 0.16 visitor parking space for each dwelling (irrespective of number of bedrooms). This results in the need for 0.8 (rounded up to one) visitor spaces.

One visitor space is currently approved as part of the development.

The modification proposes no visitor spaces.

Merit Assessment:

The development is considered against the objectives of this control , which are as follows:

1. *To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).*
2. *To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.*
3. *To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.*
4. *To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.*
5. *To ensure the width and number of footpath crossings is minimised.*
6. *To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.*
7. *To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.*

Comment:

In their Statement of Environmental Effects, the applicant argues:

*"Such request is made on the basis that the development consent involves the provision of 5 dwellings (4 apartments and 1 dwelling) and car parking for 7 vehicles. We note that 4 of these spaces are within 2 x mechanical stackers with such stackers unable to have a pit due to flooding. As such, the stackers cannot be shared between units resulting in 2 of the 5 dwellings having 2 carparking spaces and the remaining 3 dwelling having 1 space each. This leaves no opportunity for visitor parking. Were Council to insist on a visitor parking space 1 of the dwellings would have no off- street parking.*

*We consider a variation to the Council carparking control to be warranted in this instance given the scale of the development, the constraints imposed by the required conservation of the existing heritage listed dwelling, the flooding affectation which prevents pit style car stackers from being installed and the greater desirability to have off street parking for residents compared to visitors who could take advantage of available on-street parking or public parking within the various Council car parks within proximity of the site."*

It is correct that Council does require the spaces within one car stacker to be allocated to one apartment. This is to prevent issues with a stacker affecting multiple apartments, to be convenient for the residents, to minimise waiting times and to allow for efficient maintenance.

As a result, it is appropriate for the two double car stackers to be allocated to two apartments. This leaves the remaining three apartments with either one space each or; two apartments with a space, one visitor space and one apartment with no parking.

It is considered that a space allocated to an apartment, particularly if that space is the only one owned

by that apartment, will be used more often than a visitor space.

While it would be much better to have seven residential spaces and one visitor space, the size of the parking area of the development makes this impractical.

This then leads to the conclusion that, given the circumstances, it would be a better outcome to allocate the visitor space to an apartment as it will be used more often and therefore be more likely to free up an on-street parking space.

In this regard, the modification to Condition 35 and the deletion of Condition 36, are recommended for approval.

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

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

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

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

### **POLICY CONTROLS**

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

Section 7.12 contributions were levied on the Development Application.

### **CONCLUSION**

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

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

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

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

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

This modification proposes the reallocation of the visitor parking space to an apartment. This would result in the seven spaces being allocated between the five apartments, with no visitor space provided.

The public exhibition period generated four submissions raising concerns regarding the parking, construction impacts and density. These matters have been addressed within the report. The parking allocation was the main issue raised in the submissions.

As Council requires the spaces within one car stacker to be allocated to one apartment, it is appropriate for the two double car stackers to be allocated to two apartments. This leaves the remaining three apartments with either one space each (if the visitor space is reallocated), or; two apartments with a space, one visitor space and one apartment with no parking.

It is considered that a space allocated to an apartment, particularly if that space is the only one owned by that apartment, will be used more often than a visitor space, and that while it would clearly be better to have seven residential spaces and one visitor space (or more), the size of the parking area makes this impractical.

Given these circumstances, it is considered that it would be a better outcome to allocate the visitor space to an apartment, as it will be used more often and therefore be more likely to free up an on-street parking space.

This assessment has found that, while the loss of a visitor space is unfortunate, having an apartment without an off-street parking space would result in a worse outcome for the availability of on-street parking.

The modification, given the circumstances, meets the aims and objectives within the MLEP 2013 and the Manly DCP.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the modification application be approved, subject to the amended Condition No. 35.

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

## **RECOMMENDATION**

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2019/0294 for Modification of Development Consent DA2017/1217 granted for alterations and additions to an existing heritage item and construction of a residential flat building on land at Lot 1 DP 1252275,25 Pittwater Road, MANLY, subject to the conditions printed below:

### **A. Modify Condition No. 35 - Allocation of Spaces to read as follows:**

Car parking spaces provided shall be provided, made accessible and maintained at all times. The spaces shall be allocated to the residential apartments.

Each car stacker must be allocated to one apartment. They must not be shared between apartments.

Car-parking provided shall be used solely in conjunction with the uses contained within the development. Each car parking space allocated to a particular unit / tenancy shall be line marked and numbered or signposted to indicate the unit / tenancy to which it is allocated.

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

Reason: To ensure that adequate parking facilities to service the development are provided on site.

### **B. Delete Condition No. 36 - Visitors Sign**

**ITEM 3.5****DA2019/0154 - 1955 PITTWATER ROAD, BAYVIEW -  
DEMOLITION WORKS AND CONSTRUCTION OF A SENIORS  
HOUSING DEVELOPMENT****AUTHORISING MANAGER****STEVE FINDLAY****TRIM FILE REF****2019/574601****ATTACHMENTS**

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

**PURPOSE**

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

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**RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2019/0154 for demolition works and construction of a seniors housing development at Lot 1 DP 373531, 1955 Pittwater Road, Bayview subject to the conditions and for the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/0154
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<b>Responsible Officer:</b>	Catriona Shirley
<b>Land to be developed (Address):</b>	Lot 1 DP 373531, 1955 Pittwater Road BAYVIEW NSW 2104
<b>Proposed Development:</b>	Demolition works and construction of a seniors housing development
<b>Zoning:</b>	R2 Low Density Residential
<b>Development Permissible:</b>	Yes, under SEPP (Housing for Seniors or People with a Disability) 2004
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	Yes
<b>Owner:</b>	Ian Francis Westaway Jan Elizabeth Westaway J A Westaway & Son Pty Ltd
<b>Applicant:</b>	Ian Francis Westaway Jan Elizabeth Westaway Vaughan Milligan Development Consulting Pty Ltd

<b>Application Lodged:</b>	20/02/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Seniors Living
<b>Notified:</b>	21/09/2019 to 05/10/2019
<b>Advertised:</b>	21/09/2019
<b>Submissions Received:</b>	10
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 2,092,600.00
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### EXECUTIVE SUMMARY

The application seeks consent for demolition works and the construction of a seniors housing development comprising 4 self contained dwellings.

The main issues associated with the assessment of the application relate to the character, design and presentation of the development to Pittwater Road and the manner in which the built form relates to

adjoining and surrounding residential development in the R2 Low Density Residential area.

Whilst the State Policy for seniors housing provides for a form of development that typically has a greater density and scale than the forms of residential development permitted under the PLEP, the proposal is not sufficiently complementary and compatible with the established character and is inconsistent with the desired future character envisaged for the Bayview Locality.

A number of non-compliances with the relevant planning controls contributes to a proposal that is inappropriate and unsuitable for the site. Additionally, the design of the development does not demonstrate sufficient consideration of the design guidelines in the *Seniors Living Policy: Urban Design Guideline for Infill Development*.

The application does not adequately address compliance with the requirements for adequate access to services and facilities, including a connecting footpath from a return bus stop in Pittwater Road at compliant gradients.

The Applicant lodged an appeal in the Land and Environment Court against the Deemed Refusal of the application and as part of the process to seek a resolution of the issues raised by Council, the applicant lodged amended plans.

An assessment of the amended plans reveals the planning, urban design, access to the return bus stop, stormwater, waste and RMS issues have not been resolved.

The proposed development was notified on two occasions and the primary concerns raised were in relation to character, design and built form of the development, excessive bulk, scale and mass of the building, tree removal, insufficient parking, stormwater management, excessive excavation and adverse privacy impacts.

Based on an full assessment of the proposal (as amended), the issues raised by residents are generally concurred with.

Accordingly, due to a number of unresolved matters in relation to access to the return bus stop, character and built form, engineering and waste requirements and the lack of concurrence from the RMS, the application is recommended for refusal.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application (as amended) seeks consent for demolition works and the construction of a seniors housing development comprising 4 self contained dwellings. Specifically, the proposal involves:

- Demolition of the existing dwelling and other structures
- Tree removal
- Excavation and civil works, including construction of new driveway, passing bay and on-site detention system
- Construction of a two storey building comprising of 3 x three bedroom dwellings, 1 x two bedroom dwelling and basement carparking for eight (8) cars
- Construction of pedestrian footpaths to the nearest bus stops in Pittwater Road
- Retaining walls
- New landscaping

## 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 Local Environmental Plan 2014 - 7.2 Earthworks  
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards  
Pittwater 21 Development Control Plan - A4.4 Church Point and Bayview Locality  
Pittwater 21 Development Control Plan - B1.3 Heritage Conservation - General  
Pittwater 21 Development Control Plan - B3.1 Landslip Hazard  
Pittwater 21 Development Control Plan - B4.22 Preservation of Trees and Bushland Vegetation  
Pittwater 21 Development Control Plan - B5.7 Stormwater Management - On-Site Stormwater Detention  
Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve  
Pittwater 21 Development Control Plan - B6.2 Internal Driveways  
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements  
Pittwater 21 Development Control Plan - C1.4 Solar Access  
Pittwater 21 Development Control Plan - C1.5 Visual Privacy  
Pittwater 21 Development Control Plan - C1.7 Private Open Space  
Pittwater 21 Development Control Plan - C1.9 Adaptable Housing and Accessibility  
Pittwater 21 Development Control Plan - C1.12 Waste and Recycling Facilities  
Pittwater 21 Development Control Plan - C1.21 Seniors Housing  
Pittwater 21 Development Control Plan - C1.23 Eaves  
Pittwater 21 Development Control Plan - D4.1 Character as viewed from a public place  
Pittwater 21 Development Control Plan - D4.3 Building colours and materials  
Pittwater 21 Development Control Plan - D4.6 Side and rear building line  
Pittwater 21 Development Control Plan - D4.11 Fences - General  
Pittwater 21 Development Control Plan - D4.13 Construction, Retaining walls, terracing and undercroft areas  
Pittwater 21 Development Control Plan - D4.14 Scenic Protection Category One Areas

## SITE DESCRIPTION

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<b>Property Description:</b>	Lot 1 DP 373531 , 1955 Pittwater Road BAYVIEW NSW 2104
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment which is legally described as Lot 1 in Deposited Plan 373531 and is known as 1955 Pittwater Road, Bayview. The site is zoned R2 Low Density Residential under the Pittwater Local Environmental Plan 2014 (PLEP 2014).</p> <p>The site is located on the southern side of Pittwater Road and is a large, irregular shaped site with a south-eastern boundary of 43.0m, a south-western boundary of 28.05m, a north-western boundary of 42.7m and a north-eastern street frontage to Pittwater Road of 32.64m. The site has an area of 1296.5m<sup>2</sup>.</p> <p>The site is moderately sloping with an average gradient of 20 degrees. The low point is the northern corner of the site at RL 5.50 and the high point is the southern corner of the site at RL 16.00.</p> <p>The site is within the "Geotechnical Hazard H1" area on the Landslip Map of PLEP 2014, and is in a Sensitive Coastal Location under State Environmental Planning Policy (Coastal Management) 2018.</p> <p>The site currently contains a part one/part two storey dwelling house. Vehicular access to the site is via a concrete driveway from Pittwater Road to an attached garage. The property currently enjoys views to the north and north-east towards the Pittwater Waterway.</p> <p>The area surrounding the site is characterised by predominantly single and two storey dwelling houses. St Lukes Primary School is located nearby to the west and Bayview Anchorage Marina nearby to the east.</p>

Map:



#### **SITE HISTORY**

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

The land has been used for residential purposes for an extended period of time. There is no history of any other use of the land.

#### **Prelodement Application?**

No Pre-DA meeting was held in relation to the proposed development.

#### **Current Development Application**

The application was lodged with Council on 20 February 2019. Following an initial assessment of the application, the Applicant was advised by letter dated 27 June 2019, that there were significant planning, urban design and engineering concerns in relation to:

- Inadequate details with regard to a continuous path of travel for pedestrians to the nearest shops/services or public bus stops
- The character of the development is inconsistent with the streetscape and desired future character
- Lack of articulation, inadequate "detached-style" appearance and excessive bulk and scale
- Non-compliant side setbacks
- Privacy impacts
- Excessive excavation
- Inadequate landscaping and excessive tree removal
- Inadequate information in regards to RL levels, stormwater management, solar access, driveway levels and works within Councils Road Reserve
- No RMS concurrence for the driveway access onto Pittwater Road

### **Land and Environment Court Appeal**

On 25 July 2019, a Class 1 appeal was filed with the Land and Environment Court of NSW against Councils deemed refusal of the DA.

Since then, there have been two "Without Prejudice" meetings held with the applicant in an attempt to resolve the above issues.

