

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 6 NOVEMBER 2019

Beginning at 1.30pm for the purpose of considering and determining matters included in this agenda.



Peter Robinson
Executive Manager Development Assessment

Panel Members

Peter Biscoe	Chair
Marcus Sainsbury	Environmental Expert
Robert Hussey	Town Planner
Peter Cotton	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 6 November 2019
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1.30pm**

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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 16 OCTOBER 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 16 October 2019 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	MOD2019/0457 - 41 MARINE PARADE, AVALON BEACH - MODIFICATION OF DEVELOPMENT CONSENT N0279/16 GRANTED FOR DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A NEW DWELLING - REMOVAL OF CONDITION OF CONSENT B34
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2019/620894
ATTACHMENTS	1 ↓ Assessment Report

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is a modification of a condition imposed by a local planning panel.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2019/0457 for Modification of Development Consent N0279/16 granted for demolition of existing structures and construction of a new dwelling - Removal of condition of consent B34 at Lot 6 DP 553660, 41 Marine Parade, Avalon Beach subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0457
Responsible Officer:	David Auster
Land to be developed (Address):	Lot 6 DP 553660, 41 Marine Parade AVALON BEACH NSW 2107
Proposed Development:	Modification of Development Consent N0279/16 granted for demolition of existing structures and construction of a new dwelling - Removal of condition of consent B34
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Jane Margaret Rowe
Applicant:	Jane Margaret Rowe
Application Lodged:	20/09/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	02/10/2019 to 16/10/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal involves deletion of a condition previously imposed by the Local Planning Panel requiring privacy screening of a bathroom window and walk in wardrobe window. The relevant objections received relate to the privacy impacts both to and from these windows from the neighbour to the north east.

The assessment of the application has concluded that the windows do not cause any unreasonable privacy impacts, and as such, the proposed deletion of the relevant condition is recommended for approval.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification involves deletion of condition B34 from the consent, which reads as follows:

Windows W27 and W28 on the northern elevation of the upper level are to comprise frosted or opaque glazing (or are to be finished with a frosted or opaque surface treatment) to a minimum height of 1.5m above the finished floor level of the respective internal room (Ensuite and Robe 2).

Reason: To ensure privacy between adjoining properties and for future occupants of the development.

These two windows are on the upper level of the dwelling, facing towards the north east. The windows are located in a bathroom and a walk in wardrobe.

No amended plans have been proposed.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

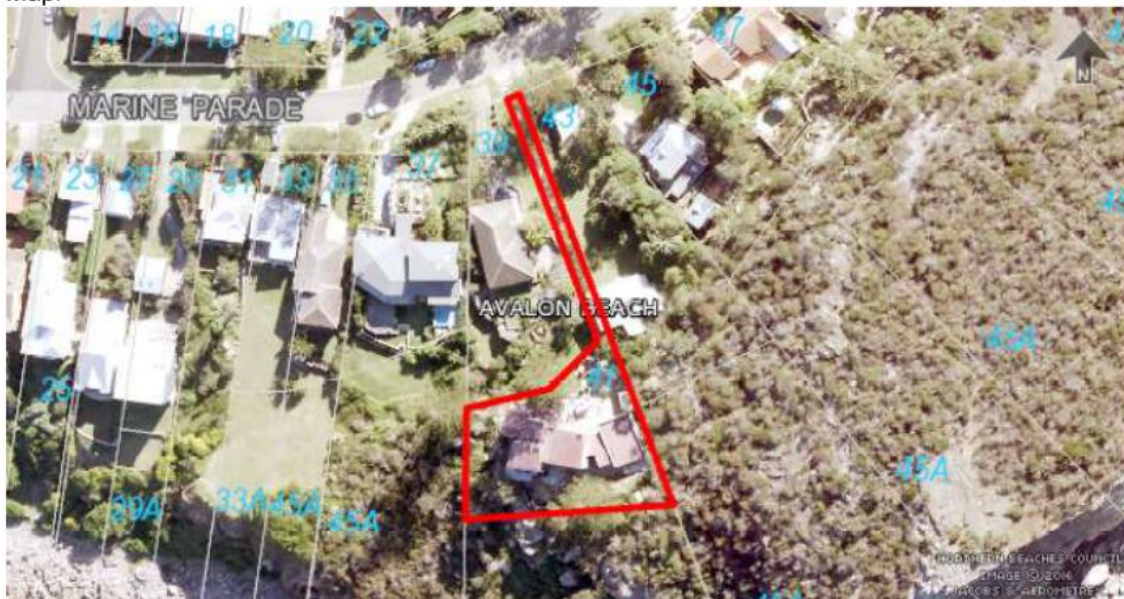
SITE DESCRIPTION

Property Description:	Lot 6 DP 553660 , 41 Marine Parade AVALON BEACH NSW 2107
Detailed Site Description:	The site is a battle-axe allotment, with a total area of 1515m ² . Vehicular and pedestrian access is gained via the 60.05m long battle-axe handle to the southern side of Marine Parade. The battle-axe handle has a steady incline from the street up towards the existing dwelling, where the site levels before falling towards the west, with a maximum cross fall in excess of 13.6m along the southern most boundary of the site. The site was previously occupied by a

one and two storey dwelling, however construction has since commenced on the site pursuant to N0279/16/R and is nearing completion. The site features a number of natural rock outcrops and significant vegetation.

The foreshore building line dissects the site, running parallel at a distance of approximately 7.5m from the southern property boundary. The site is also burdened by a Right of Carriageway, which runs the length of the existing battle-axe handle, and an easement relating to overhanging eaves associated with the existing dwelling at 43 Marine Parade. The site adjoins a public reserve which wraps around the southern portion of the site, with residential dwellings to the north-west and to the north-east, fronting Marine Parade. The site is located in a visually prominent location on North Avalon Headland, with district and ocean views available from various locations on the site.

Map:



SITE HISTORY

On 4 July 2016, development application N0279/16 was lodged with Council, seeking consent for the construction of a new dwelling at the subject site.

On 15 December 2016, N0279/16 was refused by Council under the delegation of the Development Unit.

On 12 January 2017, review of determination application N0279/16/R was lodged with Council.

On 6 June 2017, N0279/16/R was approved by the Northern Beaches Independent Assessment Panel, subject to three deferred commencement consent conditions.

On 28 June 2017, the applicant provided additional information to satisfy the deferred commencement

conditions.

On 19 July 2017, Council confirmed satisfaction of all three deferred commencement consent conditions, and the consent became operative.

On 30 November 2018, the modification application MOD2018/0654 was lodged with Council.

On 19 June 2019, MOD2018/0654 was approved by the Northern Beaches Local Planning Panel. As part of the determination, the Panel imposed condition B34 in relation to privacy screening on windows W27 and W28, which is the subject of the current modification application.

On 8 August 2019, REV2019/0045 was lodged with Council. This application was a review of MOD2018/0654. Upon assessment it was found that the application was not lodged within the timeframe required for reviews of modifications under the Environmental Planning and Assessment Regulations, and the application was subsequently withdrawn. The current modification application (the subject of this report) is essentially the same application, but lodged as another modification application as opposed to a review application.

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 MOD2018/0654 (modification of N0279/16/R), in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as

Section 4.55(1A) - Other Modifications	Comments
which consent was originally granted and before that consent as originally granted was modified (if at all), and	those already approved under N0279/16/R.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan and Pittwater 21 Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.

Section 4.15 'Matters for Consideration'	Comments
	Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. The proposal has a Flame Zone BAL Rating. MOD2018/0654 (the modification application that resulted in the condition of consent relating to the privacy screens) was referred to the NSW RFS for comments and/or recommendations. The NSW RFS provided a response confirming that the proposal is acceptable subject to those conditions issued in relation to the previous application (N0279/16/R).

Given that the current application relates only to a condition on privacy screening imposed by the NBLPP after the previous response from the NSW RFS dated 19 December 2018, the existing advice received from the RFS is considered to remain current.

NOTIFICATION & SUBMISSIONS RECEIVED

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

relevant Development Control Plan.

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

Name:	Address:
Ms Susan Hesse	43 Marine Parade AVALON BEACH NSW 2107
Mrs Yvonne Gaye McCausland Mr William Thomas McCausland	37 Marine Parade AVALON BEACH NSW 2107

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

- Privacy
- Precedent
- Construction of temporary blade and fencing

The matters raised within the submissions are addressed as follows:

- **Privacy**
Concerns were raised that the proposed removal of condition B34 would result in unreasonable privacy impacts to the dwelling at number 43 Marine Parade, located to the north east of the new dwelling on the subject site. The submission raised concern that the windows provide for views into the principle living area of number 43, and also allow for views from this living area into the bathroom and walk in robe, which are not desirable. The submission also provides counter arguments to the arguments made by the applicant in justifying the deletion of condition B34. A site visit was carried out, which included viewing out of windows W27 and W28 towards number 43, and viewing from the main living areas of number 43 towards the subject site.

The objections in relation to privacy received from the owners of number 37 Marine Parade relate to a separate condition of consent (see below). The windows in question in this application do not cause any unreasonable impacts on number 37 given the distance and viewing angles of the windows.

Comment:

Condition B34 requires the two windows in question (W27 and W28) to have opaque glazing to a minimum height of 1.5m above finished floor level. In consideration of the proposal, clause C1.5 Visual Privacy of the Pittwater DCP provides the following relevant paragraph:

Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).

W27 and W28 are approximately 27.5m from the balcony of the upper level living area of number 43. In this regard they easily fulfil the requirement in the above paragraph. The fact that these windows are relatively low use bathroom and walk in wardrobe windows also limits the privacy impacts in both directions.

The location of the bathroom window in the north western corner of the bathroom, combined

with the angle of view to and from number 43, also severely limits the area within this bathroom that occupants may view out of the window towards number 43, and also severely limits how much of the interior bathroom can be seen through the window from number 43.

A further relevant consideration is that opaque glazing to 1.5m above floor level does not significantly improve privacy outcomes. The upper levels of the two dwellings are on a similar level, and in the case of the portion of the bathroom that can be viewed into/out of the window, occupants are unlikely to be sitting, so that a standing view from this window towards number 43 is unimpeded by the opaque glazing. The walk in wardrobe includes a desk adjacent to the right of the window (viewed from the inside), where it is likely that occupants will sit. However, an occupant sitting at this desk would primarily be looking at the mirror in front of them. Further, given the nature of the rooms in question, it seems highly likely that any occupants using the bathroom and particularly the desk at the walk in wardrobe will draw the curtains for their own privacy.

Clause C1.5 of the DCP also states the following:

Direct views of private open space or any habitable room window within 9m can be restricted (see diagram below) by:

- vegetation/landscaping
- a window sill height 1.7 metres above floor level, or
- offset windows
- fixed translucent glazing in any part below 1.7 metres above floor level, or
- solid translucent screens or perforated panels or trellises which have a maximum of 25% openings, and which are:
 - permanent and fixed;
 - made of durable materials; and
 - designed and painted or coloured to blend in with the dwelling.

Notwithstanding that the windows in question are almost three times more distant than the minimum 9m noted above, and that the conditioned opaque glazing does not achieve a height of 1.7m intended to prevent standing views, the applicant has stated that they intend to provide trees which will screen the windows from number 43, and that this is part of an approved landscape plan. The applicant has stated that a modified landscape plan was approved as part of MOD2018/0654. However, the notice of determination does not make mention of a modified landscape plan, and there is no modified plan on file that was submitted with the MOD2018/0654 application. Despite this, the applicants have supplied evidence of the purchase of trees to be planted in the front setback area, which may provide screening between number 43 and windows 27 and 28.

It is further noted that the windows are 'off set' in accordance with the above requirements of clause C1.5, which in the case of the bathroom window in particular helps to limit views to and from number 43.

Given the above considerations, windows W27 and W28 are not considered to result in unreasonable privacy impacts, and it is recommended that condition B34 be deleted. The distance between the windows and the neighbouring dwelling at number 43, combined with the low use nature of the rooms, the minimal views available into and out of the bathroom window in particular due to the location of the window in the corner of the room, and the likely desire of any occupants of these rooms to protect their own privacy by drawing the curtains, the privacy impacts are not considered unreasonable in the context of clause C1.5 of the DCP and in the context of the low density residential nature of the zone.

- **Precedent**

Concerns were raised that approval of the application would create a dangerous precedent of applicants ignoring Panel decisions.

Comment:

The application has been lodged under Section 4.55 of the Environmental Planning and Assessment Act 1979. Council is bound to consider any application lodged under this section of the Act, just as it must consider any other development application. The granting of consent or otherwise does not create any precedent.

- **Construction of temporary blade and fencing**

Concerns were raised by the owners of number 37 Marine Parade regarding the form of a temporary blade privacy screen erected in response to condition B33, and the erection of boundary fencing.

Comment:

The application relates only to condition B34, which relates only to the two windows in question. Condition B33 is a separate condition which relates to privacy screening of the dining room window. The current application does not propose any changes to condition B33.

With regard to the complaint regarding the boundary fence, the fencing as described does not appear on the approved plans, and does not meet the criteria for exempt development. As such, the matter will be referred to Council's Compliance Department for investigation. However, the fencing is not relevant to the current modification application, which relates only to condition B34. No further consideration is required in this regard.

REFERRALS

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

(SREPs)**SEPP 55 - Remediation of Land**

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

SEPP (Building Sustainability Index: BASIX) 2004

The proposed deletion of condition B34 will not alter the BASIX commitments. An existing condition of consent requires compliance with the commitments identified on the BASIX certificate.

SEPP (Infrastructure) 2007Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
 - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*

- (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
- (d) *any other development.*

Comment:

The site is not on land identified as “coastal wetlands” or “littoral rainforest”.

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:

The site is not on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest”.

12 Development on land within the coastal vulnerability area

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

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

*management
of,
anticipated
coastal
processes
and
current
and
future
coastal
hazards.*

Comment:

The site is not land identified as “coastal vulnerability area”.

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 site falls within land identified as coastal environment area. The proposal only involves a very minor change to the building, in the form of replacement of opaque glazing with transparent glazing to two windows. The alteration will not have any impacts on the matters listed above.

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

Comment:

The sighting and overall design of the dwelling is not proposed to be altered. No impacts on the matters for consideration above will be caused by the deletion of condition B34.

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 land falls within the coastal use area. The proposal will not alter the siting or overall design of the building, and only relates to a change in glazing of two windows. No impacts will be caused in relation to the matters for consideration above.

As such, it is considered that the application complies 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 change to the transparency of the glazing on two small windows will have no impacts on the risk of any coastal hazards.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

The proposal does not involve any changes to the built form of the dwelling.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

The proposal does not involve any changes to the built form of the dwelling.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.13 Pollution Control	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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. Mod2019/0457 for Modification of Development Consent N0279/16 granted for demolition of existing structures and construction of a new dwelling - Removal of condition of consent B34 on land at Lot 6 DP 553660,41 Marine Parade, AVALON BEACH, subject to the conditions printed below:

A. Delete Condition B34.

ITEM 3.2

**MOD2019/0348 - 1B EDGECLIFFE ESPLANADE, SEAFORTH -
MODIFICATION OF DEVELOPMENT CONSENT DA255/2017
GRANTED FOR ALTERATIONS AND ADDITIONS TO THE
EXISTING DWELLING HOUSE**

REPORTING OFFICER

ANNA WILLIAMS

TRIM FILE REF

2019/620955

ATTACHMENTS

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

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2019/0348 for Modification of Development Consent DA255/2017 granted for alterations and additions to the existing dwelling house at Lot 1 DP 854513, 1B Edgecliffe Esplanade, Seaforth subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0348
Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 1 DP 854513, 1 B Edgecliffe Esplanade SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA255/2017 granted for alterations and additions to the existing dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Daniel Joseph Dwyer Amanda Clare Dwyer
Applicant:	Chris Flemming Building Services
Application Lodged:	18/07/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	30/07/2019 to 13/08/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This report considers the proposed modification to an approved application for alterations and additions of a dwelling which was approved by the Northern Beaches Planning Panel on 4 April 2018.

The modification includes an extension to the garage roof, modification of the eastern elevation of the level 3 terrace from a 1.2m opaque glass balustrade to a solid 1.8m high masonry wall with an internal green wall and reconstruction and increase in height of garden walls within the front setback area and along the driveway.

The development application was determined by the Northern Beaches Local Planning Panel (the Panel) as it breached the building height control and the floor space ratio of the Manly Local

Environment Plan (MLEP). The modification does not result in a change to the previous MLEP non-compliance's, however, it was lodged as a Modification (2) - Other 4.55 by the applicant which requires the application to be referred back to the Panel for their consideration.

The application has been assessed against the planning controls of the Manly Development Control Plan 2013. Whilst there are several existing non-compliance's with the the front and side setback control, the proposed modification is within the existing building footprint and has been found to be compatible with the streetscape and will not result in unreasonable impact to the amenity of the surrounding and adjoining properties.

Public exhibition of the proposal resulted in one submission received twice by Council. The submission objects to the modifications and raised the following issues:

- Bulk, solar loss and sky factor,
- Garden wall and landscaping.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposed modification is acceptable and appropriate for the site.

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

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent 255/2017 with the following:

- Modify the eastern elevation of the Level 3 terrace from a 1.2m high opaque glass balustrade with a masonry rendered wall along the north and east sides, and install a vertical 'green wall' to the terrace area,
- Garage - extend the garage roof for the entire width of the garage,
- Front Garden Walls - replace and increase height.

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 - 6.8 Landslide risk

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

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

SITE DESCRIPTION

Property Description:	Lot 1 DP 854513 , 1 B Edgecliffe Esplanade SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Edgecliffe Esplanade.</p> <p>The site is battleaxe block with an irregular shape. The site has a frontage of 18.105m along Edgecliffe Esplanade and an average depth of 21m. The site has a surveyed area of 415m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a three storey dwelling currently under construction with vehicular access via an existing driveway from Edgecliffe Esplanade.</p> <p>The property slopes from north to south and includes a crossfall of approximately 10m.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential dwellings.</p>

Map:



SITE HISTORY

DA255/2017 was determined 4 April 2018 by the Northern Beaches Local Planning Panel.

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 DA255/2017, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	

Section 4.55 (2) - Other Modifications	Comments
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA255/2017.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA255/2017 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Environmental Plan and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	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 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.

Section 4.15 'Matters for Consideration'	Comments
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&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&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public

Section 4.15 'Matters for Consideration'	Comments
	interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Withheld	SEAFORTH NSW 2092
Withheld	
Withheld	NEWPORT BEACH NSW 2106

The applicant has provided a statutory declaration stating that the notification sign was erected for required notification period.

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

- Bulk, solar loss and sky factor
- Garden wall and landscaping

The matters raised within the submissions are addressed as follows:

- **Bulk, solar loss and sky factor**
The submission objected to the increase in the height of the garage roof and raised the following objection to the modification of the eastern boundary wall stating that 'we object on the grounds that the closeness of our properties and bulk of the proposal denies us solar loss and sky factor. The modification creates an increased height of an already bulky rendered wall which has no windows. This would have the effect of making our front yard, kitchen area, laundry, laundry drying area and backyard appear darker during the day and will remove much needed sun into our property'.

Comment:

Access to sunlight and overshadowing has been addressed in more detail under part 3.4.1 Sunlight Access and Overshadowing of this report. In summary, the orientation being south facing and the topography of no. 2 C Edgecliffe Esplanade means that the property has limited solar access. The proposed modification to the terrace wall, garage roof height and garden wall

will not result in additional overshadowing to the windows and glazed doors of the living/habitable rooms of the no. 2 C Edgecliffe Esplanade and will maintain the existing access to sunlight of the private open space as per the requirements of part 3.4.1 of the MDCP.

The submission stated that they had no issues with the overall height increase of the eastern elevation of the level 3 terrace, just with the solid wall and suggested the already approved opaque glass balustrade be retained but increased in height. The proposed masonry wall is more consistent with the overall design of the dwelling and provides a greater level of privacy to both the subject site and adjoining property of no. 2 C Edgecliffe Esplanade. Due to the design and close proximity of both existing dwellings, Council does not consider the modification to be excessive or result in unreasonable bulk and scale.

While the loss of the outlook/sky is important to the owners of no. 2 C Edgecliffe Esplanade, the loss of outlook/sky is not a planning consideration. It is also noted that the area of concern within this neighbouring property is located in front of the building within an area which is at the base of a substantial rock escarpment and the dwelling. This area is not directly connected to the primary living areas of the dwelling and is not considered the property's principal private open space.

- **Garden wall and landscaping**

The submission raised concern that garden walls had been constructed at the front of the property that were not shown on the plans and that landscaping plans had not been provided showing the type of plantings proposed in this area. The applicant also requested that the planting in this area be maintained at a height that will not impact on the amenity of no. 2 C Edgecliffe Esplanade.

Comment:

Concern was raised regarding the garden walls at the front of the site and along the driveway. The applicant provided amended plans showing the extent of the impact of the garden walls. It is noted that the walls have already been constructed and the adjoining property is aware of them as it was noted in their submission to Council. The application was not re-notified as the amendment presented a minor environmental impact in accordance with clause 2.6 of the MDCP.

A full site inspection from no. 2 C Edgecliffe Esplanade was not undertaken, however, after discussion with the owner, photos were provided from those areas of the site that were the cause of most concern. The location of the garden walls and existing screen planting does not produce an unreasonable bulk or scale and does not reduce the amenity of the adjoining property.

The garden walls at the front of the site were damaged during the construction of the dwelling and required reconstruction and were increased in height for safety reasons as a result of the steep drop off from the front setback area to the excavated area of the dwelling. Part of the reconstructed walls encroach into Councils Road Reserve. The applicant was advised that any works within Councils Road Reserve would require an application to be lodged and approval granted from Council via a Minor Encroachment on Council Lands. At the time of assessment no application had yet been made to Council regarding the works. A condition will be included in the consent requiring an application and approval from Council prior to the release of the Occupation Certificate for the works undertaken within the Council Road Reserve. A condition has also been included requiring a survey to be provided at the completion of the works demonstrating that all works are within the subject site. The certifying authority has also been notified that any works outside of the scope of this application are to be investigated and appropriate action taken.

No landscape plan was submitted with the original approved application and is not required as part of the modification. The proposed landscaping at the front of the site is at the discretion of the owner of that site.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	The applicant proposed a minor change on the roof and a new masonry wall. Development Engineering has no objection to the modification. No additional engineering condition is required.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the original application (see Certificate No. A295115 dated Thursday, 05, October 2017)

A condition was included in the recommendation of DA255/2017 requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m	Existing - 10.8m Studio - 9.3 - 10.2 Garage - 11m	Modification garage roof - 8.3m Boundary wall - 7.9m Studio - no change Approved Garage - no change	Yes
Floor Space Ratio	0.4:1 166.16m ²	0.659:1 274m ²	No change	Yes

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

6.8 Landslide risk

The applicant provided a statement from Crozier Geotechnical Consultants stating that that 'The proposed changes involve no geotechnical component and do not alter the site or its geotechnical condition from that on which the original geotechnical report/assessment was undertaken. As such there is no geotechnical reason that the changes should not be approved'.

A condition was included in DA255/2017 requiring compliance with the recommendations included in Preliminary Geotechnical Assessment for proposed alterations and additions at 1B Edgecliffe Esplanade Seaforth.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 415.4m ²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	E: 1:4+ 8m	9.85m	Masonry wall - 8m	Yes
	W: 1:4+ 8m	9m	no change	Yes
4.1.2.2 Number of Storeys	2	3	No change	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.85m	Modification to garage roof - 1m	Yes
4.1.4.1 Street Front Setbacks	6m	Existing Garage 2.8m Proposed vestibule 4.8m	No change	Yes
4.1.4.2 Side Setbacks	East - 3m	1.46m	No change	Yes
	West - Vestibule - 3.28m - In-fill stud wall 1.86m	Vestibule 4.1m In-fill stud wall 1.47	No change	Yes
4.1.4.4 Rear Setbacks	8m	Existing Lower Ground	No change	Yes

		Floor Terrace - 0.5m Existing Lower Ground Floor - 2.82 Proposed Lower Ground Floor - 2.82 Existing Mid Ground Floor Terrace - 2.4m Proposed Mid Ground Floor Vergola - 2.4m Proposed Upper Ground Floor Study - 5m		
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	28% (117.58m ²)	No change	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	18.8% (22.16m ²)	No change	Yes
	2 native trees	0 trees	No change	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	117.58sqm	117.58sqm	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	2 spaces	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

A submission from the eastern adjoining property at no. 2 C Edgecliffe Esplanade raised concern that the proposed modification would unreasonably impact on the properties access to light, outlook and cause additional overshadowing to the dwelling and private open space. Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP 2013 requires that for adjacent buildings with an north-south orientation (as in this case), the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June). Furthermore the control requires alterations and additions to not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June).

The shadow diagrams provided by the applicant show that the proposal will maintain the current level of over shadowing and solar access to the windows or glazed doors of living/ habitable rooms of the adjoining dwelling and the private open space of the dwelling.

The MDCP defines the private open space as an area located adjacent to living rooms, excluding bedrooms of a single area with dimension sufficient to enable it to usefully serve domestic outdoor functions for the exclusive use of the occupants of the dwelling. The minimum area of private open space for a dwelling house is 18m². No. 2 C Edgecliffe Esplanade has terrace area directly located off the living room with an area of 22.3m² and is considered by Council to be the principal private open space for the dwelling.

There is also a excavated terrace area located off the kitchen at the front of the dwelling the that was raised as an area of concern for increased overshadowing and lack of access to sunlight and light. However, due to the location of the terrace being excavated into the hill face and south facing, it is difficult to maintain access to sunlight, light and outlook from this location. Additionally due to the size of the area, location and access this area is not considered the principal private open space for the dwelling.

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

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

Comment:

The shadow diagrams provided with the application show that the increased overshadowing will not result in unreasonable overshadowing to the windows and glazed doors of the living area as they are north facing or the private open space of the dwelling.

- *Objective 2) To allow adequate sunlight to penetrate:*
- private open spaces within the development site; and
- private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.

Comment:

The proposal will maintain the existing solar access to the private open space of the subject site and that of the private open space and windows/glazed doors to living spaces/habitable rooms of the adjoining properties. The western elevation of no. 2 C Edgecliffe Esplanade has three windows located off a lower ground floor bathroom, ground floor bathroom and a glazed door off the laundry, which are not considered habitable rooms and the modification will not result in additional overshadowing to this elevation.

- *Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:*
- encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and
- maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.

Comment:

Modulating the building bulk or increasing the setback along the eastern elevation of the proposed modification will not increase the penetration of sunlight to the north facing windows, living rooms and to principal outdoor areas. The modification to the eastern terrace wall, increased roof height of the garage and garden walls will maintain the existing penetration of sunlight which was approved under the original development application, DA255/2017.

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

Description of works

The approved development has a non-compliant setback to the east of 1.46m which was addressed in the original assessment of the works (DA255/2017). The proposed modification maintains the approved building setback and incorporates a change to the eastern elevation of the level 3 terrace from a 1.2m high opaque glass balustrade to a 1.8m high masonry wall with green wall to face terrace area.

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

Comment:

The proposed development on the street frontage includes the extension of the skillion garage roof and reconstruction of existing garden walls including increase in the height of the walls to meet Australian Standards and BCA requirements. The proposed modifications to the street frontage will not result in any unreasonable impacts within the locality. The proposed additions are within the existing building footprint and will not result in any unreasonable impacts on the

spatial proportions of the street, street edge and landscape character of the street.

- *Objective 2) To ensure and enhance local amenity by:*
 - *providing privacy;*
 - *providing equitable access to light, sunshine and air movement; and*
 - *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
 - *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
 - *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposal has been assessed with regard to Clause 3.4.2 Privacy and Security of the Manly DCP 2013. The proposed change to the eastern elevation of the terrace will increase privacy between dwellings.

The proposal has been assessed with regard to the objectives of Clause 3.4.1 Sunlight Access and Overshadowing of the Manly DCP 2013. The assessment found that the proposal will not result in any unreasonable overshadowing of the neighbouring properties.

The proposal will not result in any unreasonable impacts on views or vistas within the locality.

The proposal has been assessed with regard to the objectives of Clause 3.1 Streetscape of the Manly DCP 2013. The assessment found that the proposal would not result in any unreasonable impacts to the streetscape of the locality.

The proposal will maintain the traffic conditions of the area.

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

Comment:

The proposal will not result in any unreasonable impacts to the locality. The proposed flexibility is considered satisfactory in this circumstance.

- *Objective 4) To enhance and maintain natural features by:*
 - *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
 - *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
 - *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal is located on the existing building footprint and will not result in a reduction of the natural features of the site.

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

Comment:

Site is not located within bushfire prone land.

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

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

- Streetscape, the proposed modification to the garage roof and garden walls are consistent with the requirements of part 3.1.1 Streetscape of the MDCP. A condition has been included in the consent requiring any works within Councils Road Reserve to be assessed and approved prior to the release of the Occupation Certificate. Works outside of the scope of the application have been reported to the certifying authority to investigate and provide appropriate action.
- Solar access and overshadowing, a detailed assessment has been carried out that determines that the development would retain an equitable access to light and sunlight as per the

requirements of the MDCP.

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. Mod2019/0348 for Modification of Development Consent DA255/2017 granted for alterations and additions to the existing dwelling house on land at Lot 1 DP 854513, 1 B Edgecliffe Esplanade, SEAFORTH, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
ARK889-1-1 Sheet 1 of 5 Rev D	15.08.19	Ark design Studio Pty Ltd
ARK889-1-2 Sheet 2 of 5 Rev D	15.08.19	Ark design Studio Pty Ltd
ARK889-1-3 Sheet 3 of 5 Rev D	15.08.19	Ark design Studio Pty Ltd
ARK889-1-4 Sheet 4 of 5	15.08.19	Ark design Studio Pty Ltd
ARK889-1-5 Sheet 5 of 5 Rev D	15.08.19	Ark design Studio Pty Ltd

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

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

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

B. Add Condition 12. Approval for works within the subject to read as follows:

No consent is given under this application for work outside of the subject site. A separate application and approval is required for works within Councils Road Reserve.

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

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

C. Add Condition 13. Survey to read as follows:

A survey is to be provided showing that all works are within the subject site.

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

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







ITEM 3.3	MOD2019/0220 - 223 PLATEAU ROAD, BILGOLA PLATEAU - MODIFICATION OF DEVELOPMENT CONSENT N0482/10 FOR A SHOP TOP HOUSING DEVELOPMENT. MODIFICATION INCLUDES MECHANICAL ROOF PLANT, MINOR INTERNAL CHANGES AND EXTERNAL FAÇADE CHANGES
REPORTING OFFICER	MATTHEW EDMONDS
TRIM FILE REF	2019/620962
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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. Mod2019/0220 for Modification of development consent N0482/10 for a shop top housing development. Modification includes mechanical roof plant, minor internal changes and external façade changes. at Lots 336-338 DP 16327, 223 Plateau Road, Bilgola Plateau subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0220
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 336 DP 16327, 223 Plateau Road BILGOLA PLATEAU NSW 2107 Lot 337 DP 16327, 223 Plateau Road BILGOLA PLATEAU NSW 2107 Lot 338 DP 16327, 223 Plateau Road BILGOLA PLATEAU NSW 2107
Proposed Development:	Modification of development consent N0482/10 which approved a 3 storey shop top housing development over 2 levels of basement car parking
Zoning:	B1 Neighbourhood Centre B1 Neighbourhood Centre B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Murjen Pty Ltd M Barakat Developments Pty Ltd
Applicant:	BBF Town Planners
Application Lodged:	14/05/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	09/09/2019 to 23/09/2019
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 25.8%
Recommendation:	Approval

Executive Summary

This Section 4.55(AA) application seeks consent for amendments to a Shop Top Housing development approved under N0482/10 by the Land and Environment Court. The maximum height of the development was approved at 9.57m measured to the lift overrun. The amendments include new

mechanical plant located upon the roof of the development which will result in a maximum building height of 10.7m or a departure of 25.8% from the Height of Buildings Development Standard. The application is referred to the Panel for a determination as the application proposes a modification of a building to which SEPP65 Applies.

PROPOSED DEVELOPMENT IN DETAIL

This Section 4.55(AA) application proposes changes to an approved three storey shop-top housing development approved by the Court on 14 August 2012. This modification application seeks consent for the following changes:

Level 1 Basement Plan

- The relocation of the retail lift;
- The relocation of the residential bin storage area from Level 2 Basement;
- The reconfiguration of Stair 2;
- The reallocation of carparking spaces; and
- The nomination of carpark supply air and exhaust ducts.

Level 2 Basement Plan

- The relocation of the retail lift;
- The reconfiguration of the retail bin storage area;
- The reconfiguration of Stair 2;
- The reallocation of carparking spaces;
- The nomination of carpark exhaust ducts;
- The reconfiguration of the accessible WC to comply with current standards; and
- The provision of a second egress door from the switch room to comply with the BCA.

Level 3 Ground Floor Plan

- The relocation of the retail lift;
- The creation of a retail service corridor accessible from the retail lift and Grandview Drive frontage;
- The reconfiguration of the residential lobby to facilitate services and compliant accessibility;
- Minor façade shopfront glazing changes; and
- Nomination of carpark exhaust ducts.

Level 4 Floor Plan

- Minor internal reconfiguration of bathroom, ensuite and kitchen areas; and
- Introduction of sun awnings over west facing bedroom windows and face brickwork to external wall elements

Level 5 Floor Plan

- Minor internal reconfiguration! introduction of bathroom, ensuite and laundry areas and reconfiguration of kitchens;

- Introduction of face brickwork to external wall elements;
- The extension of the Unit 4 balcony over the approved external void area;
- The deletion of the Unit 5 spa; and
- The extension of the fire stairs to roof level for maintenance access.

Roof Plan

- Minor extension of the eastern roof upstand hob;
- The extension of the fire stairs to roof level for maintenance access;
- The relocation of a number of approved skylights; and
- The provision of an indicative mechanical plant exhaust layout;
- Provision of aluminium louvre screening around mechanical plant; and
- Increase lift overrun by 70mm.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S79C Assessment
 Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
 Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
 Pittwater 21 Development Control Plan - B2.6 Dwelling Density and Subdivision - Shop Top Housing
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
 Pittwater 21 Development Control Plan - C1.9 Adaptable Housing and Accessibility
 Pittwater 21 Development Control Plan - C1.15 Storage Facilities
 Pittwater 21 Development Control Plan - C1.25 Plant, Equipment Boxes and Lift Over-Run
 Pittwater 21 Development Control Plan - D3.1 Character as viewed from a public place
 Pittwater 21 Development Control Plan - D3.6 Front building line

Pittwater 21 Development Control Plan - D3.7 Side and rear building line

SITE DESCRIPTION

Property Description:	<p>Lot 336 DP 16327 , 223 Plateau Road BILGOLA PLATEAU NSW 2107</p> <p>Lot 337 DP 16327 , 223 Plateau Road BILGOLA PLATEAU NSW 2107</p> <p>Lot 338 DP 16327 , 223 Plateau Road BILGOLA PLATEAU NSW 2107</p>
Detailed Site Description:	<p>The subject site consists of three (3) allotments located on the corner of Plateua Road and Grandview Drive.</p> <p>The site is regular in shape with a frontage of 13.5m along Plateau Road and a depth of 36.56m. The site has a total surveyed area (three sites combined) of 856.3m².</p> <p>The site is located within the B1 Neighbourhood Centre zone and is currently vacant with the basement works currently being undertaken.</p> <p>The site is clear of any vegetation following the commencement of works.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by two storey commercial and shoptop housing to the north-east and residential properties surrounding the remainder of the site.</p>

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant history:

- Application **N0482/10** for 3 storey shop top housing development over 2 level basement parking was approved on 14/08/2011 by the Land and Environment Court.
- Application **N0482/10/S96/1** for 3 storey shop top housing development over two (2) level basement parking involving changes to internal layout and parking was approved under delegated authority on 15/05/2013.
- Application **N0121/13** for Strata Subdivision was approved under delegated authority on 27/05/2013.
- Application **N0482/10/S96/2** for 3 storey shop top housing development over 2 level basement parking - Modification includes the addition of two windows to the south east elevation was approved under delegated authority on 30/06/2015.
- The construction certificate was issued on 29 May 2017 by Blackett Maguire + Goldsmith Pty Ltd.
- Works physically commenced shortly after the issue of the construction certificate and to date the basement excavation has been largely completed and piers/footings established for the basement level.
- Application **N0482/10/S96/3** for Modification of consent N0482/10 was approved under delegated authority on 04/12/2017 for alterations to the basement to include additional storage area within void.
- Application **CDC2018/0550** for Internal fitout of the ground floor retail tenancy and first use as a Restaurant/Cafe, mini supermarket and bottle shop was approved on 8 June 2018 by a Private Certifier.