### **Amended Plans**

The applicant submitted amended plans to Council on 18 September, 2019 which included the following amendments:

- Provision of the footpath from the return bus top on the southern side of Pittwater Road
- Increasing the size of the vehicular passing bay in the road reserve
- Battering within the protection zone of tree T3 has been removed
- Revised Landscape Plan
- Additional retaining wall on the eastern edge of the pedestrian access
- Updated stormwater drainage plans
- Increasing the south-eastern side setback to 3.0m
- Changes to the planter box over the garage entry
- Additional solid built form on the terrace areas of the front facade
- Provision of a recessed area within the front facade to address building bulk
- Changes to external wall colours
- Reduction in the roof top terrace area and reduction in the size of the associated planter box

The application was re-notified and re-advertised following the receipt of the amended plans. The notification period ended on 5 October 2019. Details of submissions can be found in the Notification and Submissions section of this report.

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

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

<b>Section 4.15 Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clauses 54 and 109 of the EP&amp;A Regulation 2000 allow Council to request additional information. A letter was sent to the applicant on 27 June 2019 listing the planning issues and concerns and sought the withdrawal of the application. The applicant advised that the application would not be withdrawn and requested time to submit additional information. Two (2) meetings were held with the Applicant and amended plans were lodged on 18 September 2019.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 DCP and Residents Submissions sections in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the residential seniors housing character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the residential seniors housing nature of the proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	<p>The site is generally considered suitable for seniors housing, however that is contingent upon demonstrating that the access requirements to bus stops under SEPP HSPD can be met and to date, the application (despite the submission of additional information) has not demonstrated that the development can satisfy the SEPP. Furthermore, there are remaining concerns in relation to the built form of the development, which has been found to be not sufficiently responsive to the streetscape, the context of the area and amenity of adjoining and surrounding residential properties.</p>
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	<p>See discussion on "Notification &amp; Submissions Received" in this report. In summary, the issues raised in the residents submissions are concurred with and form part of the reasons for recommending refusal of the application.</p>
Section 4.15 (1) (e) – the public interest	<p>This assessment has found the proposal (as amended) to be inconsistent with the relevant planning controls applying to the site and type of development under the Pittwater Local Environment Plan 2014 and Pittwater 21 Development Control Plan.</p> <p>The proposal (as amended) will result in a form of development which will be out of character and will create an undesirable precedent, such that it would undermine the desired future character of the area.</p> <p>The development (as amended) remains excessive in its bulk and scale and is inconsistent with the reasonable expectations of the</p>

Section 4.15 Matters for Consideration'	Comments
	<p>community for this type of development, which should satisfy the applicable planning controls.</p> <p>In this regard, the development (as amended), is not considered to be in the public interest.</p>

### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

### NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 10 submission/s from:

Name:	Address:
Mrs Carolyn McFarlane	Po Box 583 MONA VALE NSW 1660
Mr Gillian Lee Batchen	1951 Pittwater Road BAYVIEW NSW 2104
Mr David Semple Brocklehurst Mrs Beverly Jane Ann Brocklehurst	62 Alexandra Crescent BAYVIEW NSW 2104
Mr Leonard William Baillie	58 Alexandra Crescent BAYVIEW NSW 2104
Mr Peter William Gorian Ms Toni Capel	60 Alexandra Crescent BAYVIEW NSW 2104
Mr Jack Russell	Po Box 583 MONA VALE NSW 1660
Mr John Robert Thirlwell	1963 Pittwater Road BAYVIEW NSW 2104
Mrs Noela Margaret Elsworth	30/7 Bungan Street MONA VALE NSW 2103
Mr John Barry Timothy Byrne	1943 Pittwater Road BAYVIEW NSW 2104
Mr Robert Leon Smith Mrs Robin Laurel Smith	1957 Pittwater Road BAYVIEW NSW 2104

### First Notification - Original Plans (6.3.2019 - 23.3.2019)

The following issues were raised in the submissions to the original notification:

- Accessibility for the future residents of the development to bus stops
- Front entrance is a poor design
- Inadequate parking is provided

- Overdevelopment of the site
- Out of Character with the area and excessive bulk and scale
- Overshadowing
- Privacy impacts
- View loss as a result of the proposed trees to be planted
- Stormwater issues
- Obtrusive lighting
- Heritage issues

#### **Second Notification - Amended Plans (21.9.2019 - 5.10.2019)**

The following additional issues were raised in the submissions to the notification of the amended plans:

- Demolition concerns
- Access to adjoining properties during construction
- Disruption to telecommunications
- Traffic safety for nearby school children
- Compliance with height and excessive height
- Excessive noise
- Impact on stormwater easement

The matters raised within the total submissions received are addressed as follows:

- ***Inadequate provision of access to the nearest return bus stop on the southern side of Pittwater Road***

Comment:

The applicant provided a footpath survey from a registered surveyor, engineers plans and covering report from a Civil Engineer for a new footpath linking the subject site to the return bus stop on the southern side of Pittwater Road (front of St Lukes Grammar School). Council's Development Engineers have reviewed the documentation and there is still insufficient information (details of grades and long-sections) to demonstrate that the footpath will satisfy the requirements of SEPP HSPD.

Therefore, the issue warrants refusal of the application.

- ***Inadequate access for people with a disability from the front entrance of the site into the building due to the grade of the entry path***

Comment:

The front entrance path is well defined and accessible for pedestrian and wheelchair access as demonstrated in applicants Access Report. The entry/foyer area has direct access from the basement carpark stairs and lift. In addition to this, the development serves only 4 units (potentially with also an intercom service), the entry location and arrangement is considered appropriate for the development.

The proposal meets the access requirements under clause 41 of the SEPP (HSPD) and does not warrant refusal of the application on this basis.

- ***Lack of visitor car parking available on the subject site and increased traffic***

Comment:

The proposal is for four (4) self-contained dwellings for aged and disabled persons and the

amended proposal provides for eight (8) carparking spaces (1 extra space compared to the 7 spaces in the original plans) and no visitor car parking space(s). SEPP HSPD does not require visitor car parking spaces if the proposal is for less than eight (8) dwellings.

A detailed traffic and parking report was submitted with the application, prepared by Traffix Traffic and Transport Planners, dated 15 February 2019. That report assesses traffic and parking impacts and the net estimated increase is 0.4 vehicle trips during peak hour, based on the NSW Roads and Maritime Service (RMS) Guidelines. Referrals were also made to Council's Traffic Engineer and the RMS and no objections were raised in relation to the proposal on traffic grounds, with the exception that the RMS are seeking a passing bay wholly within the subject site.

The proposal complies with the parking rates specified in Division 4 of the SEPP, therefore this issue does not have any determining weight.

- ***The built form and presentation to the streetscape is unsatisfactory and the building is incompatible with the surrounding character of the area and the proposal is an over-development of the site***

Comment:

The proposal (as amended) has a singular/monolithic built form that exhibits excessive bulk, scale and mass that is inconsistent with the built form of low-density "detached" style housing in the surrounding area. It has been assessed that the proposed singular/monolithic building, despite the minor amendments made, still does not provide adequate articulation and modulation in the form of physical breaks in the building to provide for "pavilions" or "modules", or any deeply recessed areas such that it would read as distinctly separate built forms across the width of the building as it presents to the street.

The design does not reflect the low density detached style prevalent in the surrounding area and does not attempt to minimise the visual impact it will have on the streetscape. Therefore, the proposal (as amended) remains inconsistent with the Neighbourhood Amenity and Streetscape requirements of clause 33 (Design Principals) outlined within Division 2 of SEPP HSPD. Furthermore, the proposal is inconsistent with the character as described in the Church Point and Bayview Locality Statement in clause D4.4 of Pittwater 21 DCP.

Therefore, it is agreed that the amended proposal does satisfy the character provisions of SEPP HSPD and Pittwater 21 DCP and warrants refusal of the application for these reasons.

- ***Excessive bulk and scale of the proposal and would cause unreasonable overshadowing to the south-eastern neighbouring property***

Comment:

A submission was received from the adjoining property owners at No.1953 Riverview Road, raising concerns in relation to overshadowing as a result of the proposed built form and landscape treatment. As discussed in the section concerning Clause C1.4 of P21 DCP, a reasonable solar access outcome is considered to be achievable for adjoining sites. It is however recognised that design amendments to increase the side setbacks and decrease the bulk and scale would provide improvements in solar access for neighbouring properties. The amended plans provide for a minor increase in side setbacks.

Therefore, as the proposal meets the requirements of clause C1.4 of P21 DCP in relation to solar access, the concerns raised do not warrant refusal of the application on this basis.

- ***The proposal will create visual privacy and overlooking impacts to neighbouring properties***

Comment:

Concern was raised with the original scheme regarding potential overlooking into the private open space areas of surrounding properties. Specifically, the north-western and south-eastern windows, the front terraces and the roof terrace associated with all four (4) units have the ability to overlook surrounding properties.

As assessed under clause C1.5 Visual Privacy in this report, the adjoining properties at No.1953 and No.1957 Pittwater Road would be directly overlooked as a result of the proposed development from the windows and terrace areas, and there are no privacy mitigation measures proposed. As a result, it is agreed that a more appropriate design response is required in order to minimise visual privacy impacts associated with the proposed development.

The amended scheme involves no changes to the south-east elevation, however, conditions could be imposed to address the privacy concerns of 1953 Pittwater Road. The north-east elevation has been amended to reduce the area of the top floor terrace and planter box, which will improve the privacy outcome for the residents at 1957 Pittwater Road.

Therefore, the amended proposal has addressed the privacy concerns and does not warrant refusal of the application.

- ***Proposed replacement canopy trees will be excessive in height and will impact view lines from the neighbouring properties to the rear of the subject site***

Comment:

There is no view loss created by the built form of the proposed development as indicated by the height poles onsite. The concern is in regards to the mature height of the proposed trees to be planted as part of the new landscape treatment of the development site. The amended landscape plan shows there are 9 trees in the 15.0m to 30.0m mature height range to be planted onsite. This is consistent with the objectives and requirements of the Pittwater 21 DCP to provide for the maintenance of the areas tree canopy.

- ***Significant trees to be removed as a result of the development***

Comment:

A number of trees are earmarked for removal to accommodate the building footprint, driveway infrastructure, access paths and retaining walls.

Council's Landscape Officer and Biodiversity Officer have reviewed the proposal and have raised no objections to the tree removals and the subsequent proposed landscaping (Refer to "Referrals" section in this report).

Therefore, the application does not warrant refusal on this basis.

- ***The proposal will create additional stormwater impacts***

Comment:

Detailed stormwater plans, including an on-site detention (OSD) system design were provided with the application. Councils Development Engineers have reviewed the plans and cannot support the proposal due to insufficient information in regards to stormwater for the development. The applicant has still not provided the Hydraulic Model "Drains" for analysis, which is a vital component of the stormwater assessment.

Therefore, the stormwater concerns are concurred with and warrant refusal of the application for

this reason.

- ***Amenity impacts from obtrusive lighting or any solar panels or rooftop elements being constructed on the proposed roof***

Comment:

There is no additional lighting or additional rooftop elements as part of the proposal. Therefore, there will be no additional amenity impacts to neighbouring properties as a result of these elements.

Therefore, the issue does not warrant refusal of the application on this basis.

- ***The proposals impact on the nearby Heritage listed "Maybanke House (Stoneleigh) and Plaque"***

Comment:

A submission was received raising concerns in relation to impacts the proposal may have on the heritage significance of a nearby dwelling house. In response to these concerns, the application was referred to Council's Heritage Officer for a response. Council's Heritage Officer confirmed that there are no concerns with the proposal impacting on the heritage listed dwelling house.

Therefore, this issue does not warrant refusal of the application on this basis.

- ***Demolition concerns***

Comment:

Issues in relation to asbestos, dust, noise and truck movements can be dealt with by way of conditions of consent.

- ***Access to adjoining properties during construction***

Comment:

Issues in relation to maintaining safe and available access can be dealt with by way of conditions of consent.

- ***Disruption to telecommunications***

Comment:

Issues in relation to there being no disruption to telephone and internet access are a matter for the landowners and the providers.

- ***Traffic safety for nearby school children***

Comment:

The traffic experts have reviewed the proposed development and the traffic associated with a net increase of 3 dwellings on the subject site has not been raised as a likely to significantly impact for existing traffic safety for children using the area from St Lukes Grammar School.

- ***Compliance with height and excessive height***

Comment:

The proposal complies with the building height control stipulated under SEPP HSPD. However, there are concerns related to height, including visual bulk and scale and character, which are detailed elsewhere in this report.

- **Excessive noise**

Comment:

The noise associated with a net increase of 3 dwellings on the subject site is not likely to have a significantly impact on surrounding amenity. Such issues can be dealt with by way of conditions of consent in relation to plant and equipment. Resident noise is a Police matter.