The relevant history of the subject application MOD2019/0220 is as follows:

- Council wrote to the applicant on 30 July 2019 requesting items be addressed such as an Acoustic Report, submission of a design verification statement, visibility of roof mounted plant and seeking clarification regarding some of the proposed changes.
- The applicant provided a response to Council for each of the items raised in the letter on 27 August 2019. This included an acoustic report and proposed screening around the mechanical plant.
- Council re-notified the application for a period of 14 Days due to the introduction of screening around the mechanical plant and provided acoustic report.

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 within the findings of the Judgement of the Land and Environment Court for the original application NO482/10, in full, with amendments detailed and assessed as follows:

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

Section 4.56- Other Modifications	Comments
(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under NO482/10.
(b) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan and Pittwater 21 Development Control Plan.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in	Written notices of this application have been sent to the last address known to Council of the

Section 4.56- Other Modifications	Comments
respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	objectors or other persons who made a submission in respect of NO482/10.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 79C 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application and with the modification application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to an Acoustic Report and treatment to the mechanical plant.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to</p>

Section 79C 'Matters for Consideration'	Comments
	<p>this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Alison Ludwig	11 Station Street PYMBLE NSW 2073
Mr Jeffrey Michael Fordham	162 Grandview Drive BILGOLA PLATEAU NSW 2107
Mr Jonathan Rohan Hamilton Goodwill	158 Plateau Road BILGOLA PLATEAU NSW 2107

The application was notified for a period of 14 days in accordance with the regulations and DCP. Three (3) submissions were received regarding the proposal during the notification period. The submissions raised a number of concerns (discussed below) regarding the proposal. Council wrote to the applicant requesting a number of items be addressed including an acoustic report and details of how to mitigate visual impact of the mechanical plant. Updated documentation and plans were provided by the applicant to Council in response. Due to the new documents and updated plans, the application was re-notified for a period of 14 days. During the notification period, Council received no further submissions regarding the application.

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

- Request for privacy screens on north-west corner of the building upon the two upper levels.
- At the North Western corner the stairs shown from the paving area may compromise the safety of pedestrians wishing to use the door of the adjoining building with the stair being in such close proximity to the entrance.
- The plans show a number of inaccuracies from the elevation view of the location of the roof mounted plant including the car park discharge, retail condensers and lift overrun.
- The mechanical plant will be visible from the public domain and have a detrimental impact upon the visual quality of the building and attribute to additional building height above that already approved.
- The application has not been accompanied by a Design Verification Statement prepared by a qualified designer.
- An acoustic report should be prepared for the proposed mechanical plant and submitted to Council demonstrating the noise from the proposed mechanical plant will not exceed more than 5dB(A) above the background (LA90, 15 min) level during the day and shall not exceed the background level at night (10:00pm - 7:00am).
- The extension of the eastern roof upstand hob will have an impact upon solar access and potential to reflect noise on the underside of the roof down to our property.
- Concern regarding if the proposed air conditioning units on the south-east elevation (3 units) and driveway entrance (5 Units).

The matters raised within the submissions are addressed as follows:

- *Request for privacy screens on north-west corner of the building upon the two upper levels.*
Comment:
Two privacy screens have been provided upon the updated plan as shown on the north-west elevation plan.

- At the north-western corner the stairs shown from the paving area may compromise the safety of pedestrians wishing to use the door of the adjoining building with the stair being in such close proximity to the entrance.

Comment:

This aspect of the proposal has already been approved under a previous modification application N0482/10/S96/1 on 15 May 2013. The layout at this interface is not altered under the current modification application lodged with Council.

- The plans show a number of inaccuracies from the elevation view of the location of the roof mounted plant including the car park discharge, retail condensers and lift overrun. For example, the roof plan states, 'car park exhaust discharge - top of duct 1100 off slab'. The car park exhaust discharge should be visible on the north-east elevation as it is located on the south-eastern side of the two retail condensers. The car park exhaust duct should also be visible on the south-west elevation behind the lift overrun as the top of the duct (RL149.14) is higher than the top of the lift overrun (RL148.94). The notification of the proposal is not valid as the plans do not accurately represent the modifications sought.

Comment:

Council conducted a review of the elevation plans to ascertain any inaccuracies in the elevation plans. It is correct there were minor inaccuracies upon the plan, however, the applicant has advised these were drafting errors. In response to concerns regarding the visual impact of the roof plant, the applicant has amended the proposal to include dark coloured aluminium louver screening around the most visible aspects of the plant up to a height of 1.5m. The application was re-notified for a period of 14 days with the updated plans which are now considered to accurately reflect the works as proposed.

- The mechanical plant will be visible from the public domain and have a detrimental impact upon the visual quality of the building and attribute to additional building height above that already approved. More detailed sight lines should be provided to show the impact of the roof top plant and the single submitted sight line is not sufficient to show there will not be a visual impact. If the sight line diagrams demonstrate that the proposed additions to the roof will in fact be visible Council should request that the additions be screened from view by an appropriately designed structure (such as a louvered/perforated screen) made from a durable material and integrated into the design of the development. The applicant should also be requested to demonstrate that they are unable to reduce the height of the additions. The proposed retail condensers with a height of 1500mm appear excessive as smaller condensers could be selected.

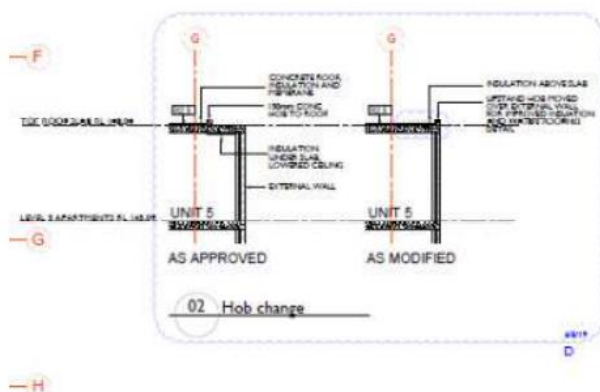
Comment:

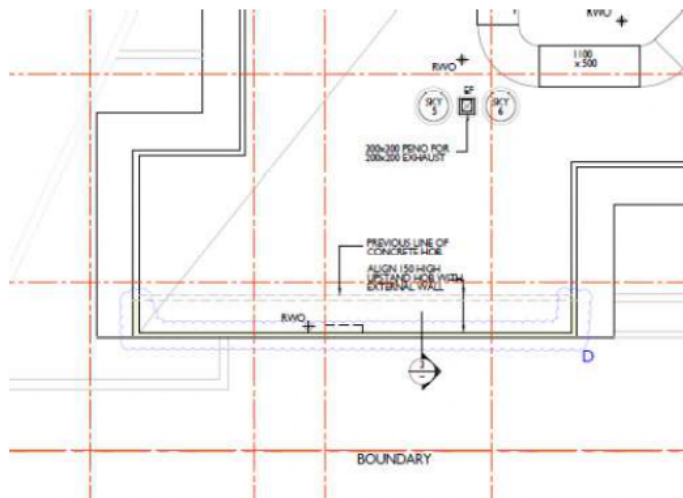
It is agreed that the application as initially lodged did not provide a satisfactory outcome with regard to visual impact, with all mechanical plant exposed with no screening around the mechanical plant. An updated set of plans have since been provided which included 1.5m height aluminum louver screening around the mechanical plant to assist with mitigating visual impacts. The solution is considered a satisfactory response to screen the the mechanical plant. Some ductwork remains exposed however is only at a low level which will not cause a visual impact from the street level or adjoining properties. A number of sight line diagrams were submitted with the application, however the two diagrams demonstrating the ground level view from Grandview Drive were provided upon an internal section plan. For privacy reasons, the section plans are not included within the notification plans as they contain internal residential floor layouts. Therefore, the applicant has provided a complete set of view sight lines from both street frontages showing the roof top plant is obscured from street level. The provided sight lines and louvered screening demonstrate an acceptable visual outcome with the 1.5m height mechanical plant selected for the proposal.

It is acknowledged the mechanical plant will attribute to additional building height at a localised

central portion of the development. This has been addressed in detail under the assessment of Clause 4.3 and Clause 4.6 within this assessment report.

- The application has not been accompanied by a Design Verification Statement prepared by a qualified designer.*
Comment:
 A Design Verification Statement has now been submitted with the application in accordance with the regulations.
- An acoustic report should be prepared for the proposed mechanical plant and submitted to Council demonstrating the noise from the proposed mechanical plant will not exceed more than 5dB(A) above the background (LA90, 15 min) level during the day and shall not exceed the background level at night (10:00pm - 7:00am).*
Comment:
 An acoustic report has been provided to Council which addresses the proposed acoustic plant as part of the development. The acoustic report is prepared by a suitably qualified consultant and provides recommendations such as additional insulation to ductwork, installation of silencers and automatic modification of the mode of operation during the evening period. The recommendations within the acoustic report confirm the operation of the mechanical plant in combination will not exceed more than 5dB(A) above the background (LA90, 15 min) level during the day and shall not exceed the background level at night (10:00pm - 7:00am) when measured at the boundary, balcony or habitable room of potentially affected residential occupancies. The recommendations of the acoustic report will form conditions of development consent.
- The extension of the eastern roof upstand hob will have an impact upon solar access and potential to reflect noise on the underside of the roof down to our property.*
Comment:
 The proposed extension of the upstand hob is a minor element of the roof feature which has a height of 150mm and does not create an additional overhang of the roof or protrude closer to the south-eastern boundary. In this regard, this minor change is not considered to create an unreasonable additional overshadowing impact or have the effect of additional noise reflection.





- Concern regarding if the proposed air conditioning units on the south-east elevation (3 units) and driveway entrance (5 Units).

Comment:

The location of the above mentioned air conditioning units were approved under a previous modification application NO482/10/S96/1. This modification application deals specifically with the new introduced mechanical plant for which the submitted acoustic report has addressed.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p>General Comments</p> <p>Environmental Health appreciates the opportunity to comment on the modifications proposed for this development. Our attention is on the inclusion of information regarding mechanical exhaust / plant and the emissions associated with those.</p> <p>Noise: The operation of air conditioning units and mechanical exhaust systems creates noise. In the preservation of residential amenity - keeping in mind that this is perhaps the first commercial use of plant in such a manner/intensity in this area - we must be diligent in monitoring the impacts and approving commercial encroachment.</p> <p>In the most relevant consent document (N0482/10/596/3), item number 9 states "Noise from the operation of any plant or equipment at the premises shall not exceed criteria listed in the NSW Industrial Noise Policy January 2000", but this document has been superseded by "Noise Policy for Industry (2017)" and the consent item will need to be re-written to reflect those changes.</p> <p>Odour/air pollution: Associated with kitchen use of mechanical exhaust, it is expected that some smoke or odour will be produced. The existing conditions refer</p>

Internal Referral Body	Comments
	<p>to <i>Protection of the Environment Operations Act 1997</i> generally and will remain without further modification.</p> <p><u>Re-assessment made on 10 July 2019</u></p> <p>Recent submissions made to Council have re-surfaced the need for more-specific conditions pertaining to noise caused by the mechanical plant with the development. We have further considered the best way to apply conditions without knowing full details of the mechanical plant to be involved.</p> <p>Acoustic assessments and a report will be required to be submitted to Council with the aim of minimising the impact on residential receivers.</p> <p>Recommendation</p> <p>APPROVAL - subject to conditions</p> <p>*Note From Council's Planner - Council's planner requested the acoustic report be provided at the DA stage, rather than the CC stage. This acoustic report has since been provided and will be incorporated as part of the conditions of consent.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. The considerations of SEPP 55 were had when granting of the original development consent. 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 three storey shop top 'housing' development plus basement car parking for the provisions of five 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 proposed development substantially the same in regards to the scale and appearance from that originally approved. The updated facade finishes are consistent with the surrounding locality consisting of face brickwork and earthy tones.

Principle 2: Built Form and Scale

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

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

Comment: The scale of the proposed development is unchanged apart from a slight increase (70mm) in the lift overrun and the introduction of mechanical plant upon the rooftop which is to be screened with Aluminium louvers. The mechanical plant is considered to be essential to the functionality of the ground floor tenancies and therefore considered acceptable given the screening proposed around the plant.

Principle 3: Density

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

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

Comment: The development remains as 5 units, unchanged from the original design.

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 window placement is unchanged from the development as originally approved. Some internal changes to the unit layout have been proposed, however these improve the functionality of the units. The amount of deep soil zones and landscaping is also unchanged. An updated BASIX certificate has been provided.

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 landscape design is unchanged from what was originally approved.

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 introduction of mechanical plant has been considered with regard to acoustic amenity (for the adjoining dwellings and dwellings within the development). An acoustic report has been submitted with the application to demonstrate that there will not be an unreasonable impact upon acoustic amenity and the recommendations of the acoustic report will form conditions of consent. Privacy screens are introduced upon the north-eastern elevation to reduce overlooking to the adjoining shop-top housing windows.

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 ground floor interface between the commercial tenancies and the street retain an appropriate amount of passive surveillance.

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 unit mix remains unchanged, with one disabled unit retained as originally proposed.

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 design of the facade and architectural elements are largely unchanged as a result of this modification application. The new proposed colour schedule consists of recessive tones which are sympathetic to the surrounds. The mechanical plant is screened with dark coloured aluminium louvers to limit the impact of the essential utilities.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments												
Part 3 Siting the Development														
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Considered under initial application.												
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Considered under initial application.												
Public Domain Interface	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?	Considered under initial application.												
Communal and Public Open Space	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)	Considered under initial application.												
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table><tr><th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr><tr><td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr><tr><td>650m² – 1,500m²</td><td>3m</td></tr><tr><td>Greater than 1,500m²</td><td>6m</td></tr><tr><td>Greater than 1,500m² with</td><td>6m</td></tr></table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with	6m	Considered under initial application.
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with	6m													

	<table> <tr> <td>significant existing tree cover</td><td></td><td></td></tr> </table>	significant existing tree cover												
significant existing tree cover														
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> <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> </table> <p>Note: 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	Considered under initial application.
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												
Pedestrian Access and entries	<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>	Considered under initial application.												
Vehicle Access	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	Considered under initial application.												
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car</p>	Considered under initial application.												

	<p>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>									
Part 4 Designing the Building										
Amenity										
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none">Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.	Considered under initial application. Introduction of mechanical plant and screening will not cause further impact solar access.								
	<ul style="list-style-type: none">A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	Considered under initial application.								
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none">At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	Considered under initial application. The minor amendments to the room layout assist in cross ventilation.								
	<ul style="list-style-type: none">Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Considered under initial application, apartment depth unchanged.								
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p>	Considered under initial application.								
	<table><tr><td colspan="2">Minimum ceiling height</td></tr><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</td></tr></table>		Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the
	Minimum ceiling height									
	Habitable rooms		2.7m							
	Non-habitable		2.4m							
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the									

	<table><tr><td></td><td>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>		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					
	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											
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Considered under initial application, overall internal size unchanged.</p>
Apartment type	Minimum internal area											
Studio	35m ²											
1 bedroom	50m ²											
2 bedroom	70m ²											
3 bedroom	90m ²											
	<p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	<p>Considered under initial application, windows unchanged and bedroom locations unchanged.</p>										
	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p>	<p>Considered under initial application.</p>										
	<p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p>	<p>Considered under initial application.</p>										
	<p>Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).</p>	<p>Considered under initial application, bedrooms are either unchanged or increased in size.</p>										
	<p>Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.</p>	<p>Considered under initial application.</p>										
	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none">• 3.6m for studio and 1 bedroom apartments• 4m for 2 and 3 bedroom apartments	<p>Considered under initial application, area and depth of living not reduced.</p>										
	<p>The width of cross-over or cross-through apartments are at least 4m internally to avoid</p>	<p>Considered under initial application.</p>										

	deep narrow apartment layouts																
Private Open Space and Balconies	All apartments are required to have primary balconies as follows:	Considered under initial application. Unit 4 gains additional Private Open Space by in-filling of void adjacent to existing Balcony off Unit 4.															
	<table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>		Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m
	Dwelling Type		Minimum Area	Minimum Depth													
	Studio apartments		4m ²	-													
	1 bedroom apartments		8m ²	2m													
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
The minimum balcony depth to be counted as contributing to the balcony area is 1m																	
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 ² and a minimum depth of 3m.																	
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	N/A only 5 units proposed.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	NA only three storey.															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	Storage not decreased within unit or within basement. As per original.															
	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>		Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²					
	Dwelling Type		Storage size volume														
	Studio apartments		4m ²														
	1 bedroom apartments		6m ²														
	2 bedroom apartments		8m ²														
3+ bedroom apartments	10m ²																
At least 50% of the required storage is to be located within the apartment.																	
Acoustic Privacy	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.	The introduction of mechanical plant has been considered with regard to acoustic amenity (for the adjoining dwellings and dwellings within the development). An acoustic report has been submitted with the application to demonstrate that there will not be an unreasonable impact upon acoustic															

		amenity and the recommendations of the acoustic report will form conditions of consent.															
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Layout of apartments relative to external noise sources are unchanged.															
Configuration																	
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Considered under initial application.															
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	N/A no ground floor apartments.															
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	The design of the facade and architectural elements are largely unchanged as a result of this modification application. The new proposed colour schedule consists of recessive tones which are sympathetic to the surrounds and face brickwork consistent with surrounding dwellings.															
Roof Design	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.	Design of roof is unchanged apart from minor extension of upstand hob which is a minor element 150mm in height. Roof mounted plant and screening is introduced and is discussed in detail elsewhere in this report.															
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Landscape design unchanged.															
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes: <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent						Considered under initial application.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area													
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent													

	<table><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent																							
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Shrubs			500-600mm																								
Ground Cover			300-450mm																								
Turf			200mm																								
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	Maintains 20% accessible units (1 unit out of 5).																									
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	Considered under initial application.																									
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Ground floor remains for commercial tenancies as per original.																									
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	Considered under initial application.																									
Performance																											
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Updated BASIX certificate has been provided.																									
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Considered under initial application.																									
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	The waste management arrangements are unchanged and the development retains																									

		sufficient room for waste storage both residential and commercial.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Considered under initial application.

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: Considered under initial application.

(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 proposal (as modified) has been considered against the relative considerations within SEPP 65 and is considered consistent with the design quality principles and objectives within the ADG.