- **Impact on stormwater easement**

Comment:

A check of Council's records reveals there is a private stormwater easement affecting the adjoining property at 1953 Pittwater Road and the excavation for the proposed development is in close proximity to the common boundary. This matter can be addressed by way of conditions in relation to a dilapidation report on the stormwater easement and dwelling on the adjoining property.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	There is no objection to the proposed demolition of existing structures and the construction of a multi dwelling development comprising 4 dwellings pursuant to SEPP (Housing for Seniors or People with a Disability) 2004, subject to standard conditions of consent.
Landscape Officer	<p>Following the submission of amended plans, and demonstrated adjustments to the site planning layout, the proposal in terms of landscape outcomes is acceptable, subject to the retention and protection of nominated trees and the completion of landscape works as conditioned.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> <li>• <i>B4.22 Preservation of Trees and Bushland Vegetation</i></li> <li>• <i>C1.1 Landscaping</i></li> <li>• <i>C1.21 Seniors Housing</i></li> <li>• <i>D4 Church Point and Bayview Locality</i></li> </ul> <p>A Landscape Plan is provided and is supported, subject to conditions for additional canopy tree planting to satisfy Pittwater 21 DCP landscape controls.</p> <p>An Arboricultural Impact Assessment is provided, and conditions of consent shall be applied in accordance with the recommendations of the report, including permitted tree removal and requirement for tree protection measures.</p>
NECC (Bushland and	The development does not impact on area mapped as native

Internal Referral Body	Comments
Biodiversity)	vegetation, is not part of Councils Biodiversity layer and does not trigger the Biodiversity Conservation Act. Approved without conditions
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 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b> As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject site has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p><u>Comment:</u></p> <p>As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd dated February 2019 and Council accepts the assessment, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018</p> <p>.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p>There have been no issues identified, and as such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP. .</p>
NECC (Development Engineering)	As a result of the submitted amended plans the revised design does not meet the requirements of the Roads and Maritime Services (RMS)

Internal Referral Body	Comments
	<p>requirements. It is noted that Waste Services do not support the proposal with respect to the position of the bin room, and any amendment of the location of the bin room with respect to the boundary is to be shown on the civil drawings.</p> <p>The applicant's Civil Engineer has included details for the provision of kerb and gutter along the frontage of the site. The design also includes a footpath which will not be required as this footpath will not link to any existing footpath to the east of the site. This footpath is to be deleted as part of any future amendment to the application.</p> <p>The submitted revised footpath plan has been reviewed and there is no long section provided for the proposal up to the existing bus stop on the southern side of Pittwater Rd, indicating the design grades for the footpath. As the SEPP has design requirements for this path it is essential that this information is provided for assessment and for confirmation that the design complies with the SEPP.</p> <p>The hydraulic model 'DRAINS' has yet to submitted to Council.</p> <p>As a result, the Development Engineers cannot support the application due to insufficient information to address Clauses B5.7, B6.1 and B6.2 of Pittwater 21 DCP 2014 and Clause 26 of SEPP (HSPD) 2014.</p>
NECC (Riparian Lands and Creeks)	<p>The applicant has provided a Stormwater Management Plan that outlines the proposed treatment measures to achieve compliance with Pittwater 21 DCP 5.9 and 5.10 and with the SEPP (Coastal Management) 2018 (Division 3 Coastal environment area 13 (1) (c)).</p> <p>While the appropriate measures are included on the detail plan, they are not indicated on the layout plan. The typical pollution control pit D2 must be incorporated into the boundary/junction pit currently indicated as junction pit D3. The typical planter box detail shown as C2 must be indicated on the layout plan, assumedly at the location of C3. These measures combined with the screen in the OSD are considered to meet the requirements of the DCP and the SEPP.</p> <p>The updated stormwater management plan must be provided to the certifying authority prior to construction certificate.</p> <p>A sediment and erosion control plan must be prepared and submitted prior to construction certificate. Sediment and erosion controls must be installed prior to any work on site and maintained until groundcover is re-established.</p> <p>This application is recommended for approval with subject to conditions.</p>
Strategic and Place Planning (Heritage Officer)	<p><b>HERITAGE COMMENTS</b></p> <p>Discussion of reason for referral</p> <p>The proposal has been referred to Heritage as it is within proximity of a heritage item</p>

Internal Referral Body	Comments																		
	<p><b><i>Maybanke House ('Stoneleigh') and plaque</i></b> - 1945 Pittwater Road, Bayview</p> <p><b>Details of heritage items affected</b></p> <p>Details of the item as contained within the Pittwater heritage inventory:</p> <p><u>Statement of significance:</u> This house, built at 1945 Pittwater Road, Bayview, in 1901 is historically significant for its association with the early development of Bayview and with the Australian feminist and writer Maybanke Anderson. Maybanke Anderson wrote the first history of Pittwater and was a passionate educator and feminist. The plaque is a tribute to Maybanke and the adjacent cove named after her. For this reason, both the house and the stone boulder mount and plaque at 1945 Pittwater Road, Bayview are socially significant for the local community. The house offers views to the water.</p> <p><u>Physical description:</u> The house is located on a steep sloped site covered with trees and luxuriant vegetation with scenic views over Pittwater. It is a two-storey sandstone cottage with a tiled roof and veranda on the east and north sides. The house has a terrazzo floor featuring Australian animals and birds</p> <p><b>Other relevant heritage listings</b></p> <table border="1" data-bbox="563 1238 930 1697"> <tr> <td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td> <td>No</td> <td></td> </tr> <tr> <td>Australian Heritage Register</td> <td>No</td> <td></td> </tr> <tr> <td>NSW State Heritage Register</td> <td>No</td> <td></td> </tr> <tr> <td>National Trust of Aust (NSW) Register</td> <td>No</td> <td></td> </tr> <tr> <td>RAIA Register of 20th Century Buildings of Significance</td> <td>No</td> <td></td> </tr> <tr> <td>Other</td> <td>N/A</td> <td></td> </tr> </table> <p><b>Consideration of Application</b></p> <p>The proposal seeks consent for the construction of a seniors living development. The heritage item is located to the south of the site, across two properties. The heritage item is set back further from the street than the adjoining properties due to it being on a rear battle-axe lot. This larger setback gives it a higher elevation than other properties that front Pittwater Road. Given the change in elevation and the spatial separation, impacts upon the heritage item are minimal.</p>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	N/A	
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No																		
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National Trust of Aust (NSW) Register	No																		
RAIA Register of 20th Century Buildings of Significance	No																		
Other	N/A																		

Internal Referral Body	Comments
	<p>Heritage raises no concerns with the proposal and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No            Has a CMP been provided? No            Is a Heritage Impact Statement required? No            Has a Heritage Impact Statement been provided? No</p>
Strategic and Place Planning (Urban Design)	<p>The proposed seniors housing development cannot be supported for the following reasons:</p> <p><b>COMMENTS ON AMENDED PLANS (24/09/2019)</b></p> <p>Following two meetings with the Applicant, it was discussed how the built form might better address issues of bulk and scale, in particular to the northern elevation and street address.</p> <p>Of particular note was the recommendation to further articulate and modulate the northern elevation by way of separation into two modules with a full height vertical separation of 3.0 metres between the eastern and western modules.</p> <p>The amended drawings have reduced this separation niche to less than what was presented in the last without prejudice meeting held on 9 August 2019. Our recommendation for the provision of a 3.0 metre wide niche which steps back 3 metres into the building would provide adequate 'perceived' separation whilst not encroaching too much into the living spaces of the units.</p> <p>As such the proposal in its current form cannot be supported.</p> <p><b>COMMENTS ON ORIGINAL PLANS</b></p> <p><b>1. SEPP Housing For Seniors or People with a Disability</b></p> <p><i>2 Aims of Policy</i>  <i>(1) This Policy aims to encourage the provision of housing (including residential care facilities) that will:</i>  <i>(a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and</i>  <i>(b) make efficient use of existing infrastructure and services, and</i>  <i>(c) be of good design.</i>  <i>(2) These aims will be achieved by:</i>  <i>(a) setting aside local planning controls that would prevent the</i></p>

Internal Referral Body	Comments
	<p><i>development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and</i></p> <p><i>(b) setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and</i></p> <p><i>Part 3 – Design Requirements</i> <i>Division 1 General</i> <i>30 Site Analysis</i> <i>33 Neighbourhood Amenity and Streetscape</i> <i>34 Visual and Acoustic Privacy</i> <i>35 Solar Access and Design for Climate</i></p> <p><u>RESPONSE</u> The proposed development does not meet some of the basic design requirements. The planning demonstrates an over development of the site with an extensive footprint, excessive cut and excavation and reduced internal site amenity.</p> <p><i>Clause 33 Neighbourhood amenity and streetscape</i></p> <p><i>The proposed development should:</i></p> <p><i>(a) recognise the desirable elements of the location’s current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area,</i></p> <p><i>(c) maintain reasonable neighbourhood amenity and appropriate residential character by:</i></p> <p><i>(i) providing building setbacks to reduce bulk and overshadowing, and</i> <i>(ii) using building form and siting that relates to the site’s land form, and</i> <i>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development,</i> <i>(iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors.</i></p> <p><u>RESPONSE</u> The building does not represent core quality and identity values of the desired future character of the Church Point Bayview Locality.</p> <p>Central Void/Niche Facade Following two previous 'without prejudice' meetings it was discussed how the built form might better address issues of bulk and scale, in particular to the northern elevation and street address.</p> <p>Of particular note was the recommendation to further articulate and modulate the northern elevation by way of separation to the two modules with a full height vertical separation of a minimum of 3 metres between the eastern and western modules.</p> <p>The drawings submitted for DA have reduced this separation niche to less than what was presented in the last without prejudice meeting</p>

Internal Referral Body	Comments
	<p>held on 9 August 2019. Our recommendation for the provision of a 3 metre wide niche which steps back 3 metres into the building would provide adequate 'perceived' separation whilst not encroaching too much into the living spaces of the units.</p> <p>As such the proposal in its current form cannot be supported.</p> <p><b><i>Desired Future Character Church Point and Bayview Locality</i></b>  <i>The Church Point and Bayview locality will remain a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. Secondary dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on lowlands in the locality on land that has less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Retail, community and recreational facilities will serve the community.</i></p> <p><u>RESPONSE</u>  It is assessed that the development, as previously outlined in this response represents an excessive style of development. The low-density residential area with dwelling house of no more than two storeys is the predominant character. The proposed development does not meet the desired future character objectives.</p> <p>A view analysis from prominent locations; Scotland Island and Bilgola Plateau have not been addressed in the application and as such is not supported.</p> <p><b><i>Clause 34 Visual and acoustic privacy</i></b>  <i>The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:</i>  <i>(a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and</i>  <i>(b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.</i></p> <p><u>RESPONSE</u>  It is noted the location of units fronting the Pittwater Road elevation will pose potential acoustic, amenity and pollution issues. Additionally, it is noted that the internal planning locates all the bedrooms to this elevation. Bedrooms are located close to the driveway and basement parking. Visual and acoustic privacy and amenity may be an issue for the neighbouring low rise residential properties.</p> <p><b><i>2. SENIORS LIVING POLICY : Urban Design Guideline for Infill Housing 2004</i></b></p> <p><i>2. Site Planning and Design (page 6)</i></p>

Internal Referral Body	Comments
	<p><i>Objectives</i> - <i>To minimise the impact of new development on neighbourhood character.</i></p> <p><u>RESPONSE</u> The opportunity to break down the built form into smaller blocks across the site with courtyards and internal landscape treatments that optimise orientation, pedestrian amenity, wayfinding and environmental conditions should be further explored. The distribution of two double storey blocks carefully sited across the site would offer the opportunity to comply with some of the design quality principles and recommendations in the SEPP Seniors Living Policy as follows ;</p> <ul style="list-style-type: none"> <li>• Site Planning to optimise solar gain and natural ventilation</li> <li>• Fine grain approach to the pedestrian ground plane and wayfinding across the site</li> <li>• Opportunity for internal courtyard gardens and pedestrian amenity at the ground level to support the recommended individualisation of the blocks that have distinct identity</li> <li>• Reduce the impacts on the existing streetscape (adjacent R1 low rise residential)</li> </ul> <p><i>4. Impacts on Neighbours (page 10)</i> <i>Objectives</i> - <i>to minimise impacts on the privacy and amenity of existing neighbouring dwellings</i> - <i>to retain neighbours' views and outlook to existing mature planting and tree canopy</i> - <i>to provide adequate building separation</i></p> <p><i>Design Principles and Better Practice</i> • <i>Reduce the visual bulk of roof forms by breaking down the roof into smaller elements rather than having a single uninterrupted roof structure</i> • <i>Design the relationship between buildings and open space to be consistent with the existing block patterns</i></p> <p><u>RESPONSE</u> As previously discussed, the proposed development does not demonstrate a relationship between buildings and open space. Breaking down the building form to allow for ground level courtyard and open space to with smaller two storey pavilion type developments is recommended to address the surrounding context and natural bushland setting. The current development is more reflective of a multi residential flat building. A less intense development that has relationship between building and open space is recommended.</p> <p><i>5. Internal Site Amenity (page 12)</i> <i>Design Principles and better practice</i> <i>In villa or townhouse style developments provide dwellings with a</i></p>

Internal Referral Body	Comments
	<p><i>sense of individual identity through building articulation, roof form and other architectural elements;</i>  <i>- Provide buffer spaces and or barriers between dwelling and driveways, or between dwellings and communal areas</i>  <i>- Use trees, vegetation and fencing or screening devices to establish curtilages for individual dwellings, . . .</i></p> <p><b>RESPONSE</b>  As noted in the comments above (2. Site Planning and Design) the internal site amenity should be further considered in the planning strategy to provide dwellings that give a sense of individual identity and amenity. This can be achieved with a smaller scale distribution of buildings across the site arranged so as to provide individual identity and wayfinding, more outdoor ground plane pedestrian friendly green courtyards and landscaping that filters through the site and buffers the adjacent residential development from the condition of major arterial road. Breaking down the single monolithic built form of into two smaller two level pavilion style buildings separated internally with green planting and buffers will assist to achieve this.</p> <p><b>3A Site Analysis</b>  Insufficient site analysis details accompany the documentation and as such the development cannot be adequately assessed.</p> <p><b>3D Communal and Open Public Space</b>  There is no provision of communal open space.</p> <p><b>4F Common Circulation and spaces</b>  <b>Objective 4F-1</b>  <i>Common circulation spaces achieve good amenity and properly service the number of apartments</i>  <b>Design Guidance</b>  <i>Longer corridors greater than 12 metres in length from the lift core should be articulated. Design solutions may include;</i>  <ul style="list-style-type: none"> <li>• <i>A series of foyer areas with windows and spaces for seating</i></li> <li>• <i>Wider areas at apartment entry doors and varied ceiling heights</i></li> </ul> </p> <p><b>RESPONSE</b>  The amenity of the underground corridor and passages as the main pedestrian thoroughfare/tunnel does not represent a good design outcome for residents, with no access to daylight and a less than optimum response to CPTED principles.</p> <p><b>3F Visual Privacy</b></p> <p><b>RESPONSE</b>  The planning arrangement places bathrooms and bedrooms located in the north eastern zone of the building. Bedrooms and bathrooms are not optimally oriented in the planning arrangements with full height glazing presenting potential privacy issues to the occupants of the units.</p>

Internal Referral Body	Comments
	<p>There are visual privacy issues with the windows on the western and eastern elevations which show no indication of privacy screening or other measures to mitigate overlooking onto neighbouring properties on both the north and south boundaries of the site.</p> <p><i>4C Ceiling Height</i></p> <p>Section AA on DA-10 shows insufficient floor to floor dimensions. Whilst the floor to ceiling dimensions show 2700 clear the 200 mm slab dimensions is inadequate to accommodate for concealed ceiling in addition to any services, ceiling lining and battening build up. The ADG recommends minimum 3100mm floor to floor comprising of 2700mm with 400mm allocated for slab and services zone. Refer Figure 4C.1 on page 86 and objectives on page 87 of the ADG.</p> <p>.</p> <p><b>4. PITTWATER 21 DCP</b></p> <p><i>C1.21 Seniors Housing</i></p> <p><i>Outcomes</i></p> <ul style="list-style-type: none"> <li>• <i>Visual bulk and scale of development is limited. (En, S)</i></li> <li>• <i>Restricted footprint of development on site. (En)</i></li> <li>• <i>Retention of the natural vegetation and facilitate planting of additional landscaping where possible. (En)</i></li> <li>• <i>Achieve desired future character of the locality. (En, S)</i></li> <li>• <i>Social mix of residents in the neighbourhood. (S)</i></li> <li>• <i>Minimal cumulative impact from State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. (S)</i></li> </ul> <p>Seniors housing developed in accordance with the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, outside the R3 Medium Density Residential and B4 Mixed Use zones shall:</p> <ul style="list-style-type: none"> <li>• <i>Be in keeping with the development of the surrounding area in regard to bulk, building height, scale and character.</i></li> <li>• <i>Not result in such an accumulation of Seniors Housing developments to create a dominant social type in the surrounding neighbourhood.</i></li> <li>• <i>Not result in such an accumulation of Seniors Housing developments to create a dominant 'residential flat building' appearance in the neighbourhood.</i></li> </ul> <p><i>The Desired Future Character for each locality can be found in Part A4 of this DCP.</i></p> <p><i>Information to be shown on the Development Drawings</i></p> <ul style="list-style-type: none"> <li>• <i>A locality and neighbourhood plan that satisfactorily addresses the minimum site analysis criteria of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, and identifies</i></li> </ul>

Internal Referral Body	Comments
	<p><i>the elements contributing to the desired future character of the locality.</i></p> <p><i>Information to be included in the Statement of Environmental Effects</i></p> <p><i>An analysis of the proposed development demonstrating that: -</i></p> <ul style="list-style-type: none"> <li>• <i>The visual bulk and scale of the development fits in with surrounding development</i></li> <li>• <i>The development contributes positively to the Desired Future Character of the locality</i></li> <li>• <i>The footprint of the development on the site has been restricted and has responded to significant vegetation and other site constraints</i></li> <li>• <i>The retention of natural vegetation and the planting of additional landscaping can be achieved</i></li> </ul> <p><i>As part of the Statement of Environmental Effects, applicants shall:</i></p> <ul style="list-style-type: none"> <li>• <i>include an assessment of the cumulative impact of the proposal, and</i></li> <li>• <i>demonstrate that the potential cumulative impact of the development has been minimised, and</i></li> <li>• <i>make reference to reports prepared by suitably qualified professionals such as urban designers and social planners.</i></li> </ul> <p><b>RESPONSE</b></p> <p>The visual bulk and scale of the development is not in keeping with Low density residential nature of the surrounding environment. The development will not have a positive impact on the desired future character of the locality.</p> <p>The excavation and extents of the proposed footprint of the development is excessive.</p> <p>The potential to break down the impacts of a perceived 3 storey development should consider breaking down of the built form into smaller double storey pavilion type development on the site.</p>
Traffic Engineer	<p><b>Access</b></p> <p>The access driveway must be designed in accordance with AS 2890.1- 2004 (Parking Facilities, Part 1: Off-street car parking).</p> <p>Due to both horizontal and vertical sight distances restrictions from the curved alignment and retaining wall, a minimum 5.5m wide driveway is required to reduce vehicular conflict.</p> <p>The development proposes a minimum 3.5m driveway width and traffic signal system, with detailed design undertaken prior to the release of the Construction Certificate.</p>

Internal Referral Body	Comments
	<p>Due to the topography of the site and car park layout it does not appear possible for a signal system to safely manage and provide adequate advanced warning for drivers entering the driveway from both directions off Pittwater Road without significant visual impact to the area or provision of a passing bay.</p> <p>A driveway width which does not allow for two vehicles to pass on the driveway, could result in reversing movements onto Pittwater Road is considered to be an arterial road, with only one traffic lane in each direction.</p> <p>It is noted that the access concerns have also been raised by the Roads &amp; Maritime Services (RMS), as Pittwater Road is a classified Regional Road. Still awaiting comments from RMS to determine suitability of the proposed driveway design.</p> <p><b>Pedestrian</b></p> <p>The plans show a pedestrian path to the entry of the property but does not provide any provision of a footpath across the full frontage and access to the existing bus stops, as required by the SEPP.</p> <p>Kerb and gutter must also be provided on Pittwater Road.</p> <p><b>Parking</b></p> <p>Council's DCP requires visitor parking at a rate of 1 space per 3 dwellings, which would require 2 visitor spaces. The development does not provide any visitor car space, and the Applicant has indicated that there is available on-street parking in the area. The proposal should therefore incorporate indented parking on the frontage to the development as part of the required pedestrian infrastructure and kerb and gutter.</p> <p>Transport Network cannot support the proposed application in its current form due to the issues raised and insufficient information provided.</p>
Waste Officer	The amended plans have not addressed Councils concerns in relation to waste management. The proposal does not comply with Council requirements in that the bin storage facility is in the basement. This location is unacceptable to Council as the bin storage must be no

Internal Referral Body	Comments
	<p>more than 6.5 metres from the property boundary and access must be via a separate pathway. Utilisation of the driveway for access is not acceptable.</p> <p>As a result the proposal cannot be supported. The bin storage facility is to be relocated and amended plans are to be submitted to Council that demonstrate that the bin room complies with Council's requirements found in the Waste Management Guidelines.</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.
Concurrence – NSW Roads and Maritime Services (s100 – Dev. on proposed classified road)	<p>The Development Application was referred to the Roads and Maritime Services (RMS) as a vehicle access point of the proposal is to a state road network and therefore, concurrence under Section 138 of the Roads Act 1993 is required.</p> <p>The RMS referral response received on the 18 March was as follows:</p> <p><i>"Roads and Maritime has reviewed the submitted documentation and request the following information for further assessment:</i></p> <ul style="list-style-type: none"> <li>• <i>The proposed driveway needs to be amended to be in accordance with AS 2890.1- 2004 (Parking Facilities, Part 1: Off-street car parking). The driveway shall be a minimum of 5.5 metres in width for a minimum distance of 6 metres from the property boundary. Plans are to be submitted to Roads and Maritime reflecting this amendment.</i></li> <li>• <i>The swept path of the longest vehicle entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. The swept paths are to show that vehicles can enter and exit the site simultaneously. In this regard, a plan shall be submitted to, which shows that the proposed development complies with this requirement. The road boundary and line markings are to be displayed on all future swept path plans."</i></li> </ul>

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

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

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

operational provisions which the proposal is considered to be acceptable against.

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

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

#### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use. Conditions are included to ensure the safe handling and appropriate disposal of any potential asbestos or lead based paint material if uncovered during demolition works.

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

A BASIX certificate has been submitted with the application (see Certificate No. 991214M and 24 January 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 991214M and 24 January 2019).

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

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

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

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

The application has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) and is for in-fill self-care housing, which is defined as follows:

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

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

### Chapter 1 – Preliminary

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

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

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

Comment:

(a) The proposal includes 3 x 3 bedroom apartments, and 1 x 2 bedroom apartment for self-contained living. The development will increase the supply of seniors housing in the Northern Beaches Council area and has been designed to meet the demand for independent living for seniors as "in-fill self-care housing". The design of the building is required to comply with *Schedule 3 Standards concerning accessibility and usability for hostels and self-contained dwellings*. Conditions of consent could be included to ensure all self-contained units are constructed to meet these standards under the SEPP, should the Panel consider the application is worthy of approval.

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

c) The development comprises a single two storey building containing one (1) apartment on the lower ground floor level, two (2) apartment on the ground floor level and one (1) apartment on the first floor level, totalling 4 dwellings. The structures sit within a landscaped setting with basement car parking accessed from Pittwater Road. The proposal fails to comply with specific built form controls contained within the SEPP and is not considered to be consistent with general detached style character of the area.

## Chapter 2 – Key Concepts

Comment:

The proposal involves 4 x self-contained dwellings as defined in Clause 13 of the SEPP.

Key concepts of SEPP HSPD include:

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

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

## Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the

occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. Should the application be approved, such a condition would need to be included in the consent. The following is an assessment of the proposal against the requirements of Chapter 3 of SEPP (HSPD).