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.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.57m (top of lift overrun)	10.7m (top of mechanical plant) 9.64m (top of lift overrun) Roof height unchanged.	25.8%	No
Density controls for certain residential accommodation	1 dwelling per 150sqm	5 dwellings	5 dwellings	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No

Clause	Compliance with Requirements
4.5A Density controls for certain residential accommodation	Yes
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

The development was approved by the court (development application NO482/10) with a maximum height of 9.57m (to the lift overrun). The proposed modifications increase the height of the lift overrun by 70mm and the impact of this is considered negligible. The introduction of mechanical plant and screening upon the roof of the development will result in a maximum height 10.7m, or a variation of 25.8% of the maximum height. The area of mechanical plant is localised within the centre of the roof and the element is not considered to give the overall development the appearance of excessive bulk and scale when viewed from the street level.

The roof slab level remains unchanged as a result of the modification.

A complete assessment of the non-compliance is detailed under Clause 4.6 of this assessment report.

4.6 Exceptions to development standards

Description of non-compliance:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the PLEP 2014, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the Environmental Planning and Assessment Act 197, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. In accordance with this, the Applicant is not required to submit a written request to vary the height of buildings development standard. Nevertheless, an assessment of the variation is as follows:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.7m (Previously approved 9.57m)
Percentage variation to requirement:	25.8%

Assessment of request to vary a development standard:

As stated above, a written request under Clause 4.6 is not required for the modification application,

However, 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*

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

standard.

Comment:

As stated previously, a written request is not required under Clause 4.6 of the PLEP 2014. However, the applicant has put forward the following justification for the additional height as a result of the mechanical plant:

We confirm that the previously approved maximum roof height of 9.3 metres is not altered with the roof top mechanical plant extending above this approved height by 1.4 metres to maximum height of 10.7 metres. The approved lift overrun is also increased in height by 70mm to accommodate the chosen lift. The roof top mechanical plant and associated exhaust breach the height standard by a maximum of 2.2 metres or 25%.

Whilst the clause 4.6 PLEP development standard variation mechanism does not apply to an application seeking to modify a consent the acceptability of the increase in building height has been assessed against the objectives of the standard as follows:

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment: *The proposed roof top mechanical plant and exhaust structures are required to satisfy the SCA in terms of ventilation of the basement and to facilitate the use of the retail tenancy as a food and drinks premises. The breaching elements have been located centrally on the roof of the building to ensure that they are not discernible as viewed from the street or surrounding residential properties as depicted in Figure 1 below.*

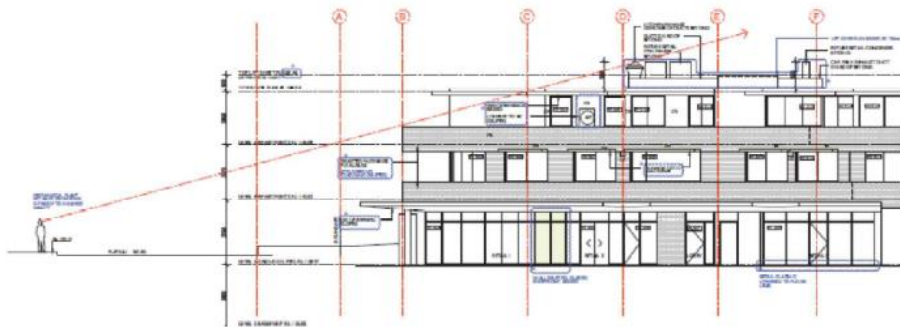


Figure 1 - Site line diagram demonstrating that the breaching roof top elements will not be discernible as viewed from the street or surrounding residential properties.

The breaching elements will not impact on the design quality of the approved building or its streetscape and residential amenity outcomes and to that extent the building, by virtue of its height and scale, will remain consistent with the desired character of the locality being an outcome accepted in the approval of the original scheme. The proposal is consistent with this objective.

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

Comment: As above.

(c) to minimise any overshadowing of neighbouring properties,

Comment: Any shadows created by the proposed roof top mechanical plant and exhaust structures will fall onto the roof and therefore not create any additional shadowing impact beyond the site boundaries. The proposal is consistent with this objective.

(d) to allow for the reasonable sharing of views,

Comment: Having inspected the site and surrounds to determine available view lines, and noting the height and location of the roof top mechanical plant and exhaust structures, we have formed the considered opinion that the proposed structures will not give rise to any public or private view affectation. The proposal is consistent with this objective.

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment: The building will continue to relate the natural topography in the same manner as originally approved. The proposal is consistent with this objective.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Comment: The building will continue to relate the natural environment in the same manner as originally approved with no heritage consequences. The proposal is consistent with this objective.

Given the ability to satisfy the objectives of the height of buildings standard we have formed the considered opinion that the strict compliance with the numerical standard is both unreasonable and unnecessary under the circumstances.

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment:

In granting development consent to the initial application, the Court found that the proposal was reasonable with regard to its height and scale in the context of the desired future character of the locality and the B1 Zoning of the land. The introduction of the roof top plant and screening adds additional building height up to a maximum of 1.13m above the approved height. The location of the plant is centrally located upon the roof and to be screened by aluminium louvers. Due to the central location and screening, this feature will not render the development incompatible with the desired locality or present excessive bulk or scale. The plant is required for the functionality of the commercial component of the development what will provide for small scale retail opportunities to serve the surrounding locality.

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

Comment:

This issue of compatibility with the scale of the surrounding development was considered under the initial application by the court. The zoning of the land (B1 Neighbourhood Centre) allows this form of development whereby it comprises of a mixture of commercial and residential uses within the low density setting of detached dwelling houses. The introduction of mechanical plant to serve the retail component of the development is not considered to render the development incompatible with the surrounding locality.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The additional height is central to the building away from the edge closest to the nearest residential property. In this regard, the height of the plant and screening will not have an overshadowing impact on the eastern residential property.

d) to allow for the reasonable sharing of views,

Comment:

No view loss will occur as a result of the proposed additional works.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment:

The relationship of the development to the site topography has been considered under the initial application. The additional works are centrally located within the site above the roof and are not considered to have adverse to the site conditions and topography.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,

Comment:

The modification does not propose any further removal of vegetation not already consented to by the court. The proposed development is not within a heritage conservation area to adjacent to a heritage item.

Zone objectives

The underlying objectives of the B1 Neighbourhood Centre zone are:

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

Comment: The proposed shop-top housing development retains the original layout with ground floor retail located on the ground floor.

To provide healthy, attractive, vibrant and safe neighbourhood centres.

Comment: The modifications will maintain good passive surveillance upon the ground floor retail tenancies. The inclusion of the mechanical plant is required for the functionality of the development and the use of screening will assist in maintaining an attractive development.

Conclusion:

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

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

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

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

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Density Residential		
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C2.1 Landscaping	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.3 Awnings	Yes	Yes
C2.5 View Sharing	Yes	Yes
C2.6 Adaptable Housing and Accessibility	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.2 Scenic protection - General	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	Yes	Yes
D3.7 Side and rear building line	Yes	Yes

Detailed Assessment

B2.6 Dwelling Density and Subdivision - Shop Top Housing

The overall retail/commercial floor area of the proposed development is unchanged. The residential floor area of the development is also unchanged, with minor internal floor plate changes to provide better functionality for units as required.

C1.5 Visual Privacy

Privacy screens have been added to the balcony as viewed upon the north-eastern elevation to reduce direct views between windows on the adjoining property. The additional balcony area off Unit 4 overlooks the street only.

C1.6 Acoustic Privacy

Mechanical plant has been proposed upon the roof of the development in order to service the ground floor commercial tenancies and residential units. The mechanical plant has been assessed as part of an acoustic report provided with the S4.55 Modification Application.

The Acoustic report recommends specific treatments to mechanical plant to ensure the noise resulting from the operation of the equipment in combination will not exceed more than 5dB(A) above the background (LA90, 15min) level during the day and will not exceed the background level at night when measured at the boundary, balcony or habitable room of potentially affected residential properties either within or external to the development.

The recommendations of the acoustic report will form conditions of development consent to achieve a reasonable outcome in accordance with Council's policy.

C1.9 Adaptable Housing and Accessibility

The minor internal floor changes to the residential dwellings will result in the retention of one (1) accessible residential unit as per the original approval and in accordance with the control.

C1.15 Storage Facilities

The arrangements and amount of residential storage attributed to each unit within the basement is unchanged as a result of the proposed modifications.

C1.25 Plant, Equipment Boxes and Lift Over-Run

The proposed modification introduces mechanical plant to the rooftop of the proposed development to service the ground floor retail facilities and basement car park. The mechanical plant is considered essential to the functionality of the development, however is to not create an unsightly impact from the street or surrounding properties.

The applicant has proposed 1.5m height aluminium louvre screening around the mechanical plant in order to reduce the visual impact and 'unsightly' nature of these services. The louvres are finished in dark grey colour 'basalt' which compliments the proposed colour schedule of the development and is consistent with the DCP requirements.

The acoustic impact of the mechanical plant has been assessed as part of an acoustic report submitted with the application (discussed earlier within this report). Overall, the visual impact of the mechanical plant is mitigated by appropriate screening which is not considered result in excessive building bulk and scale for the overall development.

D3.1 Character as viewed from a public place

The overall character of the development is largely unchanged from the original consent. Minor changes to the material palette have been selected. These changes have been considered against the original development consent and the overall palette is generally consistent with those approved. This includes the use of dark and earthy tones (no lighter than mid-grey). The main change is the external facade which was approved as consisting of colourbond around the balcony edges. This is now proposed to consist of brick facade which is not inconsistent with the surrounding development or character of the area. Overall the changes will result in a colour and material palette consistent with the surrounding locality and DCP requirements.

D3.6 Front building line

The proposed setbacks are unchanged from that originally approved under the original development consent.

D3.7 Side and rear building line

The proposed setbacks are unchanged from that originally approved under the original development consent.

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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

- The additional building height resulting from the mechanical plant;
- Acoustic impact of the mechanical plant; and
- The visual impact of the mechanical plant and screening.

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. Mod2019/0220 for Modification of development consent N0482/10 which approved a 3 storey shop top housing development over 2 levels of basement car parking on land at Lot 336 DP 16327,223 Plateau Road, BILGOLA PLATEAU, Lot 337 DP 16327,223 Plateau Road, BILGOLA PLATEAU, Lot 338 DP 16327,223 Plateau Road, BILGOLA PLATEAU, subject to the conditions printed below:

A. Modification Condition - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
CD 00, Issue A	Lawton Hurley	April 2019
CD 01, Issue A	Lawton Hurley	April 2019
CD 02, Issue A	Lawton Hurley	April 2019
CD 03, Issue A	Lawton Hurley	April 2019
CD 04, Issue A	Lawton Hurley	April 2019
CD 05, Issue A	Lawton Hurley	April 2019
CD 06, Issue D	Lawton Hurley	August 2019
CD 07, Issue D	Lawton Hurley	August 2019
CD 08, Issue D	Lawton Hurley	August 2019
CD 11, Issue D	Lawton Hurley	August 2019
CD 12, Issue D	Lawton Hurley	August 2019
CD 14, Issue D	Lawton Hurley	August 2019
Materials and Finishes Schedule	Baxter Thrum	Undated

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 330684M_06	2 May 2019	AGA Consultants

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

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

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

approved plans.

B. Add Condition Prior to the Issue of a Construction Certificate to read as follows:

Compliance with Acoustic Report

Prior to the issue of a construction certificate, a suitably qualified acoustic consultant shall confirm the following:

- The development has incorporated the recommendations of the Acoustic Report Reference 20190925.1/2108A/R2/HC, dated 21 August 2019 and prepared by Acoustic Logic; and
- That the operation of an individual piece of equipment or operation of equipment in combination will not exceed more than 5dB(A) above the background (LA90, 15 min) level during the day and shall not exceed the background level at night (10.00pm - 7.00am) when measured at the boundary, balcony or habitable room of potentially affected residential occupancies - either within or external to the development. The assessment shall include the noise and vibration generating plant including, but not limited to air conditioners, car park exhaust, bathroom/toilet and garbage room exhaust, kitchen exhaust, roller shutter doors and lifts shown on the approved plans.

Details demonstrating compliance with the recommendations of the report shall be provided to the Principle Certifying Authority prior to the issue of a Construction Certificate.

Reason: To address and mitigate potential noise and vibration related issues prior to construction, to protect residential amenity.

C. Add Condition Prior to the Issue of an Occupation Certificate to read as follows:

Compliance with Acoustic Report Implementation

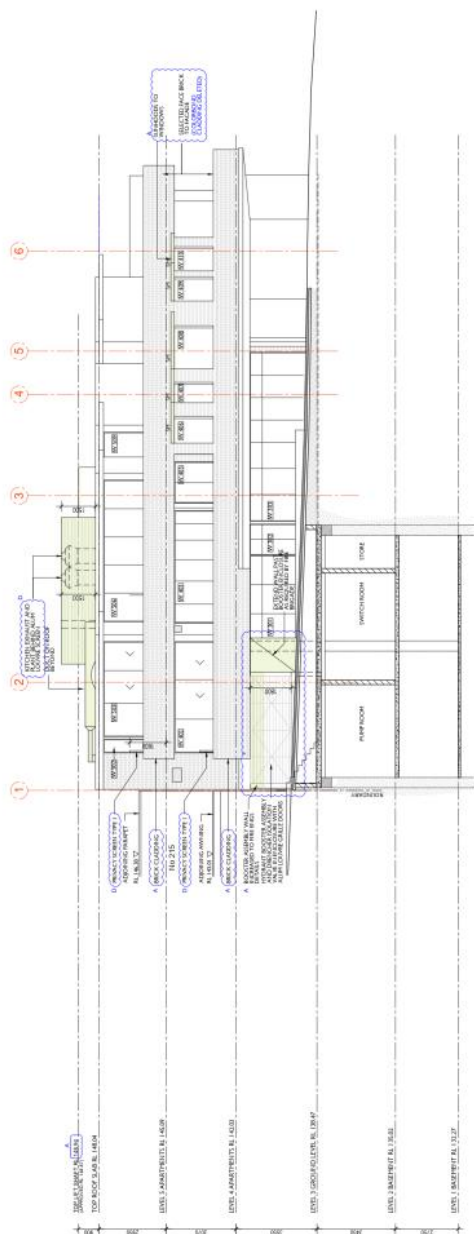
Prior to the issue of an occupation certificate, a suitably qualified acoustic consultant shall confirm the following:

- The development has incorporated the recommendations of the Acoustic Report Reference 20190925.1/2108A/R2/HC, dated 21 August 2019 and prepared by Acoustic Logic; and
- That the operation of an individual piece of equipment or operation of equipment in combination will not exceed more than 5dB(A) above the background (LA90, 15 min) level during the day and shall not exceed the background level at night (10.00pm - 7.00am) when measured at the boundary, balcony or habitable room of potentially affected residential occupancies - either within or external to the development. The assessment shall include the noise and vibration generating plant including, but not limited to air conditioners, car park exhaust, bathroom/toilet and garbage room exhaust, kitchen exhaust, roller shutter doors and lifts shown on the approved plans.

Details of demonstrating each of the above is to be provided to the Principle Certifying Authority prior to the issue of the occupation certificate.

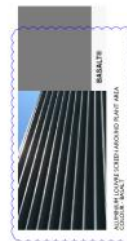
Reason: To address and mitigate potential noise and vibration related issues prior to the occupation of the development, to protect residential amenity.



[illegible]

S4.56 APPLICATION
Additional Info Aug 2019

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NOTES: 1. THE INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 10/10/01 BY 60322 UCBAW/STP

[illegible]

4.0 REVIEW OF DETERMINATIONS

ITEM 4.1 REV2019/0047 - 5 DALLEY STREET, QUEENSCLIFF - REVIEW
OF DETERMINATION OF DEVELOPMENT APPLICATION
DA2018/1069 FOR DEMOLITION WORKS AND THE
CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING

REPORTING OFFICER MATTHEW EDMONDS

TRIM FILE REF 2019/620995

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

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. REV2019/0047 for Review of Determination of development application DA2018/1069 for demolition works and the construction of a residential flat building at Part Lot 1 DP 302634, 5 Dalley Street, Queenscliff for the reasons set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2019/0047
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 1 DP 302634, 5 Dalley Street QUEENSCLIFF NSW 2096
Proposed Development:	Review of Determination of development application DA2018/1069 for demolition works and the construction of a residential flat building
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Golden Beaches Pty Ltd
Applicant:	Golden Beaches Pty Ltd
Application Lodged:	28/08/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	07/09/2019 to 21/09/2019
Advertised:	07/09/2019
Submissions Received:	17
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 2,320,593.00

EXECUTIVE SUMMARY

The application seeks a review of the determination of DA2018/1069, which was refused by the NBLPP on 8 May 2019. Despite amendment, the proposed development remains inconsistent with a number of requirements and objectives of WDCP 2011, and the majority of issues raised by the NBLPP in relation to DA2018/1069 remain outstanding. As such, the application is referred to the NBLPP with a recommendation of refusal.

PROPOSED DEVELOPMENT IN DETAIL

The application has been lodged under the provisions of section 8.3 of the EP&A Act, seeking a review of the refusal of development application DA2018/1069, which sought consent for:

- the demolition of existing site improvements,
- the construction of a residential flat building comprised of four x three bedroom units and basement parking for seven vehicles, and
- associated earthworks, landscaping and infrastructure.

In response to the refusal of DA2018/1069, the development has been amended in a number of ways, as shown highlighted in red on the architectural plans provided. However, the key changes can be summarised, as follows:

- the deletion of the ground floor (subterranean) apartment, such that only three apartments are now proposed,
- the lowering of each residential level and the building as a whole by 575mm,
- an increase to the FFL of the basement car park level by 2.5m and base of the car stackers by 2.85m, and in turn a reduction to the volume of excavation proposed, and
- the deletion of the visitor parking space.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Warringah Development Control Plan - B2 Number of Storeys

Warringah Development Control Plan - B3 Side Boundary Envelope

Warringah Development Control Plan - B5 Side Boundary Setbacks

Warringah Development Control Plan - B9 Rear Boundary Setbacks

Warringah Development Control Plan - C2 Traffic, Access and Safety

Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - C4 Stormwater
 Warringah Development Control Plan - C7 Excavation and Landfill
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk
 Warringah Development Control Plan - D10 Building Colours and Materials
 Warringah Development Control Plan - D21 Provision and Location of Utility Services
 Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation

SITE DESCRIPTION

Property Description:	Lot 1 DP 302634 , 5 Dalley Street QUEENSCLIFF NSW 2096
Detailed Site Description:	<p>The site is slightly irregular in shape, with a 12.19m wide frontage to Dalley Street to the south, a maximum depth of 46.865m and a total area of 568.3m². The site currently contains a detached dual occupancy, comprising a two storey dwelling at the front of the site and a single storey dwelling at the rear. Existing canopy trees are located at the front of the site, and at the rear between the two dwellings.</p> <p>The site experiences a fall of approximately 5.5m from the rear boundary down towards the street, with a maximum slope of approximately 12%. Pedestrian and vehicular access is gained via an existing driveway to Dalley Street, immediately adjacent to the eastern side boundary. The site is surrounded by residential development of varying age, scale and density, with 4 storey residential flat buildings to the east, west and north.</p> <p>Dalley Street is a local road with on-street parking on both sides. Overhead low voltage power lines and communication cables are located within the public road reserve and run along the entire frontage of the site.</p> <p>The site is identified as within "Area B" of Landslip Risk Map of WLEP 2011, and is located within the Coastal Zone, specifically the Coastal Environment Area, as identified by SEPP (Coastal Management) 2018.</p>

Map:



SITE HISTORY

On 7 November 2017, a prelodgement meeting was held between Council and the applicant with regards to the construction of a residential flat building at the site.

On 22 June 2018, Development Application DA2018/1069 was lodged with Council, seeking consent for a residential flat building at the site.

On 8 May 2019, Development Application DA2018/1069 was presented to the NBLPP for determination with a recommendation of approval. The NBLPP considered the proposal and refused the application for the following reasons:

1. 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 B2 Number of Storeys of the Warringah Development Control Plan 2011. In particular, the resultant impact on adjoining properties.
2. 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 B3 Side Boundary Envelope of the Warringah Development Control Plan 2011. In particular, the impact on solar access for adjoining properties and building bulk.
3. 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 B5 Side Boundary Setbacks of the Warringah Development Control Plan 2011. In particular, the narrow setback, deep excavation, inadequate landscaping and resultant building bulk along the side setbacks.
4. 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 C7 Excavation and Landfill of the Warringah Development Control Plan 2011. In particular, the deep excavation close to the side boundaries for both number 3 and number 7 Dalley Street and the poor amenity to unit one of the proposed development.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1 Landscaped Open Space and Bushland Setting of the Warringah Development Control Plan 2011. In particular, the

- inadequate deep soil planting and narrow landscaping width along the side boundaries.*
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 D6 Access to Sunlight of the Warringah Development Control Plan 2011. In particular, inadequate solar access to the ground floor unit living areas of the development and overshadowing of adjoining neighbours.
 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 D7 Views of the Warringah Development Control Plan 2011.
 8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the privacy measures proposed to satisfy the provisions of Clause D8 Privacy of the Warringah Development Control Plan 2011 result in reduced amenity for the proposed development.
 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 D9 Building Bulk of the Warringah Development Control Plan 2011 given the number of storeys, the reduced setbacks and height.
 10. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development. In particular, the quality of landscaped open space, amenity and built form and scale.

On 28 August 2019, the subject application was lodged with Council, seeking a review of the refusal of DA2018/1069.

On 17 September 2019, the assessing officer undertook an inspection of the site.

On 14 and 15 October 2019, the assessing officer undertook inspections of dwellings on the adjoining sites to the east and west at 3 and 7 Dalley Street.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Evaluation

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	WDGP 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of

Section 4.15 Matters for Consideration	Comments
Regulation 2000)	<p>consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter can be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development, in so far as the proposal presents as an overdevelopment of the site.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to relevant policies and will result in a development that will create an undesirable precedent, such that it would undermine the desired future character of the area and be contrary to the

Section 4.15 Matters for Consideration	Comments
	expectations of the community. In this regard, the proposed development is not considered to be in the public interest.

Section 8.3 Application for and conduct of review

In accordance with Section 8.3 of the Act, an applicant may request a review of a determination of a development application. The review must be lodged and determined within 6 months of the date of determination of the development application. To meet this requirement, noting that the application was determined on 8 May 2019, the subject review application must be determined before 8 November 2019.

Section 8.3(3) provides that the applicant may amend the proposal, however the consent authority must be satisfied that the amended proposal presented in the review application remains substantially the same as that considered in the original development application. The applicant has made changes to the development, including the deletion of 1 unit. However, despite this reduction in the density of the development, the proposal is considered to remain essentially and materially the same as that previously proposed, and thus Council can be satisfied in this regard.

Section 8.3(5) prescribes that an application to review a decision by a local planning panel must also be determined by the local planning panel. As such, the application is referred to the NBLPP for determination.

Overall, the review application is considered to be consistent with the provisions of section 8.3 of the EP&A Act, subject to the matter being determined before 8 November 2019.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 17 submission/s from:

Name:	Address:
Mr Bernard Albert Voltz	6 / 3 Dalley Street QUEENSCLIFF NSW 2096
Lauren Jaclyn Bartlett	12 / 3 Dalley Street QUEENSCLIFF NSW 2096
Mr Peter Anthony Croghan	11 / 7 Dalley Street QUEENSCLIFF NSW 2096
Mrs Beverley Ruth Appleton	3 / 7 Dalley Street QUEENSCLIFF NSW 2096
Mr Andrew William Weaver	10 / 3 Dalley Street QUEENSCLIFF NSW 2096
Miss Charlotte Jane Barry	4 / 3 Dalley Street QUEENSCLIFF NSW 2096

Name:	Address:
Renata Valadares	4 / 7 Dalley Street QUEENSCLIFF NSW 2096
Mr Americo Livramento Tognetti	4 / 7 Dalley Street QUEENSCLIFF NSW 2096
Mr Damian Dimarzio	28 / 91 West Esplanade MANLY NSW 2095
Ms Kelli Tonia Rickard	5 / 7 Dalley Street QUEENSCLIFF NSW 2096
Ricardo Javier Samosky	3 / 10 Cavill Street QUEENSCLIFF NSW 2096
Roxana Patricia Serafin	8 / 3 Dalley Street QUEENSCLIFF NSW 2096
Ms Tatsuko Ryan	21 / 104 Crown Road QUEENSCLIFF NSW 2096
Mr Dean Jericevic	1 / 7 Dalley Street QUEENSCLIFF NSW 2096
Jonathan Francis Coyle	C/- Red Property Shop 1, 5-7 Raglan Street MANLY NSW 2095
Cecelia Hermoine Wells	14 / 104 Crown Road QUEENSCLIFF NSW 2096
Friends Of Freshwater Inc	4 Marmora Street FRESHWATER NSW 2096

The concerns raised in the submissions received are considered as follows:

- **Proximity and extent of excavation**

Comment: The majority of submissions received raised concern with regard to the proximity and extent of excavation, and the potential associated impacts upon the stability of adjoining buildings. Whilst Council's Development Engineer has raised concerns with regard to stormwater management, concerns have not been raised from an engineering perspective in relation to the extent of excavation proposed, and should the application be approved, conditions could be imposed to ensure that impacts associated with construction are appropriately mitigated. See clause C7 (Excavation and Landfill) of WDCP 2011 for further discussion in this regard.

However, the extent of the proposed excavation extends unnecessarily beyond the footprint of the building, unreasonably restricting opportunities for appropriate plantings along the side and rear boundaries that are required to minimise impacts associated with the intensified development.

Submissions received make specific request for the production of dilapidation reports. Should the application be approved, conditions can be imposed to require the production of pre and post construction dilapidation reports.

- **Building height**

Comment: Submissions were received in objection to the height of the proposed development. Whilst several submissions make reference to non-compliance with the 11m height limit for the development, the proposal has been amended to strictly comply with the 11m height limit.

However, despite compliance with the maximum building height development standard prescribed by WLEP 2011, the upper extent of the development remains non-compliant with the Building Envelope and Number of Storeys development controls prescribed by WDCP 2011, resulting in unreasonable impacts upon the amenity of adjoining dwellings. See clauses B2 (Number of Storeys) and B3 (Side Boundary Envelopes) of WDCP 2011 for further discussion.

- **View loss**

Comment: Concerns have been raised in submissions received regarding the potential impacts upon views currently enjoyed by adjoining properties. As discussed with regard to D7 (Views) of WDCP 2011, the application has not satisfactorily demonstrated that view sharing between properties has been achieved.

- **Solar access**

Comment: A number of submissions were received raising concern with regard to the loss of direct and indirect light. Due to the comparably undeveloped nature of the subject site, some level of impact, particularly to the lower floor apartments in adjoining residential flat buildings, is considered to be reasonable and unavoidable. However, as discussed with regard to clauses B3 (Side Boundary Envelope) and D6 (Access to Sunlight) of WDCP 2011, non-compliant elements of the proposed built form attribute to the loss of direct sunlight which would reasonably be retained with a compliant built form.

- **Visual privacy**

Comment: Submissions were received from residents on either side of the proposal in objection to the proximity and extent of windows along the side elevations. As discussed with regard to clause D8 (Privacy) of WDCP 2011, the proposed development is not considered to demonstrate that visual privacy between properties is appropriately maintained.

- **Parking**

Comment: Concern has been raised with regard to a potential shortfall of off-street parking. As discussed by Council's Traffic Engineer and with regard to clause C3 (Parking Facilities) of WDCP 2011, the proposed parking solution is not satisfactory. However, if the proposed car stacker was redesigned to comply with necessary clearance heights, the shortfall in visitor parking (1 space) would be supported in light of the oversupply (1.5 spaces) of resident spaces.

- **Breeze**

Comment: Submissions received raise concern with regard to the potential obstruction of breezes currently enjoyed by adjoining properties. There is no specific development control that considers the impact of development upon ventilation of adjoining development. However, the proximity of the proposed development in relation to adjoining dwellings is considered to be unacceptable, as discussed with regard to clauses B2 (Number of Storeys), B3 (Side Boundary Envelope) and B5 (Side Boundary Setbacks) of WDCP 2011.

- **Heat load on western facade**

Comment: A submission was received regarding the length of the western facade and the likely reliance upon air-conditioning. The BASIX Certificate identifies that each of the proposed apartments will have a separate cooling system; however the location of air-conditioning units is not shown in the architectural plans. Furthermore, the application does not demonstrate compliance with the necessary requirements of the BASIX Certificate with regard to what needs to be demonstrated on the DA plans.

- **Noise**

Comment: A submission has been received raising concern with regard to the potential noise levels associated with plant equipment, with a request that the proposed development not

exceed 0dBA above existing noise levels. Should the application be approved, conditions can be imposed to limit the noise levels of any plant equipment in accordance with legislation (5dBA above background levels as measured from the nearest residential receiver).

- **Site contamination**

Comment: Concern has been raised regarding potential contamination associated with the materiality of the existing dwellings on site. Should the application be approved, conditions can be imposed to ensure the responsible management of potentially hazardous materials during demolition.

- **Landscaping**

Comment: Submissions have been received in objection to the proposal and the shortfall of landscaped area on the site. As discussed with regard to clause D1 (Landscape Open Space and Bushland Setting) of WDCP 2011, the significant shortfall of landscaped area and appropriate landscaping is considered to warrant the refusal of the subject application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Approval, subject to conditions.</p> <p><i>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of development subject to inclusion of the attached conditions of approval and consideration of the notes below.</i></p> <p><i>Note: The proposed development may not comply with some requirements of the BCA the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>
Landscape Officer	<p>Refusal.</p> <p><i>REV2019/0047 fails to demonstrate that the existing Bangalay tree, identified as tree 1, at the front setback can be successfully retained with the following proposed works within the structural root zone (SRZ) and tree protection zone (TPZ):</i></p> <ul style="list-style-type: none"> • <i>relocation of the bin store and walling (with associated excavation) within the SRZ tree 1,</i> • <i>stormwater pit and line within the SRZ,</i> • <i>storage of waste and construction materials within the SRZ.</i> <p><i>No plans are provided on the location of utility connections that will potentially impact upon</i></p>

Internal Referral Body	Comments
	<p><i>the SRZ and TPZ of tree 1 to assess the impact of such works, nor has an updated arboricultural impact assessment been provided to support the REV2019/0047 design. The arboricultural impact assessment report of 18 April 2018 recommended under section 1.3 Tree protection and specification, that "No trenching for services or other excavation, pie footings ... shall be approved in the TPZ areas unless it can be proven that the impact on roots is negligible". The root investigation conducted is thus limited in its recommendation the proposal for the retaining walling, and is not updated to include utility excavations and relocated bin store.</i></p> <p><i>Utility excavations and locations of pits and lines for utilities are not supported within the SRZ, and must be documented on plans outside of the SRZ, and only within the TPZ where Project Arborist is engaged to supervise the excavation works.</i></p> <p><i>Given the above and the lack of information provided to assess the impact to tree 1, REV2019/0047 is not supported.</i></p> <p><i>As tree 1 is determined by the arboricultural impact assessment to be of High retention v. removal of tree 1 is not an option.</i></p> <p><i>Whilst the landscape area provided is under the 50% requirement for WDCP, the landscape outcome achieves the intent of WDCP, including additional tree planting, and planting along the side boundaries to soften the built form. No landscape issues are raised with the landscape plan to the following areas:</i></p> <ul style="list-style-type: none"> <i>• roof garden at first floor level, planted with shrubs and groundcovers,</i> <i>• small to medium tree planting along the rear boundary,</i> <i>• screen small tree / tall shrub planting along the side boundaries.</i>
NECC (Development Engineering)	<p>Refusal.</p> <p><i>A review of the amended proposed arrangement for the internal parking with additional vehicular turntable and adjusted levels for internal ramp was attended on 11 October 2019. It is noted that the proposed design for driveway crossover has indicated Normal High Standard profile on the longitudinal section and Normal Low Standard profile within a note on the drawing CW01/C (dated 20.08.2019). The profiles contradict each other, and none of the profiles was implemented in the long section. The applicant shall carefully redesign the driveway profile to comply with Council standard and AS/NZS2890.1.</i></p> <p><i>Pedestrian access for the new development has FFL 30.900 and the survey plan has shown an existing level of 31.340. There is a possibility to redesign the access to the main lobby to comply with the requirements of Australian Standard -Access for people with Disabilities.</i></p> <p><i>The proposed concept design for stormwater discharge, on the drawing CW01/C (dated 20.08.2019) is extended and has included a new kerb inlet pit fronting the property and a D=375 mm pipe that was proposed to connect the new pit with existing downstream gully. The presented design shall be supported with a long-section (including existing and proposed levels) and a hydraulic model to justify the feasibility of the proposal. This work can be supported by Council.</i></p>

Internal Referral Body	Comments
	<p>The Traffic and Parking Impact Assessment report (dated 4 August 2019) has provided swept path analysis for B99 using a turntable. However, the diagram has expanded required clearance over the structural part of the ground floor layout that is not acceptable but can possibly be avoided with the adjusted speed in modeling by Auto Track. It is also noted that Accessible Parking was removed from the internal parking area. Written concurrence from Council's Traffic Engineers should be obtained with regards to the proposed maneuvering, the proposed turntable and car stacking arrangement in light of clause C3 Parking Facilities of Council's DCP.</p> <p>Based on the above mentioned issues the amended proposal is not supported for approval due to inadequate information to address:</p> <ul style="list-style-type: none"> Storm-water drainage for the site and road drainage in accordance with C4 Stormwater of Council's DCP. Driveway crossing design in accordance with AS/NZS2890.1. Pedestrian access for the site in accordance with the latest version of AS1428.1.
Strategic and Place Planning (Urban Design)	<p>Refusal.</p> <p>The applicant has submitted a revised proposal following the refusal of DA2018/1069 by Northern Beaches Local Planning Panel (NBLPP). The revised design changes include the lowering of the building height to achieve strict compliance with the building height controls and the deletion of the lower level apartment. The issues highlighted by the NBLPP on building and scale of the building and the impacts on the amenity of surrounding properties in relation to overshadowing and loss of views are still not resolved.</p> <p>As such, the amended proposal cannot be supported. Additional issues with the proposal further highlighted below:</p> <ol style="list-style-type: none"> The revised proposal have complied with the building height control but side setbacks and building envelope controls have been breached resulting in loss of sunlight access to units in the western and eastern neighbouring apartments. The breach of setback controls has resulted in building separation distances between habitable spaces of about 5 to 6m to the neighbouring apartments which are not acceptable for visual and acoustic privacy reasons. The extensive ribbon windows with 1.5m sill height proposed across the east and west elevations will not resolve the privacy issues comprehensively. The increase in building bulk from the breach in built form controls will add to the loss of view from neighbouring apartment units. The submitted drawings indicate full height sliding doors from Apartment 3, bed 1 to the roof area. The roof area should not be accessible because of visual and acoustic privacy reasons to next door residences. The amount of excavation proposed is still extensive. The engineering structure of the retaining walls proposed has not been allowed for in the schematic drawings. As a result, landscaping area and soil depths will be further reduced by the additional structural footings required. (Landscape site area of 41.6% proposed, 50% required by Warring DCP)

Internal Referral Body	Comments
Traffic Engineer	<p>Refusal.</p> <p>Traffic Generation from the development will be 1-2 additional weekday peak hour trips over the existing traffic generation from the site and this will not impact to an appreciable degree upon traffic conditions in the surrounding area.</p> <p>The proposal includes provision for 6 basement parking spaces to serve 3 units. All of the spaces will be contained within 3 x 2 car vertical car stackers with a turntable provided to assist with access to and from the stacker units. While the Clause C3 of the Warringah DCP outlines that the use of mechanical car stackers shall be avoided, given the narrow width of the site (which limits the ability to provide for a second basement level) and the associated significant increase in environmental impact if a second basement were constructed, their use, in this instance, is considered acceptable subject to their being appropriate clearance heights over car stacker units.</p> <p>However, the Australian Standard for Offstreet Parking (AS2890.1 section 5.3) requires a headroom clearance height of 2.2m between the floor and an overhead obstruction. It is noted that both levels of the mechanical car stackers fail to comply with this requirement with clearance above the top level of the car stacker unit being only 1.65m. This would impose a significant limitation upon residents in terms of their choice of vehicle and accessibility of parking spaces. A 1.65m clearance would prevent the upper level of the car stacker being occupied by many vans, 4WD vehicles and SUV's. The carpark level should be redesigned to provide clearance heights which meet the Australian Standard.</p> <p>The DCP requirement for the three residential apartments is 4.5 residential spaces plus one visitor space. The six parking spaces all allocated to the 3 residences exceeds the residential parking requirement and, given the impracticality of having a visitor space within a car stacker, the absence of a visitor space is considered acceptable in this instance having regard to the over supply of resident spaces. Each stacked car space pair will need to be allocated to the same unit.</p>
Waste Officer	<p>Approval, with conditions.</p> <p>The proposal is acceptable from a waste services perspective subject to conditions. Additionally the waste storage area is in a suitable location and should have minimum internal dimensions of 3700mm x 850mm x 2100mm high and have continuous hard surf pathway to the footpath, with no steps and gradient not exceeding 1:8.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>Approval, without conditions.</p> <p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>

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 proposed.