Development Criteria			
Clause	Requirement	Proposal	Complies
<b>PART 2 - Site Related Requirements</b>			
26(1)	Satisfactory access to: (a) shops, banks and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner	The site has access via a public transport (Route 156) bus service to the central business area of Mona Vale. This local centre contains a range of services for banking and finance, shopping and groceries, postal and government offices, community services, medical services and recreation facilities.  The footpath design for pedestrian access from the return bus stop on the southern side of Pittwater Road (in front of St Lukes Grammar School) has not provided sufficient information on gradients and longitudinal sections to confirm compliance with the SEPP.	<b>Does not comply</b>
26(2)	Access complies with this clause if: (a) the facilities and services referred are located at a distance of not more than 400 metres from the site or (b) there is a public transport service available to the residents not more than 400 metres away.	The site is within 150.0m of a public transport (Route 156) bus service which would take residents to a shopping centre (Mona Vale Commercial Centre) with appropriate facilities.  It is noted that further regular services can be obtained from Mona Vale Commercial Centre to Narrabeen, Collaroy, Dee Why, Warringah Mall, Manly and through to the CBD.  The footpath design for pedestrian access from the return bus stop on the southern side of Pittwater Road (in front of St Lukes Grammar School) has not provided sufficient information on gradients and longitudinal sections to confirm compliance with the SEPP.	<b>Does not comply for return journey bus stop</b>
27	If located on bush fire prone land, consideration has been given to the relevant bushfire guidelines.	Not applicable	N/A
28	Consideration is given to the suitability of the site with regard to the availability of reticulated	Reticulated water and sewerage is available. The proposal is subject to Sydney Water requirements via a "Section 73 Certificate". This issue is addressed by	Complies

Development Criteria			
Clause	Requirement	Proposal	Complies
	water and sewerage infrastructure.	conditions.	
29	<p>The consent authority to consider certain site compatibility criteria for development applications to which Clause 24 does not apply having regard to the following criteria specified in Clauses 25 (5)(b)(i), 25(5)(b)(iii), and 25(5)(b)(v):</p> <p>i) the natural environment and the existing uses and approved uses of land in the vicinity of the proposed development</p> <p>iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,</p> <p>v) the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development.</p>	<p>The site currently contains a single dwelling house and the site sits within an area which is characterised as a low density residential environment. An increase in side setbacks and greater articulation/modulation would provide a more appropriate design with a landscape setting that could screen and soften the built form, which would achieve greater compliance with this clause.</p> <p>An OSD system will be installed as part of the development and connected to Councils infrastructure in Pittwater Road to manage stormwater flow. Off street carparking is provided within the basement level for each dwelling. However, design issues with the stormwater management and the driveway access are required to be addressed before the proposal can be supported. The proposal (if approved) would also be subject to Section 94A contributions to assist in providing future demand for local services and infrastructure.</p> <p>However, the application has not demonstrated that the proposal meets the requirements of Clause 26, in that adequate access from the return bus stop to the subject site has not been demonstrated.</p> <p>The proposal (as amended) is designed as one building across two levels (plus basement) with an apartment style appearance. The overall design results in one large monolithic building which exhibits excessive bulk and scale and is inconsistent with the low density pattern of the locality and with the scale of residential uses adjacent and surrounding. Greater articulation and modulation in the form of physical breaks in the building to provide for "pavilions or modules", or a deeply recessed area, such that it would read as two distinct forms across the frontage of the site would provide for a better "fit" and would be less jarring within the R2 Low density zone.</p> <p>Therefore, proposal will result in a</p>	<b>Does not comply</b>

Development Criteria			
Clause	Requirement	Proposal	Complies
		development that is inconsistent with the existing and desired future character of the locality.	
<b>PART 3 - Design Requirements – Division 1</b>			
30	A site analysis is provided.	Site analysis is provided detailing the site features and surroundings.	Complies

### Clause 31 Design of in-fill self-care housing

Pursuant to Clause 31 of the SEPP, in determining a development application to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the former NSW Department of Infrastructure, Planning and Natural Resources dated March 2004.

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

Section	Requirements	Comment
1. Responding to context	<p><u>Built Environment</u> – New development is to follow the patterns of the existing residential neighbourhood in terms of built form.</p> <p><u>Policy Environment</u> – Consideration must be given to Councils own LEP and/or DCPs where they may describe the character and key elements of an area that contribute to its unique character.</p>	<p><u>Built Environment</u> The pattern of neighbourhood development in the vicinity of the site is detached style residential dwellings houses in landscaped settings.</p> <p>The Bayview Anchorage Marina located approximately 120m to the north-east of the site has a greater scale, but is not a residential development and is not immediately adjacent to the site and should not be seen as influencing the character relevant to the subject site.</p> <p>Therefore, the pattern of development contains a mix of low density residential development with a number of seniors housing developments.</p> <p>The proposal (as amended) will not maintain the detached style of housing consistent with the low density environment. The proposal is a large monolithic building reminiscent of a residential flat building and fails to achieve a bulk and scale and landscaped surrounds</p>

Section	Requirements	Comment
		<p>that is typical of the streetscape and Bayview locality.</p> <p><u>Policy Environment</u> The Pittwater LEP has objectives for the zone that determine the character of the area and require the area to be made up of housing that provides for the needs of the community within a low density environment, enables other land uses that provide facilities or services to meet the day to day needs of residents; and ensures that low density residential environments are characterised by landscape settings in harmony with the natural environment.</p> <p>The proposal, despite the amendments, fails to achieve these objectives in relation to the character of the area, with a bulk, scale and design of development that is not desirable for the streetscape or broader character of Pittwater Road, Bayview.</p>
2. Site Planning and design	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>-Minimise the impact of new development on neighbourhood character</li> <li>-Minimise the physical and visual dominance of car parking, garaging and vehicular circulation.</li> </ul>	<p><u>Neighbourhood Character</u> The amended proposal presents as a singular/monolithic built form that exhibits excessive bulk, scale and mass that is not consistent with the built form of low-density “detached” style housing in the surrounding neighbourhood area.</p> <p>The proposed singular/monolithic building does not provide adequate articulation and modulation in the form of any physical breaks or substantial recesses in the building. The significant vertical and horizontal bulk with no stepping back of the upper floors, combined with insufficient side setbacks, demonstrates incompatibility with the low density residential character. The large unbroken built form does not contribute favourably to the quality and identity of the residential area and does not reflect the predominant character of residential</p>

Section	Requirements	Comment
		<p>development in the area.</p> <p>The amended proposal has not demonstrated that the established neighbourhood amenity will be maintained. The proposal results in non-compliant side setbacks, contributing to excessive bulk and scale and unreasonable impacts on neighbouring privacy.</p> <p>The considerable extent of earthworks does not adequately consider the natural landform, and the design does not respond to the topography of the site by reflecting good hillside practice of the mass stepping down the site.</p> <p>Consequently, the proposal, despite the amendments, does not meet the objective.</p> <p><u>Carparking</u> Carparking is located within a basement and is not readily visible from the street. Parking is accessed from Pittwater Road with adequate carparking spaces are provided to comply with the SEPP and enables all cars to enter and leave in a forward direction. However, the proposed driveway does not provide an appropriate passing bay wholly within the site, to reduce vehicular conflict due to the horizontal and vertical sight distance from the curved driveway alignment. Therefore, the car parking does not meet the objective.</p>
3. Impacts on streetscape	<p>Objectives of this section are to:</p> <ul style="list-style-type: none"> <li>-Minimise impacts on the existing streetscape and enhance its desirable characteristics</li> <li>-Minimise dominance of driveways and car park entries in streetscape.</li> </ul>	<p>The building (as amended) will display a significant vertical bulk when viewed in the streetscape. There is no stepped profile to the upper floors to provide visual relief corresponding to the sloping topography. The flat vertical presentation will negatively impact on the streetscape.</p> <p>The installation of the driveway</p>

Section	Requirements	Comment
		<p>access point on Pittwater Road is appropriate. However, there are some design issues which Council's Development Engineers, Traffic Engineers and RMS require to be addressed before the proposal could be supported.</p> <p>Therefore, the amended proposal does not comply with the objectives.</p>
4. Impacts on neighbours	The proposal is generally in accordance with the requirements of this section.	<p>The proposal (as amended) has not demonstrated that a reasonable neighbourhood amenity can be maintained and the resultant development is not considered to reflect an appropriate residential character and appearance.</p> <p>The amended proposal still results in non-compliant setbacks to the side boundaries, contributing to excessive bulk and scale when viewed from neighbouring properties and unreasonable impacts associated with visual privacy. The terrace on the upper level has been amended to increase the side setback and this has addressed the overlooking concerns raised by the owners of 1957 Pittwater Road. Other privacy concerns can be addressed by conditions of consent.</p> <p>Concerns with the proposed driveway access and management of stormwater are required to be further assessed by Councils Officers and the RMS before the proposal can be supported.</p> <p>Conditions of consent would be recommended to address potential environmental impacts during construction and ensure compliance with relevant environmental controls.</p>
5. Internal site amenity	<p>Objectives of this section are to:</p> <p>-Provide safe and distinct pedestrian routes to all dwellings and communal</p>	<p>Safe pedestrian access is provided from the public domain and internally for the development by pathways. Off-street parking for residents in the basement is provided, which meets the requirements of the SEPP.</p>

Section	Requirements	Comment
	facilities.	<p>The wheelchair accessible routes for residents of the building are directed to Pittwater Road. The proposal has suitable pedestrian links to the public domain and internal areas of common property.</p> <p>However, the main pedestrian thoroughfare/tunnel does not represent a good design outcome for residents, with no access to daylight and a less than optimum response to CPTED principles.</p>

### Clause 32 Design of residential development

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

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

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	Desirable amenity elements of the location include; detached style of development in landscaped settings, open space buffers of rear setbacks and private living environments with minimal overshadowing and good road access to services and facilities. These factors are not incorporated into the proposed development.	<b>Does not comply</b>
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.	Councils Heritage Officers have assessed the application due to the sites close proximity to the heritage listed " <i>Maybanks House (Stoneleigh) and plaque</i> ". The proposal will not have any unreasonable impact on the nearby heritage item.	Complies
	c. Maintain reasonable neighbour amenity and	Reasonable neighbour amenity will be not be maintained in that the proposal	<b>Does not comply</b>

Control	Requirement	Proposed	Compliance
	<p>appropriate residential character by;</p> <p>(i) providing building setbacks to reduce bulk and overshadowing</p> <p>(ii) using building form and siting that relates to the site's land form, and</p> <p>(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development,</p> <p>(iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors.</p>	<p>has been designed as follows:</p> <p>i) Insufficient building setbacks to minimise bulk and scale, and alleviate privacy impacts. Increased setbacks and reduced bulk and scale would also improve solar access.</p> <p>ii) The proposal will require substantial excavation for the site to accommodate the development. The extent of excavation for the basement and building footprint encroaches within side setback areas and does not reflect good hillside practice as the mass of the development does not "step-down" the slope to correspond with the topography of the site.</p> <p>iii) The substantial excavation results in a building envelope and building height that is compliant with the controls. However, the proposed building will display a significant vertical bulk when viewed in the streetscape resulting in an incompatible scale with neighbouring developments and the streetscape.</p> <p>iv) There are no neighbouring buildings located on a nil setback to the boundary.</p>	
	<p>d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line,</p>	<p>The proposal is consistent with setbacks on adjacent land and complies with the 6.5m setback in the Pittwater 21 DCP.</p>	Complies
	<p>e. embody planting that is in sympathy with, but not</p>	<p>The proposal does involve the planting of additional canopy trees. Small to medium sized</p>	Complies

Control	Requirement	Proposed	Compliance
	necessarily the same as, other planting in the streetscape.	trees and shrubs are used that includes perimeter planting and landscaping within the spaces between the dwelling and side setbacks. Landscaped open space and deep soil zones are provided at the front of the site to enable continuity with adjoining front gardens.	
	f. retain , wherever reasonable, major existing trees, and	The development proposes to remove significant canopy trees on the site. These existing trees provide landscaped and streetscape amenity and would screen and soften the built form of the proposal. The removal of significant canopy trees is inconsistent with the existing neighbourhood amenity and streetscape. However, there is the retention of some existing significant trees and the planting of additional canopy trees to ensure the landscape outcome is acceptable.	Complies
	g. be designed so that no building is constructed in a riparian zone.	The site is not within a riparian zone.	N/A
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways,	Visual and acoustic privacy impacts have generally been addressed in the amended plans.  Additional privacy measures are required to ensure adequate privacy in these locations. This can be conditioned.	<b>Complies (subject to conditions)</b>

Control	Requirement	Proposed	Compliance
	parking areas and paths.		
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.	<p>The adjoining property to the south-east is a two storey dwelling house. The dwelling house has a kitchen window and laundry windows on the north-western elevation, and its private open space area is located in the south-eastern area adjoining the dwelling house.</p> <p>Assessment of the Shadow Diagrams DA -01, 02 &amp; 03, dated January 2019, demonstrated that the neighbouring property achieves the required 3 hours of solar access between 9.00am and 3.00pm. However, if the development reduced the bulk and scale, and provided larger side setbacks, the solar access impacts would be reduced.</p> <p>The proposal has been submitted with a BASIX certificate and energy rating assessment to demonstrate that the dwellings will meet performance standard for thermal and cooling condition for sustainable building design and comfortable living.</p> <p>The living rooms of all units are oriented towards north-east, which should assist in maximising the amount of sunlight received in these areas. However, concern is raised with regard to the amount of direct sunlight hitting windows and private open space areas associated with living areas with Unit 1.</p>	Complies
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where	There are stormwater design issues that Councils Development Engineers require to be addressed before	<b>Does not comply (insufficient information)</b>

Control	Requirement	Proposed	Compliance
	practical include on-site detention and water re-use.	<p>the proposal can be supported in accordance with Council's Stormwater Policy, and Technical Specification.</p> <p>This is specifically in relation to the "DRAINS" hydraulic model that has been requested but not provided.</p>	
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	<p>The development provides clear sight lines of the entry path to the 4 units for passive surveillance.</p> <p>However, the underground corridor and passages as the main pedestrian thoroughfare/tunnel does not represent a good design outcome for residents, and a less than optimum response to CPTED principles.</p> <p>Secure lift access and basement access can be provided including intercom facilitates to maintain security.</p>	<b>Does not comply (underground corridor)</b>
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet	<p>Vehicle and pedestrian entries are separate with the pedestrian access tunnelled underneath the driveway/carpark entrance.</p> <p>Carparking is located within the basement and incorporates an entry to the lift that services the development.</p>	<p>Complies</p> <p>Complies</p> <p>Complies</p>

Control	Requirement	Proposed	Compliance
	safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.	<p>A concrete path from Pittwater Road leads the pedestrians into the entrance of the development.</p> <p>There is a concrete footpath on the northern side of Pittwater Road and is of a gradient that will not hinder access to the the bus stop on the northern side of Pittwater Road to gain access to the the Mona Vale Commercial Centre.</p> <p>However, there is no design for a constructed footpath access to the return route bus stop on the southern side of Pittwater Road. Therefore, the application does not comply with the requirements of the clause.</p>	<p>Complies</p> <p><b>Does not comply</b></p>
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	<p>A garbage bin storage room is located within the basement carparking area.</p> <p>Access to the street for waste management is a less than optimal response in that the access is via the driveway, not a separate pathway within the site.</p> <p>The development is subject to the requirements of <i>Council's Waste Management Plan</i> for the provision of appropriate bins, however the bin storage room does not meet the relevant Council requirements.</p>	<b>Does not comply</b>

**Part 4 - Development standards to be complied with Clause 40 - Development standards – minimum sizes and building height**

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

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

Control	Required	Proposed	Compliance
Site Size	1,000 sqm	1,296.5sqm	Complies
Site frontage	20 metres	32.64m (by survey) to Pittwater Road	Complies
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	7.7m	Complies
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	2 storeys	Complies
	A building located in the rear 25% of the site must not exceed 1 storey in height	Unit 1 is single storey at the rear of the site	Complies

#### Clause 41 Standards for hostels and self contained dwellings

Clause 41 prescribes various standards concerning accessibility and useability having regard to relevant Australian Standards. The applicant has submitted a report and checklist prepared by an accredited access consultant verifying that the proposal will comply with the relevant standards. These standards may be reinforced via suitable conditions of consent, should the application be worthy of approval.

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

Clause 50 prescribes that consent to development for the purpose of self-contained dwellings must not be refused on the grounds of building height, density and scale, landscaped area, deep soil zones, solar access and parking, if certain numerical standards are met. The following table outlines compliance with the standards specified in clause 50 of SEPP (HSPD):

Control	Required	Proposed	Compliance
Building height	8.0m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	7.7m	Complies
Density and scale	0.5:1	0:5:1	Complies
Landscaped area	30% of the site area is to be landscaped	53% (553sqm) of the site is to be landscaped.	Complies

Control	Required	Proposed	Compliance
Deep soil zone	15% of the site area. Two thirds of the deep soil zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.	The site only contains 165.1sqm (12.7%) of deep soil landscape at the rear of the site.	<b>Does not comply</b>
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	Three (3) dwellings should receive a minimum of 3 hours solar access to internal living areas and to private open space.  However, concern is raised with regard to the amount of direct sunlight hitting windows and private open space areas associated with living areas with Unit 1. The submitted shadow diagrams do not demonstrate compliance with this standard.	<b>Does not comply</b>
Private open space	(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and  (ii) in the case of any	Dwelling 1: 32.341 sqm  Dwelling 2: 14.46 sqm Dwelling 3: 8.92 sqm (under) Dwelling 4: 39.8 sqm  (only areas 3m x 3m included)  Dwelling 1, 2 and 3 have additional private open spaces areas (terraces), however these are below the required 3m x 3m requirement).  The total private open spaces area, with these areas included are as follows:	<b>Does Not comply (Dwelling 2 and 3)</b>

Control	Required	Proposed	Compliance
	other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area	Dwelling 1: 65.165 sqm Dwelling 2: 34.238 sqm Dwelling 3: 35.755 sqm Dwelling 4: 66.56 sqm (original, but has been reduced under amended scheme)	
Parking	(10 bedrooms proposed – 5 carparking spaces required)	0.5 spaces per bedroom. There are 11 bedrooms proposed - 6 car parking spaces are required.  The proposal has 8 carparking spaces.	Complies
Visitor parking	None required if less than 8 dwellings	No visitor car parking spaces are proposed.	Complies

#### Chapter 4 – Miscellaneous

The proposed development is consistent with the provisions contained in Chapter 4. The site is not on environmentally sensitive land, is not affected by amendments to other SEPPs, and the special provisions do not apply to the land.

#### SEPP (Infrastructure) 2007

##### Ausgrid

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

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

##### Comment:

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

### SEPP (Coastal Management) 2018

The site is located within the Coastal Use Area and Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the proposed development, the consent authority 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
- The proposal is not likely to cause an adverse impact upon the matters listed in clause 14(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 14(1) of the CM SEPP
- The proposal is not likely to cause increased risk of coastal hazards on the site or other land as listed in clause 15 of the CM SEPP

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

### Pittwater Local Environmental Plan 2014

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

### Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings	8.5m	7.7m	Yes

### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.9 Preservation of trees or vegetation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

## Detailed Assessment

### 7.2 Earthworks

A Geotechnical Assessment, prepared by Ascent, reference number Ref: AG19015, dated 30 January, 2019 was submitted with the application. Should the application be approved, the report and its recommendations can be included within the conditions of consent to ensure there is no adverse impacts to the surrounding properties resulting from the proposed excavation. Suitable conditions can be imposed in relation to Dilapidation Reports on adjoining properties.

### 7.7 Geotechnical hazards

A Geotechnical Assessment, prepared by Ascent, reference number Ref: AG19015, dated 30 January, 2019 was submitted with the application. Should the application be approved, the report and its recommendations can be included within the conditions of consent to ensure there is no adverse impacts to the surrounding properties resulting from the proposed development on sloping land. Suitable conditions can be imposed in relation to Dilapidation Reports on adjoining properties.

## Pittwater 21 Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	10.0m	-	Yes
Rear building line	6.0m	6.5m - 10.3m Ground Floor 6.0m - 10.3m First Floor	- -	Yes Yes
Side building line	3.825m North-Western	3.0m	24.5%	No
	3.875m South-Eastern	3.0m	24.5%	No
Building envelope	3.5m North-Western	No encroachment	-	Yes
	3.5m South-Eastern	No encroachment	-	Yes
Landscaped area	50%	50%	-	Yes

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.4 Church Point and Bayview Locality	No	No
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	No	No
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	No	No
B5.10 Stormwater Discharge into Public Drainage System	No	No
B6.1 Access driveways and Works on the Public Road Reserve	No	No
B6.2 Internal Driveways	No	No
B6.3 Off-Street Vehicle Parking Requirements	No	No
B8.1 Construction and Demolition - Excavation and Landfill	No	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	No
C1.5 Visual Privacy	Yes	N/A
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	No	No
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	No	No
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.21 Seniors Housing	No	No
C1.23 Eaves	No	No
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D4.1 Character as viewed from a public place	No	No
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	Yes	Yes
D4.6 Side and rear building line	No	No
D4.8 Building envelope	Yes	Yes
D4.9 Landscaped Area - General	Yes	Yes
D4.11 Fences - General	Yes	Yes
D4.13 Construction, Retaining walls, terracing and undercroft areas	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
D4.14 Scenic Protection Category One Areas	No	No

Detailed Assessment

**A4.4 Church Point and Bayview Locality**

The proposed seniors housing development, despite the amendments made, remains inconsistent with the desired future character of the Church Point and Bayview Locality with regard to both the type of development and the proposed density of development. It is noted that other localities include the word '*primarily*' before the density specification, and would allow for the inclusion of a greater density of development, whereas the Church Point and Bayview Locality does not.

The proposed development will not have the appearance of a "detached-style" dwelling house in a natural landscaped setting, integrated with the landform and landscape. Particularly, as the singular monolithic building displays a significant vertical bulk when viewed in the streetscape. There is no stepped profile to the upper floors to provide visual relief which relates to the sloping topography of the site. The flat vertical presentation will be visually prominent and will negatively impact on the streetscape and does not reflect the predominant character of residential development in the area.

The proposed singular/monolithic building does not provide adequate articulation and modulation in the form of physical breaks in the building to provide for "pavilions" or "modules", or any deeply recessed areas such that it would read as distinctly separate forms across the frontage of the site, thereby reflecting the low density detached style and minimising the visual amenity impact to the streetscape. The design is both inconsistent with surrounding development and the design requirements identified for future development within the Pittwater locality. The existing detached style dwelling house is shown below in Photo 1.



**Photo 1. Existing detached style dwelling on the subject site**

The extent of excavation and site disturbance is also inconsistent with the desired future character statement for Church Point and Bayview with regard to the maintenance of natural landforms and other

features of the natural environment and is not considered a sensitive design solution for this environmentally sensitive site. The extent of excavation for the basement and building footprint encroaches within the side setback areas and does not reflect good hillside practice of the mass "stepping-down" the slope to correspond with the topography of the site. Therefore, it cannot be said that the proposed development has been designed to minimise bulk and scale, or lessen the visual impact of the proposed development as viewed from Pittwater Road, or adjoining properties.

Overall, the proposal (as amended) is inconsistent with the desired future character of the Church Point and Bayview Locality.

### **B1.3 Heritage Conservation - General**

The proposal is located within the proximity of the heritage item "*Maybanke House (Stoneleigh) and plaque - 1945 Pittwater Road, Bayview*". Councils Heritage Officers have reviewed the proposal and have raised no concerns with the proposal.

### **B3.1 Landslip Hazard**

A Geotechnical Assessment, prepared by Ascent Geotechnical Consulting, Report Number AG 19015, dated 30 January, 2019 was submitted with the application. Should the application be approved, this report and its recommendations can be included in the conditions to ensure that there are no adverse impacts to surrounding properties resulting from the proposed excavation.

### **B4.22 Preservation of Trees and Bushland Vegetation**

The Landscape Plan (L001), dated 5 February 2019 demonstrates that the landscaping proposal is acceptable, subject to the retention and protection of nominated trees and the completion of landscape works as conditioned.

### **B5.7 Stormwater Management - On-Site Stormwater Detention**

Councils Development Engineers cannot support the proposal due to insufficient information in regards to the stormwater management onsite. The applicant has failed to provide the Hydraulic Model "Drains", so the proposal cannot be supported at this stage.

### **B6.1 Access driveways and Works on the Public Road Reserve**

The development proposes a 3.5m wide driveway from the front boundary to the building, with a traffic signal system. Vehicle movements will not be able to be safely managed with the proposed system, due to the lack of a vehicle passing bay, therefore the proposal is supported for this reason.

### **B6.2 Internal Driveways**

The minimum width of the driveway entry at Pittwater Road is inadequate. In this regard, the RMS and Councils Traffic Engineers require the driveway to be widened to 5.5m for a minimum distance of 6.0m from the property boundary to reduce vehicular conflict due to the horizontal and vertical sight distance restrictions from the curved alignment of the driveway and front retaining wall. Therefore, the proposal does not satisfy the outcomes of the control.

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

The proposal does not provide additional visitor car parking spaces on the site.

Whilst the proposal does not satisfy the requirements for visitor parking as prescribed by P21 DCP, there is no requirement for visitor car parking prescribed by the SEPP HSPD due to the proposal being 4 units. Based on compliance with the SEPP, the lack of visitor parking cannot be used as a reason for refusal.

#### C1.4 Solar Access

Concern is raised with regard to the amount of direct sunlight hitting windows and private open space areas associated with living areas with Unit 1, noting that P21 DCP identifies the need to receive sunlight to at least 50% of the glazed area.

The applicant has not provided sufficient information to determine compliance with the requirements of this control, and concern is raised with regard to solar access to the front terrace and rear courtyard adjoining living rooms and potential loss of solar access associated with screening devices required to minimise visual privacy impacts.

The shadow diagrams below show that the rear windows (adjoining living rooms) and courtyard of Unit 1 are in shadow between 9am and 3pm.



**Figure 1.** Shadow over the rear windows

**Figure 3.** Shadow still over rear windows  
and Court Yard of Unit 1 at 9.00am  
and Court Yard at 3.00pm

**Figure 2.** Shadow still over rear windows

and Court Yard at 12 noon

All areas of private open space for Units 2, 3 and 4 will receive in excess of 3 hours of direct sunlight between 9.00am and 3.00pm during midwinter.

### **Adjoining Dwellings**

The application was supported by shadow diagrams which demonstrate that the proposed development will not result in any unreasonable impacts upon adjoining properties with regard to solar access. However, it is recognised that an increase in the side setbacks and the reduction in the bulk and scale would improve solar access to the south-eastern neighbouring property.

Therefore, the proposal satisfies the requirements of the control.

### **C1.5 Visual Privacy**

Concern was raised in the assessment of the original scheme in relation to the potential overlooking of adjoining properties. Overlooking was associated with the north-western and south-eastern windows, the front terraces of Units 1, 2 and 3 and the roof terrace associated with Unit 4.