SEPP 65 - Design Quality of Residential Apartment Development

The application seeks consent for a four storey residential flat building, comprising only three dwellings, and as such, the provisions of SEPP 65 do not apply to this development.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 924795 dated 12 August 2019).

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

Commitment	Required Target	Proposed
Water	40	43
Thermal Comfort	Pass	Pass
Energy	35	37

However, the BASIX Certificate provided requires the applicant to demonstrate critical elements of the proposal on the DA plans. In this respect, the BASIX Certificate requires a photovoltaic system to be incorporated into the development at DA stage. This information has not been demonstrated on the plans provided to Council, and as such, the proposal is inconsistent with the BASIX requirements prescribed.

SEPP (Infrastructure) 2007

The proposal was referred to Ausgrid in accordance with clause 45 of this policy. No response has

been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

However, it is noted that the application requires the relocation of a power pole within the road reserve and Ausgrid provided commentary in this regard in relation to the DA2018/1069. Should the application be approved, it is considered reasonable to include the conditions relating to the relocation of the power pole within any consent issued.

SEPP (Coastal Management) 2018

The site is identified as being within the Coastal Environment Area on the Coastal Environment Area Map of SEPP (Coastal Management) 2018, and the proposal is subject to the provisions of clauses 13 and 15 of this policy. In this regard, Council can be satisfied of the following:

- The proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of SEPP (Coastal Management) 2018,
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of SEPP (Coastal Management) 2018, and
- The proposal is not likely to cause an increased risk of coastal hazards on the site or other land.

As such, the proposal is considered to be consistent with the provisions of SEPP (Coastal Management) 2018, including the matters prescribed by clause 13 and 15 of this policy.

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:	11m	11m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

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Built Form Control	Requirement	Proposed	Variation*	Complies
B2 Number of storeys	3	4	1 storey 33%	No
B3 Side Boundary Envelope	Top Floor East: 8.35m (max)	10.7m (max)	2.35m	No
	Top Floor West: 8.35m (max)	10.6m (max)	2.25m	No
	Third Floor East: 7.9m (max)	10.7m (max)	2.80m	No
	Third Floor West: 7.9m (max)	10.5m (max)	2.60m	No
B5 Side Boundary Setbacks	East: 4.5m	1.135m - 3.35m	1.15m - 3.365m	No
	West: 4.5m	2m - 3.35m	1.15m - 2.5m	No
B7 Front Boundary Setbacks	6.5m	6.5m	-	Yes
B9 Rear Boundary Setbacks	6m	2m	4m	No
D1 Landscaped Open Space (LOS) and Bushland Setting	50%	11.2%	77.6%	No

***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
A.5 Objectives	Yes	Yes
B2 Number of Storeys	No	No
B3 Side Boundary Envelope	No	No
B5 Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	No
C4 Stormwater	No	No
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	No	No
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	No
D7 Views	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	No	No
D11 Roofs	Yes	Yes
D12 Glare and Reflection	No	No
D14 Site Facilities	Yes	Yes
D19 Site Consolidation in the R3 and IN1 Zone	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	No	No
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	No	No
E2 Prescribed Vegetation	No	No
E6 Retaining unique environmental features	No	No
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B2 Number of Storeys

The site is located within an area where new development is to be limited to 3 storeys in height. In accordance with clause B2 of WDCP 2011, the *"number of storeys of a building are those storeys which may be intersected by the same vertical line, not being a line which passes through any wall of the building; and storeys that are used for the purposes of garages, workshops, store rooms, foundation spaces or the like, that do not project, at any point, more than 1 metre above ground level (existing) are not counted"*. The proposed residential flat building is inconsistent with this development control, with four storeys at both the front and rear of the building.

The proposal is also considered to be inconsistent with the objectives of this development control, as follows:

- *To ensure development does not visually dominate its surrounds.*

Comment: Whilst the height and bulk of the proposed development will not be visually dominant in the streetscape, the proposed use of light tones will be at odds with the character of surrounding development, which generally comprises mid-dark brick buildings. However, the proposed development will be visually dominating when viewed from adjoining properties, particularly where the non-compliant portions of the development are also non-compliant with the prescribed Building Envelope and Side Setback.

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

Comment: The proposed use of light tones does little to minimise the visual impact of the proposal. Furthermore, the proposed non-compliance with the amount of storeys is amplified by the non-compliant proximity of the proposed development to adjoining dwellings, with limited screen planting to ameliorate the visual dominance of the proposal.

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

Comment: The application has not satisfactorily demonstrated that the additional storeys at both the front and rear of the development will not attribute to unreasonable impacts upon views currently enjoyed from adjoining properties. As discussed with regard to clause D7 (Views) of WDCP 2011, the non-compliant four storey element at the front of the proposed development directly attributes to the loss of ocean views from Apartment 6/7 Dalley Street, with the top floor non-compliant element likely to attribute to impacts upon views currently enjoyed by dwellings at the rear of the site.

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

Comment: The non-compliant four storey element at the rear of the development attributes to unreasonable overshadowing of areas of private open space of adjoining dwellings, to a point where solar access is reduced (or further reduced) below the minimum 3 hour requirement of clause D6 (Access to Sunlight) of WDCP 2011. Furthermore, the additional storey at the rear also impacts upon the amount of solar access to windows associated with living rooms and bedrooms.

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

Comment: The proposed development incorporates a flat roof and significant excavation to squeeze additional floors below the height limit. This is not considered to be an innovative design solution, particularly noting a compliant 3 storey development with a pitched roof form would likely improve solar access to adjoining dwellings and respond more appropriately to Council's built form controls.

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

Comment: The maximum height limit is not an automatic entitlement, and is to be read in conjunction with relevant development controls. Whilst now compliant with the 11m height limit (the original proposal included a variation associated with the lift overrun), the proposed built form is non-compliant with the majority of applicable built form controls. As proposed, the development has not been designed on the basis that the maximum number of storeys is intended to complement the height limit, as the Number of Storeys control (and the majority of other built form development controls) appears to have largely been ignored.

Non-compliance with the 3 storey height limit and the associated objectives is considered to warrant the refusal of this application.

B3 Side Boundary Envelope

The proposed development protrudes beyond the 5m building envelope on both the eastern and western sides of the proposed development, as highlighted in green in **Figure 1**, below. It is relevant to note that the areas of non-compliance generally align with those parts of the building that also exceed the 3 storey height limit prescribed by clause B2 (Number of Storeys) of WDCP 2011.

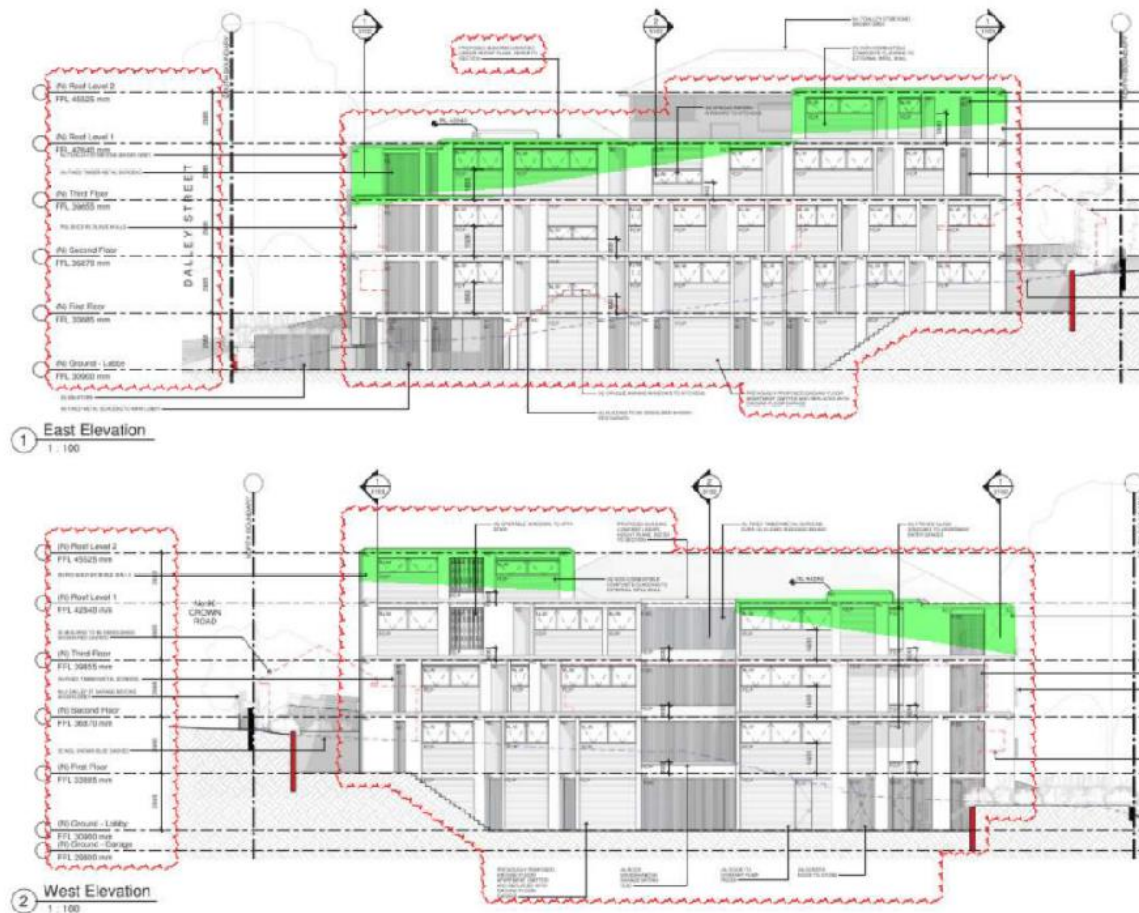


Figure 1 - Extent of building envelope non-compliance (highlighted in green)

The proposed breach of the building envelope is not supported, as the proposed development cannot be said to achieve consistency with the objectives of the development control, as follows:

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

Comment: Whilst the height and bulk of the proposal will not be visually dominant in the streetscape, the proposal will dominate the adjoining dwellings by virtue of its height and proximity to the common boundaries.

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

Comment: The proposed development will impact upon solar access to areas of private open space and windows associated with living rooms of adjoining dwellings, and in some instances, the impact can be directly attributed to non-compliance with the prescribed building envelope.

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

Comment: The proposal is reliant upon extensive excavation across the majority of the site. The

proposed variation to the prescribed building envelope is considered to be excessive and unreasonable when combined with the extent of excavation proposed.

B5 Side Boundary Setbacks

The proposed setbacks, which increase from 2m at the ground level up to 3.35m on the upper-most floor, are inconsistent with the 4.5m minimum side setbacks prescribed by this control. Noting that the site is only 12.19m wide with little/no ability to amalgamate with adjoining properties, it is appreciated that the prescribed side setbacks are a constraint to the development of this site, and that strict compliance would be unreasonable.

However, in order to support a lesser setback, the proposed development must be designed to minimise impacts upon adjoining properties and achieve consistency with the objectives of the side setback control. In this respect, the proposed variation cannot be supported, as the proposal is inconsistent with the objectives of this control, as follows:

- *To provide opportunities for deep soil landscape areas.*

Comment: The proposal provides limited (300mm wide) deep soil landscaped areas along the side setbacks. Whilst the excavation along the side boundaries was necessary in the previous scheme (where habitable floors were located wholly below existing ground levels), a considerable portion of the proposed excavation along the side boundaries is now largely redundant. The incorporation of more meaningful deep soil areas along the side boundaries would be extremely beneficial in such circumstances where reduced setbacks are proposed.

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

Comment: The proposed development will be overwhelming as seen from adjoining dwellings. The visual dominance of the non-compliant proposal is amplified by the proposed use of light tones, the lack of any meaningful landscaping and the extent of glazing along the side elevations.

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

Comment: The bulk and scale of the development is inconsistent with the majority of built form controls, particularly with respect to Number of Storeys, Side Boundary Setbacks and Landscaped Area. In this respect, it cannot be said that the bulk and scale of the development has been minimised.

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

Comment: The proposed development will result in adverse impacts upon the amenity of adjoining properties with respect to privacy and solar access. It is noted that a 6m minimum setback is prescribed by the ADG in circumstances where habitable rooms are oriented towards the boundary, with a 3m setback tolerated for non-habitable rooms. Whilst the constraints associated with the width of the site are acknowledged, there is no reason as to why a more skilful design could not be developed to orientate habitable rooms towards the front or rear of the site (or into a central courtyard noting the length of the site), with non-habitable rooms located along the reduced setbacks. Furthermore, a variation to the side setback is likely to be more tolerable in respect to a design that had a greater level of consideration of other built form

controls, specifically with respect to the building envelope and number of storeys.

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

Comment: The application has not satisfactorily demonstrated that the reduced setbacks will not result in unreasonable impacts upon views currently enjoyed by adjoining properties.

B9 Rear Boundary Setbacks

Whilst the basement car park and external rear facade of the proposed building has been set back in accordance with the 6m minimum setback prescribed, the proposed on site detention tank and excavated area of private open space are inconsistent with the specific provisions for R3 zoned land which require the setback to be free of above and below ground structures and areas of private open space.

The majority of the rear setback is to be excavated up to 2m below existing ground level into rock, such that even if the area was not used for private open space, any opportunity for meaningful landscaping has been removed. In this respect, the proposal cannot be said to be consistent with the objectives of the rear setback control, as follows:

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment: Deep soil areas have not been maximised, with excessive excavation beyond the footprint of the proposed development. Furthermore, the excavation proposed will extend to bedrock, such that there will be no available soil within the excavated areas beyond the footprint of the development.

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

Comment: The area of private open space located approximately 2m below existing ground level and enclosed by retaining walls is not considered to create a sense of openness within the rear yard. Furthermore, the division of the rear yard pushes the only more mature plantings proposed on site closer to the common rear boundary, reducing the sense of openness to the dwellings at the rear.

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

Comment: The incorporation of an excavated terrace within the rear 6m setback reduces the opportunity to provide more significant plantings to assist in screening the proposed built form from the rear.

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

Comment: Whilst the rear facade of the development is consistent with the 6m minimum prescribed, the siting of the proposed development is inconsistent with the pattern of buildings in the street, which features smaller buildings and/or car parking areas within the rear setback, and larger setbacks to more significant built form.

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

Comment: As above, the reduced deep soil area at the rear of the dwelling limits the potential height/growth of plantings to a scale that would be commensurate with the scale of the building proposed.

C2 Traffic, Access and Safety

As discussed by Council's Development Engineer, the proposed development has not satisfactorily demonstrated that the driveway can be designed to comply with Council's Vehicle Crossing Policy, and the application is not supported in this regard.

C3 Parking Facilities

Required parking:

Residential: 4.5 spaces (1.5 spaces per 3 bedroom unit)
Residential visitor: 1 space (1 space per 5 units rounded up)

The proposed development is non-compliant with the requirements of this clause which prescribe that mechanical car stackers should be avoided. Whilst the concept of car stackers may be supported in relation to this specific proposal, the current design (which reduces the overhead clearance height of each stacker to as little as 1.65m) is non-compliant with the provisions of AS2890.1 and is not supported in this regard.

Without being able to rely upon the proposed car stackers, the basement can only accommodate 3 off-street vehicle spaces, shy of the 4.5 spaces required by this control. Furthermore, the review application seeks to delete the previously proposed dedicated on-site visitor parking space such that no visitor spaces are provided on site, inconsistent with the 1 space required by this control.

The proposed design is not supported by Council, with inadequate off-street parking provided on site, inconsistent with the requirements and objectives of this development control.

C4 Stormwater

The proposed stormwater solution has not been accompanied by sufficient information to demonstrate the feasibility of the proposal, and is not supported by Council's Development Engineers. Furthermore, the proposed stormwater solution is inconsistent with the recommendations of the arborist report in relation to works in the vicinity of Tree 1 in the south-west front corner of the site. As such, Council cannot be satisfied that the proposed stormwater solution is appropriate for the site, or consistent with the requirements and objectives of this development control.

C7 Excavation and Landfill

The proposed development seeks consent for extensive excavation of the subject site. However, despite the considerable volume of excavation, which reaches depths of up to 11m, the proposal is not considered to be inconsistent with the requirements of this control, as follows:

- *All landfill must be clean and not contain any materials that are contaminated and must comply with the relevant legislation.*

Comment: With the exception of minor planters, no landfill is proposed. Should the application be approved, conditions of consent can be imposed to ensure compliance in this regard.

- *Excavation and landfill works must not result in any adverse impact on adjoining land.*

Comment: The application was supported by a geotechnical risk management report, which provides recommendations to ensure that the works can be undertaken to minimise risk and adverse impacts to adjoining land. Should the application be approved, conditions of consent can be imposed to require further geotechnical investigation prior to construction and to ensure consistency with the recommendations of the geotechnical risk management report.

- *Excavated and landfill areas shall be constructed to ensure the geological stability of the work.*

Comment: As above.

- *Excavation and landfill shall not create siltation or pollution of waterways and drainage lines, or degrade or destroy the natural environment.*

Comment: Should the application be approved, conditions of consent can be imposed to ensure that the proposal does not result in any adverse impacts upon the natural environment.

- *Rehabilitation and revegetation techniques shall be applied to the fill.*

Comment: With the exception of minor planters, no landfill is proposed.

- *Where landfill is necessary, it is to be minimal and shall have no adverse effect on the visual and natural environment or adjoining and surrounding properties.*

Comment: With the exception of minor planters, no landfill is proposed.

D1 Landscaped Open Space and Bushland Setting

The site is subject to a minimum landscaped area calculation of 50% of the total site. With a site area of 568.3m², this equates to the need for 284.15m² of landscaped area to be provided on the site. The applicant has provided a diagram demonstrating a landscaped area calculation of 236.5m² or 41.6% of the total site, 47.65m² shy of the minimum requirement prescribed by this control.

However, it is apparent that the diagram incorrectly includes areas that cannot be included within the landscaped area calculations, specifically paved areas, pathways, areas with less than 1m of soil depth (such as those excavated areas surrounding the development) and the bin store area. With these areas excluded, the landscaped area calculation is further reduced to only 63.5m² or 11.2% of the total site area.

In addition to the significant landscaped area non-compliance, the proposal is also considered to be inconsistent with the objectives of the landscaped area development control, as follows:

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

Comment: The most significant area of landscaping proposed is located in the south-western front corner of the site, in the vicinity of Tree 1, an existing significant Eucalyptus tree. Whilst the dimensions of this landscaped area appear to be designed in order to ensure the retention of this existing tree, underground infrastructure and the location of the proposed garbage store will impact upon the SRZ of this tree, in a manner that is inconsistent with the recommendations and

findings of the arborist report. The loss of this existing tree will detrimentally impact upon the existing streetscape.

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

Comment: As above, the application has not satisfactorily demonstrated that Tree 1 can be safely retained, and the loss of this significant tree will detrimentally impact upon the character of the streetscape. Furthermore, the application seeks consent to excavate the majority of the area of the site, to a depth where soil would need to be reintroduced to accommodate any proposed plantings. The proposal has not satisfactorily demonstrated that a reasonable proportion of the site's existing natural features are to be retained.

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

Comment: The proposed development does not accommodate any deep soil areas that are sufficient for anything greater than a small canopy tree, which is at odds with the scale of the proposed 4 storey development.

- *To enhance privacy between buildings.*

Comment: Council's Landscape Architect is satisfied that hedge planting will be able to be accommodated in the limited space between retaining walls and the common site boundaries, which will ultimately grow to provide privacy to the lower levels of the adjacent developments. However, the plantings will not grow tall enough to provide any privacy between the upper levels where new and additional privacy impacts are to occur as a result of the intensified and non-compliant redevelopment of the site.

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

Comment: In a medium density environment, the proposed development is considered to provide appropriate outdoor recreational opportunities for future occupants of the development, well in excess of the minimum dimensions prescribed by clause D2 (Private Open Space) of WDCP 2011.

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

Comment: Clothes drying can occur within areas of proposed private open space.

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

Comment: The majority of the site is to be covered in hard surfaces or excavated to bedrock (detected at depths between 0.3m and 0.68m below existing ground levels), with no intent to reintroduce soil to accommodate plantings (or meet the landscaped area requirements). The available area for infiltration on the site is significantly depleted, with additional concerns raised by Development Engineering with regard to the proposed stormwater solution.

Non-compliance with both the minimum landscaped area requirement and the objectives of this clause is considered to warrant the refusal of the subject application.

D6 Access to Sunlight

Clause D6 of WDCP 2011 requires a minimum of 3 hours of direct sunlight to 50% of each area of private open space between 9am and 3pm in midwinter. The application has not provided sufficient information to determine compliance in this regard, as the solar access diagrams provided to support the application do not demonstrate overshadowing arising from existing development uphill to the north.

This development control also prescribes that at least 50% of the required area of private open space of adjoining dwellings is to receive a minimum of 3 hours of direct sunlight between 9am and 3pm in midwinter. In this respect, the proposed development attributes to additional overshadowing of areas of primary private open space of Apartments 2, 5, 6, 7 & 8 at 7 Dalley Street to the west and Apartments 8 and 12 at 3 Dalley Street to the east, the specific location of which are highlighted in **Figure 2** and **Figure 3**, below.

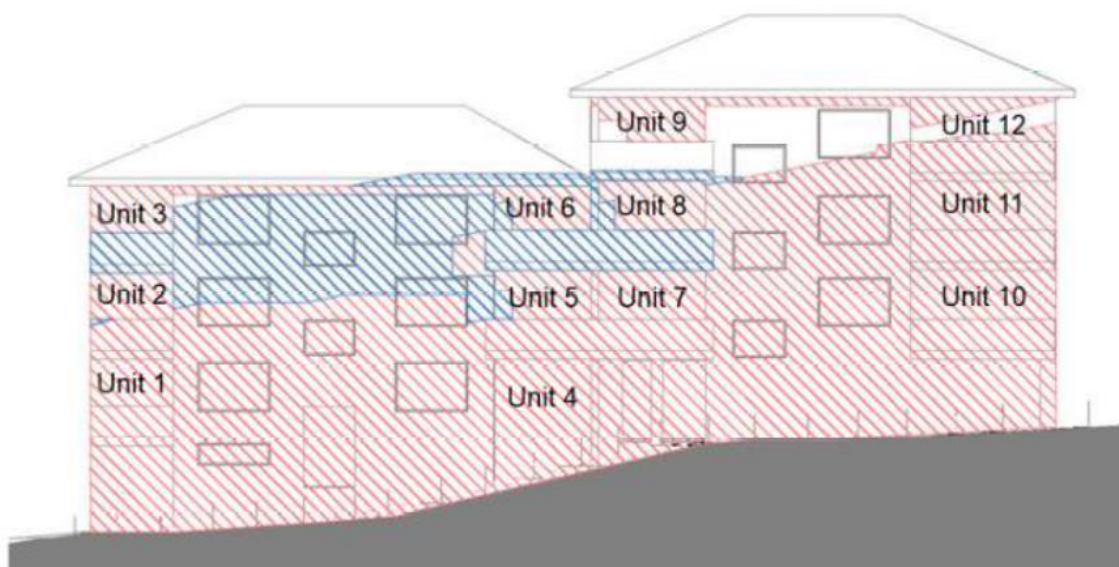


Figure 2 - Location of individual units at 7 Dalley Street.

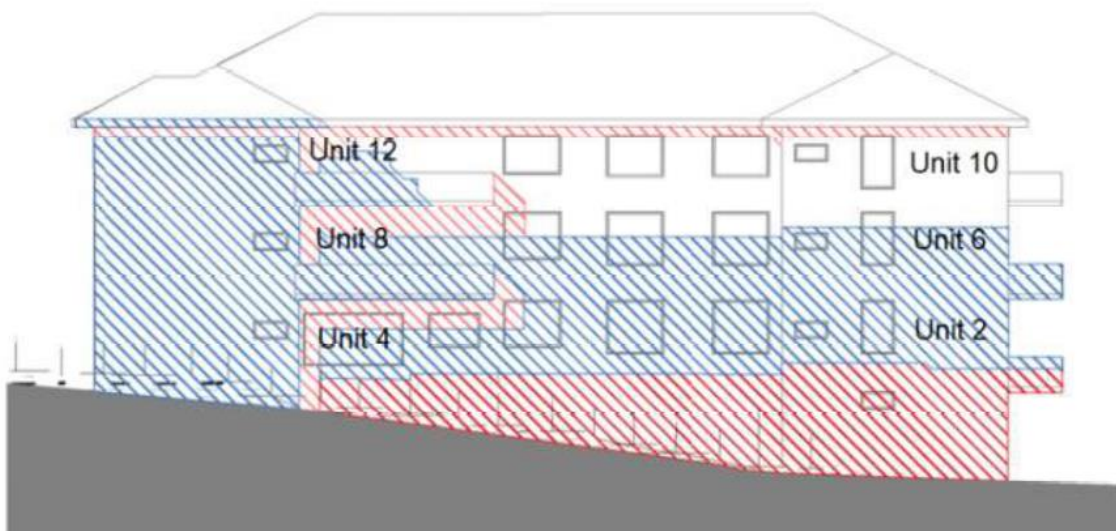


Figure 3 - Location of individual units at 3 Dalley Street.

The potential impacts to these dwellings are considered individually, as follows:

- **2/7 Dalley Street**
Apartment 2 is located on the second floor of 7 Dalley Street, with a balcony in the front south-eastern corner of the building. At 9am, occupants of this apartment would presently be able to sit or stand on the balcony in sunshine. This direct sunshine at 9am will be lost as a result of the proposed development, but is regained by 10am. The proposal will further reduce an existing non-compliant situation with respect to the 3 hour minimum prescribed.
- **5/7 Dalley Street**
Apartment 5 is located on the second floor of 7 Dalley Street, with a balcony in the middle of the eastern facade. At 9am, occupants of this apartment would presently be able to sit or stand on the balcony in sunshine. This direct sunshine at 9am will be lost as a result of the proposed development, but is regained by 10am. The proposal will further reduce an existing non-compliant situation with respect to the 3 hour minimum prescribed.
- **6/7 Dalley Street**
Apartment 6 is located on the third floor of 7 Dalley Street, with a balcony in the middle of the eastern facade. At 9am, occupants of this apartment would presently be able to sit or stand on the balcony in sunshine. This direct sunshine at 9am will be lost as a result of the proposed development, but is regained by 10am. The proposal will further reduce an existing non-compliant situation with respect to the 3 hour minimum prescribed.
- **7/7 Dalley Street**
Apartment 7 is located on the second floor of 7 Dalley Street, with a balcony in the middle of the eastern facade. At 9am, occupants of this apartment would presently be able to stand on the balcony in sunshine. This direct sunshine at 9am will be lost as a result of the proposed development, but is regained by 10am. The proposal will further reduce an existing non-compliant situation with respect to the 3 hour minimum prescribed.
- **8/7 Dalley Street**
Apartment 8 is located on the third floor of 7 Dalley Street, with a balcony in the middle of the eastern facade. At 9am, occupants of this apartment would presently be able to sit and stand on the balcony in sunshine. This direct sunshine at 9am will be lost as a result of the proposed development, but is regained by 10am. The proposal will further reduce an existing non-compliant situation with respect to the 3 hour minimum prescribed.
- **8/3 Dalley Street**
Apartment 8 is located on the second floor of 3 Dalley Street, with a balcony on the western facade, towards the rear of the building. At 2pm, occupants of this apartment would presently be able to sit and stand on the balcony in full sunshine. This direct sunshine will be lost as a result of the proposal and will result in a new non-compliance with respect to the 3 hour minimum prescribed.
- **12/3 Dalley Street**
Apartment 12 is located on the third floor of 3 Dalley Street, with a balcony on the western facade, towards the rear of the building. At 3pm, occupants of this apartment would presently be able to sit and stand on the balcony in full sunshine. This direct sunshine will be lost to a portion of the balcony as a result of the proposal, however it is likely that the balcony will remain compliant with respect to the 3 hour minimum prescribed.

Whilst some level of additional overshadowing impact is anticipated due to the comparably undeveloped nature of the existing site, concern is raised where the additional impacts to areas of private open space arise as a result of non-compliance with Council's built form controls. In this respect, it is noted that the impact to the balconies of Apartments 6 and 8 of 7 Dalley Street and Apartments 8 and 12 at 3 Dalley Street are directly attributable to non-compliance with the Number of Storeys, Building Envelope and Side Setback development controls that are applicable to the site.

As such, the proposed development is considered to not only be inconsistent with the numerical requirements of this development control, but also the objective of the control, which seek to ensure that reasonable access to sunlight is maintained to adjoining properties.

D7 Views

A number of adjoining dwellings currently obtain views over the subject site, including but not limited to the dwellings at Apartments 3, 5, 6 and 7 of 7 Dalley Street and Apartments 8 and 12 of 3 Dalley Street. During the course of the assessment, the assessing officer undertook inspections of these properties to appreciate the views currently enjoyed, and to ascertain the likely impact of the development. However, despite the impact upon views being raised as a reason for the refusal of DA2019/1069, the assessment of the proposal has not been assisted by the erection of height poles on the site, and as such, the exact level of impact is unable to be ascertained. Furthermore, the statement of environmental effects is limited to the consideration of impacts upon an unidentified apartment at 7 Dalley Street, with no consideration of other dwellings potentially affected.

The likely impacts upon the dwellings inspected as part of the subject application are considered individually, as follows:

- **3/7 Dalley Street**
Apartment 3 is located on the third floor of 7 Dalley Street, at the front of the building. Occupants of Apartment 3 currently enjoy panoramic district views from Manly Beach to the south-east across to Balgowlah to the south-west, encapsulating North Head and portions of the city skyline (including Centrepont Tower) from the primary living room and the front balcony. The proposed development has potential to impact upon views to the south-east of Manly Beach as seen from the living room window, located on the eastern side of the building, obtained over the common side boundary. These views are heavily filtered by existing vegetation, predominately by an existing palm located within the boundaries of 7 Dalley Street that is to be retained. Views from the balcony and living room windows on the southern elevation of the dwelling will remain unaffected by the proposal.

The likely impact upon views currently enjoyed from the living room window is considered to be minor, and whilst the level of impact is slightly compounded by non-compliance with respect to the prescribed side setback and building envelope, the likely level of impact is not considered to be unreasonable.

- **5/7 Dalley Street**
Apartment 5 is located on the second floor of 7 Dalley Street, in the centre of the building. Occupants of Apartment 5 currently enjoy a view corridor towards Manly in a south-south-easterly direction from the balcony on the eastern side of the building. The view does not include any significant or iconic features, and is filtered by vegetation. The view corridor is obtained over the common side boundary and the western half of the pitched roof of the existing dwelling at the front of the subject site. Whilst the proposed development is likely to obstruct this entire view corridor, the level of impact is considered to be minor, given the vulnerability and filtered nature of the view affected. Although the level of impact upon the view is considered to

be increased as a result of side setback non-compliance, the likely impact is not considered to be unreasonable in these circumstances.

- 6/7 Dalley Street

Apartment 6 is located on the third floor of 7 Dalley Street, in the centre of the building. Occupants of Apartment 6 currently enjoy views of Manly Beach and North Head in a south-easterly direction from the living room and balcony on the eastern side of the building. The view does not include the land/water interface of Manly Beach, however the foreshore walkway around to Shelly Beach is visible amongst the tops of the Norfolk Island Pines that line the beachfront. The view is obtained over the common side boundary and the roof of the existing dwelling at the front of the subject site. The proposed development is likely to obstruct this entire view, resulting in a major impact upon the amenity of this dwelling.

The impact is attributable to the front portion of the proposed third floor, which is inconsistent with the minimum Side Setback, Building Envelope and Number of Storeys development controls prescribed by WDCP 2011. It is considered that a more skilful design solution that sets this floor back from the street frontage would be more responsive to the relevant built form controls and allow for a greater obtainment of views from Apartment 6. Noting the degree of impact associated with a non-compliant built form, the likely impact upon views currently enjoyed from Apartment 6 is considered to be unreasonable.

- 11/7 Dalley Street

Apartment 11 is located on the third floor of 7 Dalley Street, at the rear of the building. Occupants of Apartment 11 currently enjoy views towards North Head in a south-easterly direction from the living room and balcony on the eastern side of the building. The view does not contain any significant/iconic features, and is obtained over the side common boundary and the roof of the existing dwelling at the front of the subject site. The proposed development is likely to obstruct this entire view resulting in a minor/moderate impact upon the amenity of this dwelling. However, the likely impact is not considered to be unreasonable, as the impact would otherwise arise with a compliant built form.

- 8/3 Dalley Street

Apartment 8 is located on the second floor of 3 Dalley Street, in the rear north-western corner of the building. Occupants of Apartment 8 currently enjoy district views and portions of the city skyline (including Centrepont Tower), in a south to south-south-westerly direction from the balcony on the western side of the building. The view is obtained over the common side boundary and over the western half of the pitched roof of the existing dwelling at the front of the subject site. The proposed development is likely to obstruct the most westerly portion of this view that is partially obstructed by an existing canopy tree, such that the likely impact is considered to be negligible. Whilst the likely impact to views can be associated with built form non-compliance, the level of impact is not considered to unreasonable in these circumstances.

- 12/3 Dalley Street

Apartment 12 is located on the third floor of 3 Dalley Street, in the rear north-western corner of the building. Occupants of Apartment 12 currently enjoy district views and portions of the city skyline (including Centrepont Tower) in a south to south-westerly direction from the kitchen window and balcony on the western side of the building. The views are obtained over the common side boundary and over the roof of the existing dwelling at the front of the subject site. The proposed development is likely to obstruct the western-most half of the existing view, however as this portion is filtered by vegetation, the impact is considered to be minor. Whilst a minor degree of likely impact can be attributable to built form non-compliance (specifically side setback and building envelope non-compliance), the level of impact is not considered to be unreasonable and view sharing is considered to be achieved.

The proposed development is also likely to impact upon views enjoyed from additional dwellings at 7 Dalley Street and dwellings at the rear of the site at 96 and 104 Crown Road. However, access to these potentially affected units was not available during the assessment process, and the likely impact could not be gauged by the occupants of these respective dwellings, as height poles have not been erected at the site.

Whilst it is noted that the applicant has undertaken a schematic view loss assessment in relation to an undisclosed location at 7 Dalley Street; this assessment has not been able to be verified and insufficient information has been provided to confirm the levels of the photomontage, or the angle/location of the base photography. Once again, the true impact upon these views would be best qualified by the erection of height poles at the site.

At this stage, the proposal is likely to result in negligible to major impacts upon existing views, the exact extent of which is unable to be qualified. However, in some specific circumstances, the likely impact is considered to be unreasonable in light of the degree of impact and in such circumstances where the likely impact can be attributable to multiple non-compliance with relevant built form controls. The applicant has not satisfactorily considered the likely impacts upon views currently enjoyed from adjoining properties or demonstrated that the reasonable sharing of views is achieved. As such, Council cannot be satisfied that the proposal is consistent with the requirements and objectives of this clause, and the proposal is considered to warrant refusal in this regard.

D8 Privacy

The proposed development comprises windows along both the western and eastern side elevations that are sited within 9m and directly align with windows and balconies of adjoining dwellings. Whilst some of the windows comprise sills at 1.6m, the proposed design is inconsistent with the generally accepted minimum sill height of 1.7m, and the development has not been designed to prevent downward overlooking from windows and balconies of upper level adjoining dwellings.

The impact associated the design and extent of the proposed windows on the side elevations is amplified by the reduced/non-compliant side boundary setbacks proposed, to a degree where it cannot be said that the building layout has been designed to optimise privacy for occupants of the development and occupants of adjoining properties, or that a high level of visual and acoustic privacy between properties is achieved. As such, the proposed development is inconsistent with the requirements and objectives of this development control.

D9 Building Bulk

Whilst clause D9 of WDCP 2011 encourages side setbacks to be progressively increased as wall height increases, the proposed 5-stepped design is inconsistent with the design guidance of the ADG which outlines that buildings should only include one step in the built form in order to avoid a 'ziggurat' or 'wedding cake' appearance.

Furthermore, it cannot be said that the proposal, which includes excavation of the majority of the site up to 11m in depth, has been minimised, particularly noting the unnecessary excavation along both sides of the basement car park in close proximity to adjoining properties.

Concern is also raised in relation to the proposed finishes of the development, with the essentially white surface finishes emphasising the scale of the non-compliant built form. Furthermore, the application is reliant upon the retention of an existing significant canopy tree in the front yard to screen and soften the development, however the application has not satisfactorily demonstrated that it is capable of being safely retained.