### **Adjoining Dwellings**

Submissions have been received from adjoining property owners at No.1955 and No.1963 Pittwater Road, with regard to potential overlooking into their private open space areas that may result from the proposed development.

#### ***No.1957 Pittwater Road***

Specific concern is raised regarding the windows on the north-western elevation of Unit 1 and Unit 2, as the windows are directly orientated towards the neighbouring site. The windows have the potential to directly overlook the south-eastern windows and front balcony areas.

No.1957 Pittwater Road has two large balcony areas primarily utilised for recreational purposes. These front balcony areas adjoin the primary living spaces of the neighbouring dwelling house, being loungerooms, and kitchen/dinning areas, see photo 2 below.

The original design of the roof terrace of Unit 4 and the front terrace of Unit 2 had the ability to directly overlook these front balcony areas. However, the amended proposal effectively eliminates overlooking from the terrace of Unit 4 and conditions of consent will address the other privacy concerns.



*Photo 2. The two front balcony recreational areas of No.1963 Pittwater Road.*

**No.1953 Pittwater Road**

Specific resident concerns were raised in regards to the windows on the south-eastern elevation of Unit 3 and Unit 4 as the windows could directly overlook the north-western window (kitchen), rear private open space area and front balcony areas of No.1953 Pittwater Road.

No.1953 also has a front balcony area used for primarily for primary recreational purposes, see photo 3 below.



*Photo 3. The front balcony recreational area of No.1953 Pittwater Road.*

No privacy mitigation measures have been incorporated into the design. Screening will be required in certain areas of the development in order to maintain adequate privacy between adjoining properties. Suitable conditions of consent can satisfactorily address these concerns.

Therefore, the proposal, subject to conditions, is satisfactory in terms of visual privacy.

### **C1.7 Private Open Space**

A minimum of 15% of the floor area of each dwelling is required as private open space, with ground floor units needing 30sqm. Details of areas are provided previously in this report.

The development fails to comply with SEPP (ARH) requirements which supersedes Council's DCP controls. Therefore, the variation is not supported.

### **C1.9 Adaptable Housing and Accessibility**

An Access Report has been prepared by Accessible Public Domain, dated 15 February 2019, which concludes that suitable access is provided for the development. The Accessibility Report ensures compliance with the standards prescribed by AS 4299-1995 Adaptable Housing.

### **C1.12 Waste and Recycling Facilities**

A garbage bin storage room is located within the basement carparking area. Access to the street for waste management is via the driveway, not a separate pathway within the site. The development is subject to the requirements of *Council's Waste Management Plan* for the provision of appropriate bins, however the bin storage room does not meet the relevant Council requirements.

### **C1.21 Seniors Housing**

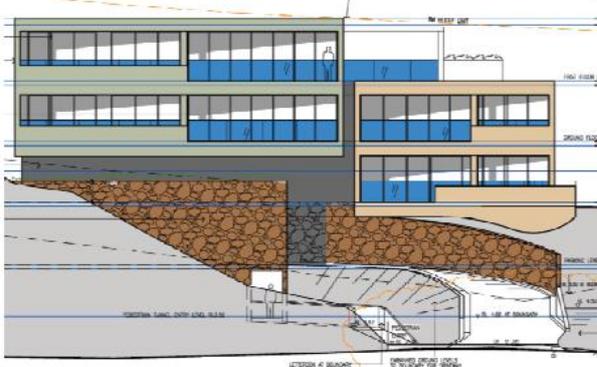
The proposed development, comprising 4 units within one large monolithic building exhibits excessive bulk, scale and mass, such that it is not consistent with the built form of low-density "detached" style housing in the surrounding area. Numerous submissions have been received from the public expressing concern in this regard. Therefore, the proposal does not satisfy the control.

### **C1.23 Eaves**

The proposed development does not include any eaves on any elevation. The lack of eaves, in conjunction with the flat roof form, is seen to contribute to the proposal's inconsistency with the character of the locality and the outcomes of this clause.

### **D4.1 Character as viewed from a public place**

The proposed development is of a greater scale than any other development within the visual catchment of the site. The development also exceeds the built form controls prescribed by Pittwater 21 DCP and the built form development standards within the PLEP and SEPP HSPD. Overall, it cannot be said that the bulk and scale of the development is minimised in that the proposal exhibits excessive bulk, scale and mass that is not consistent with the built form of low-density "detached" style housing in the surrounding area as shown below.



**Photo 4.** Existing Pittwater Road presentation (amended scheme) of a "detached style" dwelling house.

**Figure 5.** Proposed Pittwater Road presentation

Additionally, the proposal is unable to achieve consistency with the outcomes of this clause which aim to ensure that new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment and that buildings do not dominate the streetscape and are of a "human scale".

Several submissions have been received in objection to the development, particularly with regard to the bulk and scale of the built form and its inconsistency with the character of the locality. Those concerns are concurred with.

#### **D4.3 Building colours and materials**

The application was supported by a schedule of finishes which is generally consistent with the requirements of Clause D4.3 of P21 DCP.

#### **D4.6 Side and rear building line**

The proposed side setbacks are inadequate and do not provide for an appropriate level of spatial separation.

The DCP requires residential flat buildings to have a setback determined by the formula below:

$$S = 3 + \frac{H - 2}{4}$$

Based on a wall height, a minimum setback of 3.85m to the north-western side boundary and a

minimum of 3.875m to the south-western side boundary would be required. The proposed development has side setbacks of 3.0m which are lesser than the minimum required.

#### **Merit consideration**

No specific justification for the variation is provided in the SEE.

The minimal side setbacks proposed attribute to a proposal that exhibits excessive bulk, scale and mass as viewed from both the street and the waterway, and does not provide sufficient space to alleviate amenity impacts such as privacy and solar access.

The variation to the side setbacks are not supported, in that higher intensity development should respond to the local character by providing greater setbacks to maintain more appropriate spatial separation.

The Pittwater 21 DCP does provide for variations relating to the greater setbacks associated with multi-unit housing developments, however as the application is unable to achieve consistency with the outcomes of this control, through minimising the visual impact of the development, these variations have not been demonstrated to be warranted or well founded.

#### **D4.11 Fences - General**

New boundary fencing is to be provided to the rear and side boundaries, and will not exceed 1.8m in height

#### **D4.13 Construction, Retaining walls, terracing and undercroft areas**

The proposal will require substantial excavation to accommodate the development, including a 4.0m to 6.9m deep cut behind the building and an 8.8m to 11.2m cut for the basement levels. In this regard, the levels of excavation have not been minimised, and the extent of excavation for the basement and building footprint encroaches within the side setback and does not reflect good hillside practice of the mass stepping down the slope to correspond with the topography of the site. The proposal presents as a tall front retaining wall, whilst treated in natural stone, adds to the visual impact of the development. The proposal is inconsistent with the requirements of the clause and is inconsistent with the character of the locality as described in Clause A4.4 (Church Point and Bayview Locality).

#### **D4.14 Scenic Protection Category One Areas**

The proposed development has a built form that is inappropriate and unsuitable having regard to the context of the area and the character of residential development in the Church Point and Bayview Locality. The proposal has a singular/monolithic built form that exhibits excessive bulk, scale and mass that is not consistent with the built form of low-density "detached" style housing in the surrounding area and does not achieve the consistency with the requirements of this control.

Whilst the landscape treatment of the site is supported, and the retention of the large trees within the Council Road Reserve will assist in softening the built form, there will still be a significant visual 'jarring' effect when viewed from the neighbouring properties and from Pittwater Road.

Submissions have been received in objection to the proposal on this basis, raising concern with regard to potential tree loss and the resultant visual impact of the development as seen from Pittwater Road and the waterway. Those concerns are concurred with.

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

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

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

### **Detailed Conclusion Comments**

The assessment of the application, as amended, has found that the character, design and external appearance of the building and the non-compliance with the access requirements to services and facilities (bus stops) under the SEPP HSPD and Pittwater 21 DCP are still fundamental issues that render the proposal inappropriate and unsuitable for the site and the locality.

The applicant has not adequately demonstrated that a compliant footpath can be constructed from the return bus stop in Pittwater Road to the subject site to satisfy the requirements of Clause 26 of the SEPP.

In terms of the built form of the development, the proposed singular/monolithic building typology does not provide for an outcome that is compatible with the predominant character of residential development in the surrounding area. The lack of articulation of the front facade to produce a pavilion or module effect is a fundamental shortcoming of the design. The bulk and scale of the building is excessive and is not consistent with a site responsive design on sloping land on the high side of the street.

The design is not consistent with the desired future character statement for the Church Point and Bayview Locality and exhibits non-compliances with the side setback controls and solar access requirements.

The notification of the original and amended scheme resulted in 10 submissions from surrounding properties. The objections raised concerns primarily in relation to height, bulk and scale, the building being out of character with the low-density “detached” style housing in the area, non-compliant access to nearby bus stops, lack of parking, excessive tree loss, excessive excavation and adverse visual privacy impacts.

A Class 1 Appeal has been lodged in the LEC against the deemed refusal of the application, which triggered an amended scheme, which has been addressed in this report.

Finally, there are still outstanding stormwater engineering, traffic and waste issues and concurrence of the RMS has not be issued for the proposal.

In summary, the application (as amended) should be refused as the proposal is unsatisfactory in terms of its character and design, the visual bulk and scale and the development, non-compliance with the access requirements under the SEPP HSPD, impacts on surrounding properties and the streetscape of Pittwater Road, unresolved referral issues and the lack of concurrence from the RMS.

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

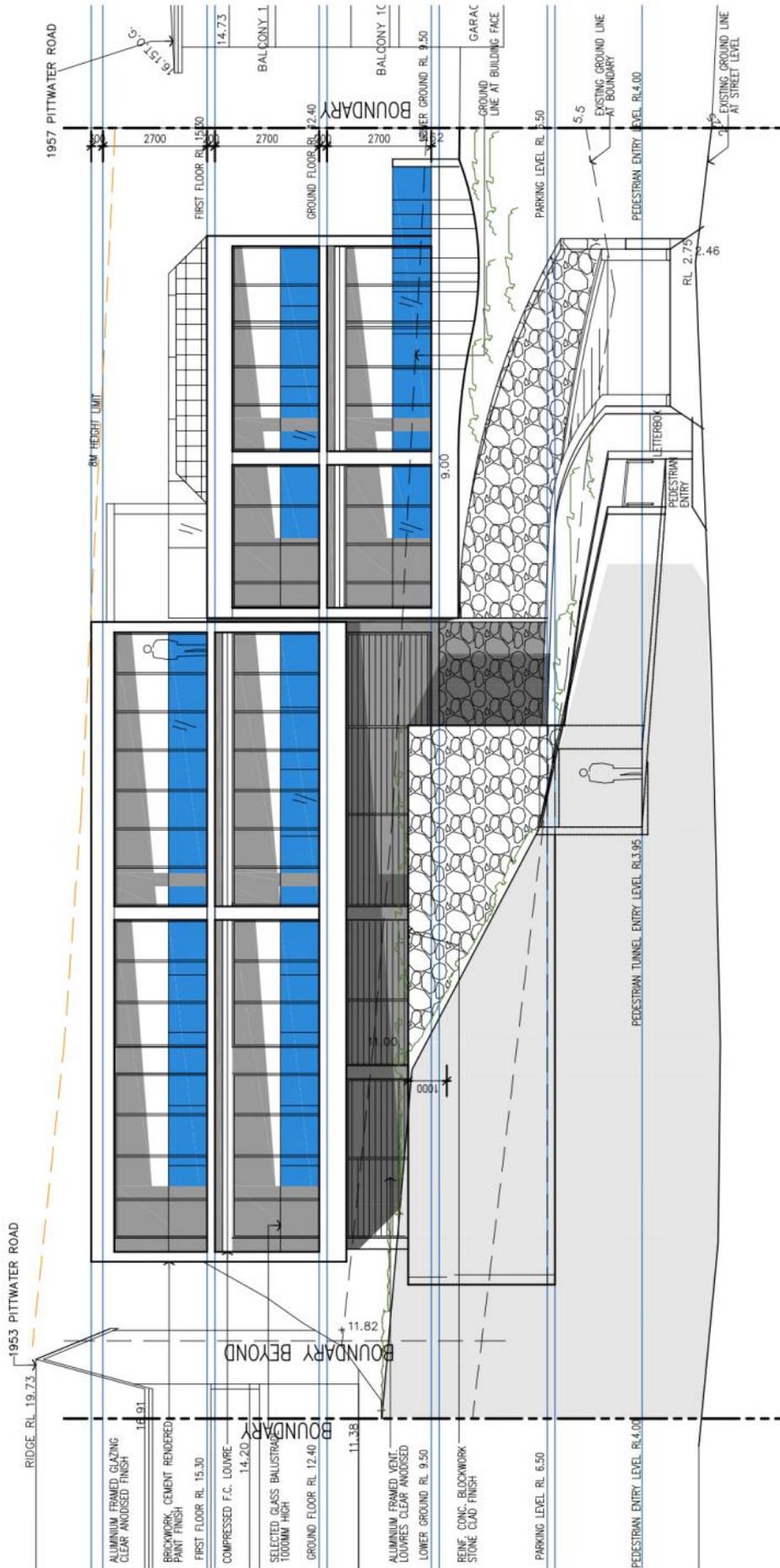
## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0154 for the Demolition works and construction of a seniors housing development on land at Lot 1 DP 373531, 1955 Pittwater Road, BAYVIEW, for the reasons outlined as follows:

1. Pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 and State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, the proposal does not comply with the following requirements of the SEPP:
  - (a) Clause 26 in that the applicant has not demonstrated that the site is located within 400 metres of public transport services to essential facilities and services which comply with the required gradients. In this regard, insufficient information has been provided to demonstrate compliant grades, including longitudinal sections and levels.
  - (b) Clause 29, 31, 32 and 33 in that the proposal is unsatisfactory in relation to character, streetscape and built form.
  - (c) Clause 36 in that stormwater management issues remain unresolved.
  - (d) Clause 37 in that crime prevention issues remain unresolved.
  - (e) Clause 38 in that accessibility requirements have not been resolved.
  - (f) Clause 39 in that waste management issues remain unresolved.
  - (g) Clause 50 in that the proposal is unsatisfactory in relation to deep soil, solar access and private open space.
2. Pursuant to Section 100 "Development on proposed classified road" of State Environmental Planning Policy (Infrastructure) 2007, the concurrence of the Roads and Maritime Services has not been granted for the development, which obtains access from Pittwater Road and proposes the construction of a passing bay within the road reserve.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the following provisions of the Pittwater 21 Development Control Plan:
  - (a) Clause A4.4 Church Point and Bayview Locality in that the proposal is inconsistent with the desired future character of the locality.
  - (b) Clause B5.7 Stormwater Management - Onsite Stormwater Detention
  - (c) Clause B6.1 Access Driveways and Works on the Public Road Reserve
  - (d) Clause B6.2 Internal Driveways

- (e) Clause C1.4 Solar Access
- (f) Clause C1.7 Private Open Space
- (g) Clause C1.12 Waste and Recycling Facilities
- (h) Clause C1.21 Seniors Housing
- (i) Clause C1.23 Eaves
- (j) Clause D4.1 Character as viewed from a Public Place
- (k) Clause D4.6 Side and Rear Building Lines
- (l) Clause D4.13 Construction, retaining walls, terracing and undercroft areas
- (m) Clause D4.14 Scenic Protection Category One Areas

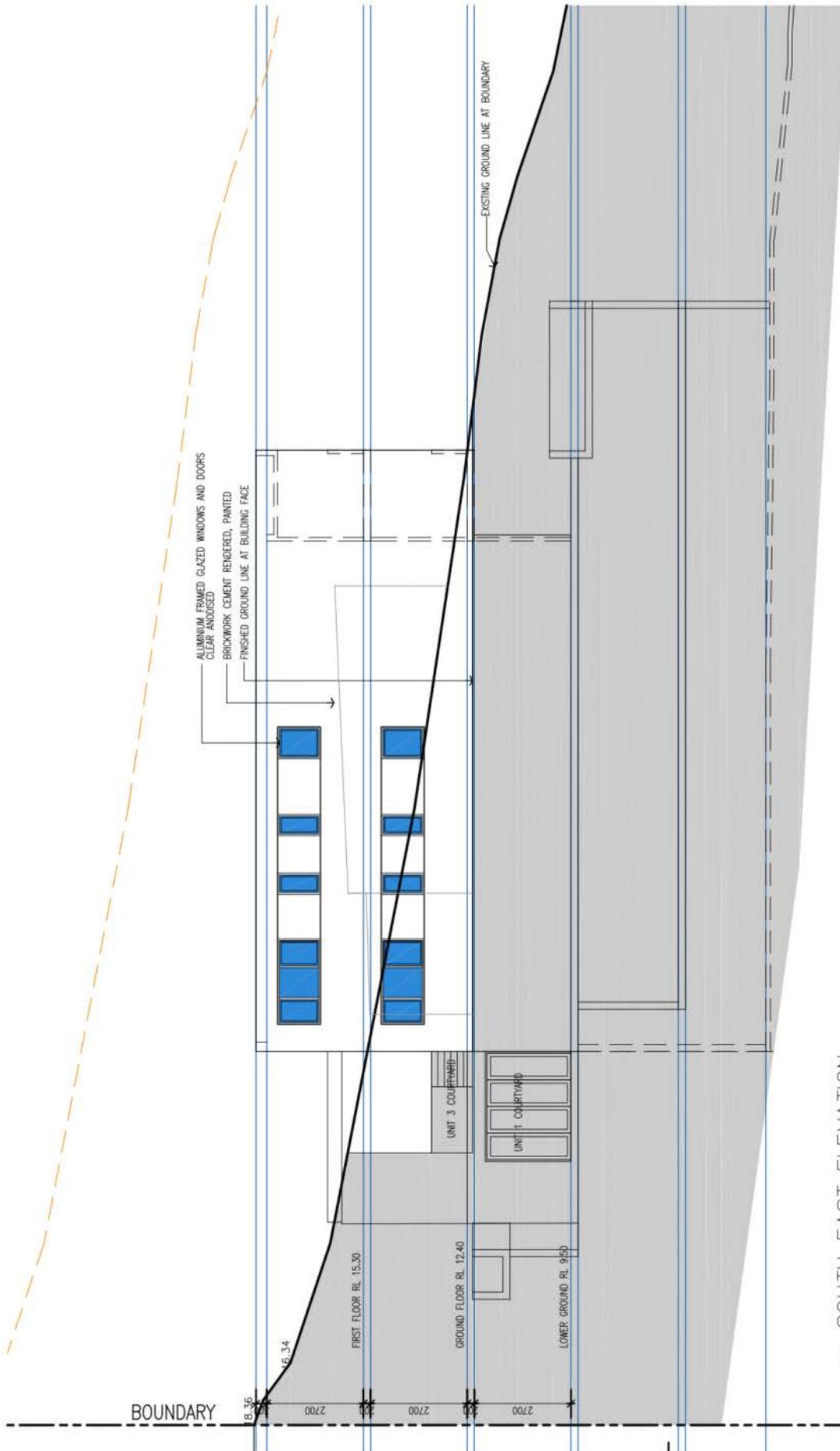




1 NORTH EAST ELEVATION  
Scale: 1:100

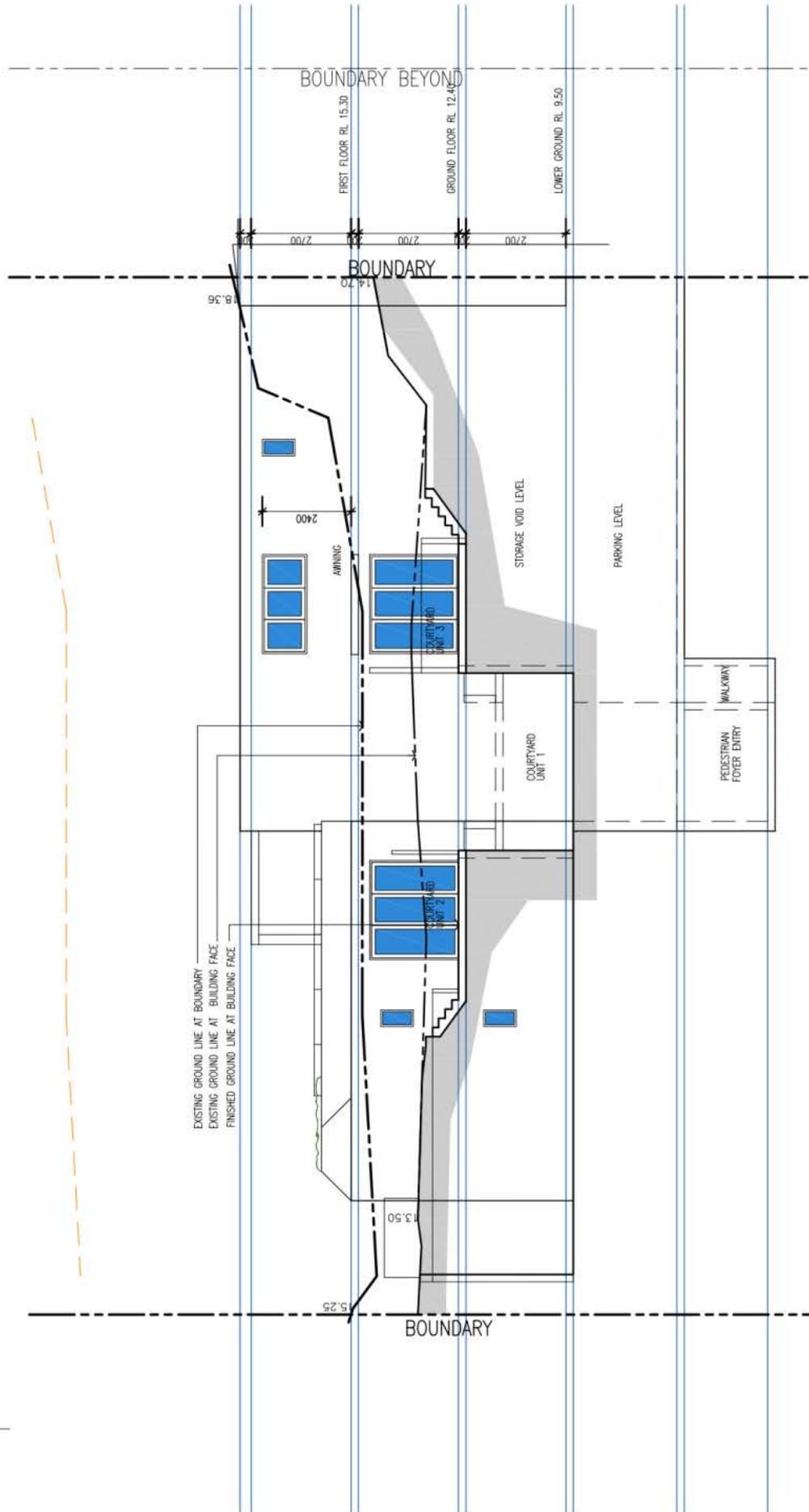
		Project No.	DA-06	Drawn By	DA-06
		Current Issue Date	FEBRUARY 14, 2019	Scale	1:100 @ A3
<h2>NORTH EAST ELEVATION</h2>					
<p>Project Details  <b>RESIDENTIAL DEVELOPMENT</b>  <b>SENIORS LIVING-LOT 1 DP 373531</b>          1955 Pittwater Road BAVIEW          Client: MR WESTAWAY</p>					
No.	Description	Date			
 <p><b>LEECH HARMON ARCHITECTS</b>          NOMINATED ARCHITECT: DENIS LEECH REG NO. 3980          INCORPORATED IN NEW SOUTH WALES          SUITE 100 PO BOX 211 NEWPORT BEACH NSW 2108          TELEPHONE: (02) 9997 7288 EMAIL: dleech@bhpa.com.au</p>					





5 SOUTH EAST ELEVATION  
Scale: 1:100

		<b>SOUTH EAST ELEVATION</b> Project No. --- Drawing Number <b>DA-08</b> Revision --- Scale 1:100 @ A3
Project Details <b>RESIDENTIAL DEVELOPMENT</b> <b>SENIORS LIVING-LOT 1 DP 373531</b> 1955 Pittwater Road BAVIEW Client <b>MIR WESTAWAY</b>		
No.	Description	Date
 <b>LEECH HARMON ARCHITECTS</b> NOMINATED ARCHITECT DENIS LEECH (REG. NO. 3860) INCORPORATED IN NSW (ABN 48 002 517 875) SUITE 4, 9 FOAMCREST AVE NEWPORT BEACH NSW 2106 TELEPHONE: (02) 9987 7288 EMAIL: dleech@lhdmond.net.au		



④ SOUTH WEST ELEVATION  
Scale: 1:100

<b>SOUTH WEST ELEVATION</b>		Project No. DA-09	Drawing Number DA-09	Plan No. -
Project Details		Current Issue Date FEBRUARY 14, 2019	Scale 1:100 @ A3	
<b>RESIDENTIAL DEVELOPMENT</b> <b>SENIORS LIVING-LOT 1 DP 373531</b> 1955 Pittwater Road BAVIEW Client: MR WESTAWAY				
No.	Description	Date		
 <b>LEECH HARMON ARCHITECTS</b> NOMINATED ARCHITECT: DENIS LEECH REG NO. 3980 INCORPORATED IN NEW SOUTH WALES SUITE 10 PITTWATER 1955 PITTWATER ROAD BAVIEW NSW 2106 TELEPHONE: (02) 9957 7288 EMAIL: dleech@bhgroup.net.au				