The proposed development has been referred to Council's Urban Design Team, who do not support the design of the proposal based on concerns relating to the bulk and scale of the development. Overall, Council cannot be satisfied that the proposal is consistent with the requirements and objectives of this development control.

D10 Building Colours and Materials

and D12 Glare and Reflection

The proposed development is to be finished in raw concrete and light coloured cladding, with large areas of glazing, which will be highly reflective and visually dominating, particularly as seen from adjoining properties. The proposed use of light tones also acts to emphasise the scale of the development, which is sited in a manner that is inconsistent with the majority of applicable built form controls, including the proximity of the proposal to adjoining properties. The proposed finishes of the development are not considered to minimise glare, or improve the visual amenity of adjoining properties, and a more skilful design solution could be developed to achieve a greater level of consistency with the requirements and objectives of these clauses.

D21 Provision and Location of Utility Services

With the exception of stormwater, the application is silent with respect to the provision of essential services to the site. The lack of detail of any future service connections is of concern noting that the existing service connections are located within the SRZ of Tree 1, being a significant tree to be retained, with recommendations from the arborist preventing any excavation within the vicinity of this tree. Furthermore, as discussed with regard to clause C4 (Stormwater) of WDCP 2011, the proposed stormwater solution is also inconsistent with these arboricultural recommendations, with the main underground outlet dissecting the SRZ of this significant tree.

The proposal, which is reliant upon air-conditioning to each of the three apartments, also lacks sufficient detail with regard to air-conditioning units, and as discussed with regards to SEPP (BASIX), the required photovoltaic system is not included on the DA plans. As such, Council cannot be satisfied that the impact associated with the provision of essential services will not result in adverse impacts upon the natural environment or the amenity of adjoining dwellings, and consistency with the requirements and objectives of this control has not been demonstrated.

E1 Preservation of Trees or Bushland Vegetation

E2 Prescribed Vegetation & E6 Retaining unique environmental features

As discussed by Council's Landscape Officer, the application has not satisfactorily demonstrated that the existing significant Eucalyptus tree at the front of the site can be safely retained. As such, the proposal is inconsistent with the provisions of these development control, which seek to minimise impacts upon existing significant features of the site and to promote the retention of native canopy trees.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

The proposed development has been amended following the refusal of DA2018/1069, however a number of the reasons for refusal remain outstanding, as follows:

1. *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 B2 Number of Storeys of the Warringah Development Control Plan 2011. In particular, the resultant impact on adjoining properties.*

Comment: The proposed development remains generally unchanged (and non-compliant) with regard to the number of storeys proposed and the associated impact upon the amenity of adjoining dwellings.

2. *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 B3 Side Boundary Envelope of the Warringah Development Control Plan 2011. In particular, the impact on solar access for adjoining properties and building bulk.*

Comment: Whilst the overall height of the development has been marginally reduced by 575mm, the proposed development remains non-compliant and generally unchanged with respect to the side boundary envelope of the proposal and the associated impacts upon the amenity of adjoining properties.

3. *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 B5 Side Boundary Setbacks*

of the Warringah Development Control Plan 2011. In particular, the narrow setback, deep excavation, inadequate landscaping and resultant building bulk along the side setbacks.

Comment: The development remains entirely consistent with respect to the side setbacks of the proposal.

4. *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 C7 Excavation and Landfill of the Warringah Development Control Plan 2011. In particular, the deep excavation close to the side boundaries for both number 3 and number 7 Dalley Street and the poor amenity to unit one of the proposed development.*

Comment: The subterranean unit has been removed, however the extent of demolition remains essentially the same as that previously proposed. Whilst the associated impacts of the proposed excavation remain of concern, the amended proposal is not considered to be inconsistent with the provisions of clause C7 of WDCP 2011.

5. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D1 Landscaped Open Space and Bushland Setting of the Warringah Development Control Plan 2011. In particular, the inadequate deep soil planting and narrow landscaping width along the side boundaries.*

Comment: The landscaped treatment of the site remains unaltered, with additional concerns regarding the safe retention of Tree 1 in the front south-western corner of the site and the stormwater management solution proposed.

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 D6 Access to Sunlight of the Warringah Development Control Plan 2011. In particular, inadequate solar access to the ground floor unit living areas of the development and overshadowing of adjoining neighbours.*

Comment: Despite minor amendment to the height of the development and the removal of the subterranean unit, the proposal will still result in unreasonable overshadowing impacts to adjoining properties.

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 D7 Views of the Warringah Development Control Plan 2011.*

Comment: Despite minor amendment to the height of the development, the proposal will still result in unreasonable impacts upon views currently enjoyed by adjoining properties.

8. *Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the privacy measures proposed to satisfy the provisions of Clause D8 Privacy of the Warringah Development Control Plan 2011 result in reduced amenity for the proposed development.*

Comment: No amendments are proposed in this review application to address privacy concerns previously raised.

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 D9 Building Bulk of the Warringah Development Control Plan 2011 given the number of storeys, the reduced setbacks and height.*

Comment: The bulk of the development remains generally unchanged compared to that considered in DA2018/1069, with maintained non-compliance with respect to the Number of Storeys, Building Envelope, Side Setback and Landscaped Area development controls.

10. *Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development. In particular, the quality of landscaped open space, amenity and built form and scale.*

Comment: As one unit has been deleted, the provisions of SEPP 65 and the ADG are no longer applicable.

In addition to these earlier concerns, additional concerns have arisen with respect to:

- car parking non-compliance,
- the design of the proposed stormwater management solution,
- inadequate provision of services and facilities,
- compliance with BASIX requirements, and
- impacts to existing significant trees.

Overall, the proposal presents as an overdevelopment of the site, and the three generously proportioned units could readily be reduced in size/scale to achieve a greater level of compliance with WDCP 2011, with less impacts upon the amenity of adjoining properties.

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 REV2019/0047 for the Review of Determination of development application DA2018/1069 for demolition works and the construction of a residential flat building on land at Lot 1 DP 302634,5 Dalley Street, QUEENSCLIFF, for the reasons outlined as follows:

1. The height, siting and proximity of the proposal to adjoining development is inconsistent with the requirements and objectives of clauses B2 (Number of Storeys), B3 (Side Boundary Envelope), B5 (Side Boundary Setbacks) and B9 (Rear Boundary Setbacks) of WDCP 2011, with unreasonable impacts upon the amenity of adjoining dwellings with regard to visual dominance, privacy, view sharing and solar access.
2. The design of the proposed driveway and basement car park is inconsistent with the design requirements of *AS2890.1 Parking Facilities - Off-Street Car Parking* and Council's Driveway Profiles, resulting in an inadequate off street car parking arrangement and non-compliance with the requirements and objectives of clauses C2 (Traffic, Access and Safety) and C3 (Parking Facilities) of WDCP 2011.
3. The application lacks sufficient information to demonstrate compliance with Council's Water Management Policy, such that consistency with the requirements and objectives of clause C4 (Stormwater) of WDCP 2011 cannot be determined. Furthermore, the proposed stormwater management solution conflicts the recommendations of the Arboricultural Impact Assessment provided to support the application, with likely detrimental impacts upon existing vegetation to be retained.
4. The proposed development is significantly deficient with regards to the area and quality of landscaping proposed, resulting in non-compliance with the requirements and objectives of clause D1 (Landscape Open Space and Bushland Setting) of WDCP 2011.
5. The proposed development is inconsistent with the requirements and objectives of clause D6 (Access to Sunlight), with unreasonable impacts upon solar access of adjoining dwellings, and insufficient information to demonstrate that each of the proposed dwellings will receive adequate solar access to areas of private open space.
6. The proposed development will result in unreasonable impacts upon views currently enjoyed from adjoining properties, inconsistent with the requirements and objectives of clause D7 (Views) of WDCP 2011.
7. The proposal is inconsistent with the requirements and objectives of clause D8 (Privacy) of WDCP 2011, with inadequate measures implemented to ensure privacy for both the adjoining and proposed dwellings.
8. The proposed development is inconsistent with the requirements and objectives of clauses D9 (Building Bulk), D10 (Building Colours and Materials) and D12 (Glare and Reflection) of WDCP 2011, with the bulk of the proposal, that is compounded by the use of light and reflective finishes, unreasonably dominant as seen from adjoining dwellings.
9. The application fails to demonstrate that essential services have been designed to minimise impacts upon natural features of the site and the location of necessary plant and service equipment has not been disclosed, resulting in inconsistency with the submitted BASIX Certificate and the requirements and objectives of clause D21 (Provision and Location of Utility

Services) of WDCP 2011.

10. The application is inconsistent with regard to the potential impacts upon Tree 1, an existing significant Eucalyptus. The inability to satisfactorily demonstrate that Tree 1 can be safely retained is inconsistent with the requirements and objectives of clauses E1 (Preservation of Trees or Bushland Vegetation), E2 (Prescribed Vegetation) and E6 (Retaining Unique Environmental Features) of WDCP 2011.

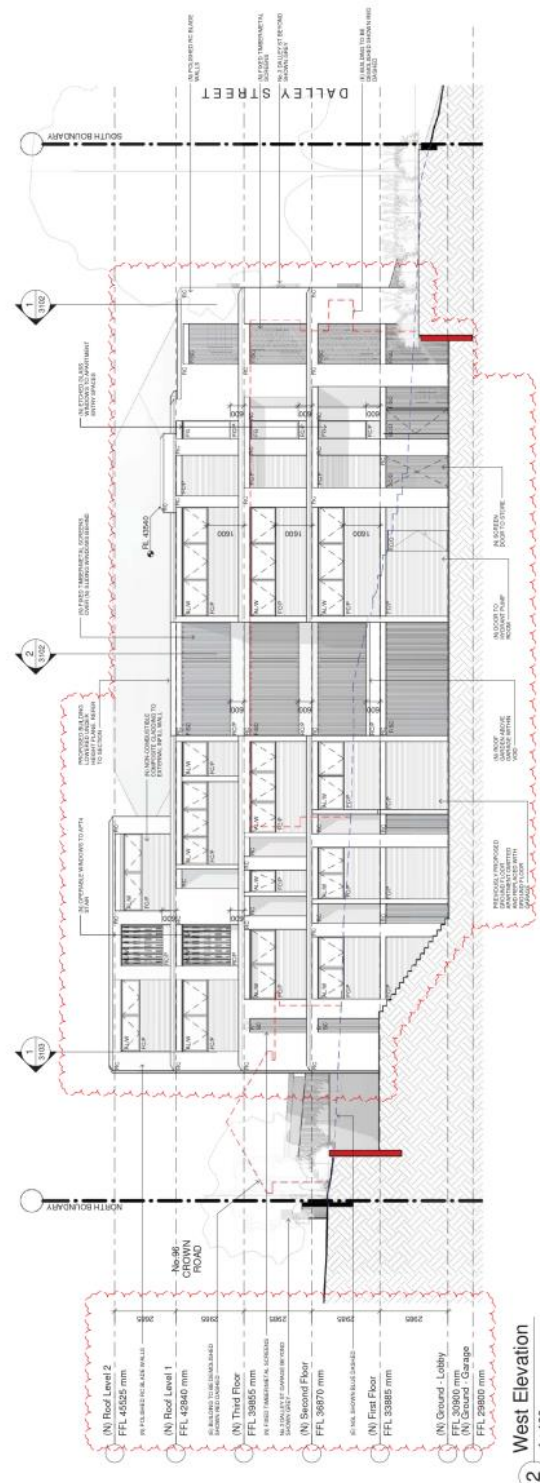


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		Ray Donnell Traffic & Transport		T 1 435 344 2800		T 1 435 344 1336		T 1 435 344 1336		Drawing No.		AR-DA-1101		NEW RELEASED ARCHITECTURE	
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East Elevation
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2 West Elevation
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ITEM 4.2	REV2019/0028 - 12L MCDONALD STREET, FRESHWATER - REVIEW OF DETERMINATION OF MODIFICATION 2018/432 DEMOLITION WORKS CONSTRUCTION OF ATTACHED DWELLINGS AND SUBDIVISION OF LAND
REPORTING OFFICER	ANNA WILLIAMS
TRIM FILE REF	2019/621019
ATTACHMENTS	1 ↓ Assessment Report

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. REV2019/0028 for Review of Determination of Modification 2018/432 for demolition works and construction of attached dwellings and subdivision of land at Lots 1-14 DP 1226906, 12A-L McDonald Street and 25 & 27 Coles Road, Freshwater subject to the conditions and for the reasons set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2019/0028
Responsible Officer:	Nick England
Land to be developed (Address):	<p>Lot 2 DP 1226906, 12 K McDonald Street FRESHWATER NSW 2096</p> <p>Lot 3 DP 1226906, 12 J McDonald Street FRESHWATER NSW 2096</p> <p>Lot 4 DP 1226906, 12 I McDonald Street FRESHWATER NSW 2096</p> <p>Lot 5 DP 1226906, 12 H McDonald Street FRESHWATER NSW 2096</p> <p>Lot 6 DP 1226906, 12 G McDonald Street FRESHWATER NSW 2096</p> <p>Lot 7 DP 1226906, 12 F McDonald Street FRESHWATER NSW 2096</p> <p>Lot 8 DP 1226906, 12 E McDonald Street FRESHWATER NSW 2096</p> <p>Lot 9 DP 1226906, 12 D McDonald Street FRESHWATER NSW 2096</p> <p>Lot 10 DP 1226906, 12 C McDonald Street FRESHWATER NSW 2096</p> <p>Lot 11 DP 1226906, 12 B McDonald Street FRESHWATER NSW 2096</p> <p>Lot 12 DP 1226906, 12 A McDonald Street FRESHWATER NSW 2096</p> <p>Lot 13 DP 1226906, 27 Coles Road FRESHWATER NSW 2096</p> <p>Lot 14 DP 1226906, 25 Coles Road FRESHWATER NSW 2096</p> <p>Lot 1 DP 1226906, 12 L McDonald Street FRESHWATER NSW 2096</p>
Proposed Development:	Review of Determination of Modification 2018/432 Demolition works construction of attached dwellings and subdivision of land
Zoning:	<p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p> <p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p> <p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p> <p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p> <p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p> <p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p> <p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p>

	<p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p> <p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p> <p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p> <p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p> <p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p> <p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p> <p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p> <p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p> <p>Warringah LEP2011 - Land zoned R2 Low Density Residential</p> <p>WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011</p> <p>WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011</p> <p>WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011</p> <p>WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011</p> <p>WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011</p> <p>WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011</p> <p>WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011</p> <p>WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011</p> <p>WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011</p> <p>WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011</p> <p>WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011</p> <p>WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011</p> <p>WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011</p> <p>WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011</p>
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Peninsular 1 Pty Ltd
Applicant:	I P M Holdings Pty Ltd

Application Lodged:	07/06/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	05/07/2019 to 19/07/2019
Advertised:	Not Advertised
Submissions Received:	15
Clause 4.6 Variation:	4.3 Height of buildings: 12.9%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 0.00
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Executive Summary

The request for review of determination relates to the decision of the Northern Beaches Local Planning Panel (NBLPP) to remove the existing AC units from the rooftops of the approved townhouse development. The original consent, MOD2018/0432, was granted by NBLPP on 9 May 2019.

The primary issues that relate to the proposal are: view loss to adjoining properties in McDonald Street and the visual impact of the unauthorised works.

A total of 16 submissions were received during the notification period, 8 of which were submissions from the owners of the land subject to the application, supporting the proposal. 8 objections were received, 5 from adjoining properties and 3 from owners of the dwellings subject to the application.

A review of the original view loss assessment has been undertaken. The original assessment of the view loss impact, which was found to be adverse to adjoining properties, is considered to be correct and is affirmed. The submission issues in respect to view loss (in the original assessment and in those received for this application) are hence still valid.

The proposed amendments made under this review (in effect the retention of 7 of the air conditioning units) are not sufficient to address the issues identified in the previous assessment.

The application is referred to the NBLPP to comply with the statutory requirement that all applications for review not be determined by a subordinate authority. MOD2018/0432 was determined by the NBLPP.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be refused.

PROPOSED DEVELOPMENT IN DETAIL

The application is made pursuant to Section 8.2 (1) (b) of Environmental Planning and Assessment Act 1979. It seeks to review the decision by NBLPP to approve MOD2018/0432, which required in effect:

- the removal of 14 existing unauthorised air conditioner units from the roof of the proposed development; and
- lowering of the existing unauthorised ventilation stack by approximately 700mm.

The applicant proposes that 7 of the existing air conditioner units (for units 7 to 14) remain on the roof and that Council erred in the assessment of the impact of these units in the original determination. No plans were provided with the application, with the proposed amendment stated only in correspondence provided with the application.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Development Control Plan - A.5 Objectives

Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 2 DP 1226906 , 12 K McDonald Street FRESHWATER NSW 2096 Lot 3 DP 1226906 , 12 J McDonald Street FRESHWATER NSW 2096 Lot 4 DP 1226906 , 12 I McDonald Street FRESHWATER NSW 2096 Lot 5 DP 1226906 , 12 H McDonald Street FRESHWATER NSW 2096 Lot 6 DP 1226906 , 12 G McDonald Street FRESHWATER NSW 2096 Lot 7 DP 1226906 , 12 F McDonald Street FRESHWATER NSW 2096 Lot 8 DP 1226906 , 12 E McDonald Street FRESHWATER NSW 2096
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	<p>Lot 9 DP 1226906 , 12 D McDonald Street FRESHWATER NSW 2096</p> <p>Lot 10 DP 1226906 , 12 C McDonald Street FRESHWATER NSW 2096</p> <p>Lot 11 DP 1226906 , 12 B McDonald Street FRESHWATER NSW 2096</p> <p>Lot 12 DP 1226906 , 12 A McDonald Street FRESHWATER NSW 2096</p> <p>Lot 13 DP 1226906 , 27 Coles Road FRESHWATER NSW 2096</p> <p>Lot 14 DP 1226906 , 25 Coles Road FRESHWATER NSW 2096</p> <p>Lot 1 DP 1226906 , 12 L McDonald Street FRESHWATER NSW 2096</p>
Detailed Site Description:	<p>The site currently consists of 14 separate lots. Lots 1 - 14 in DP 1226906. The development is stratum subdivided.</p> <p>The site has three street frontages and is located on the southern side of Wyndora Avenue, the eastern side of McDonald Street and the northern side of Coles Road.</p> <p>The land is generally rectangular in shape and has a frontage of:</p> <ul style="list-style-type: none"> • 24.38m to Wyndora Avenue; • 90.53m to McDonald Street; • 36.57m to Coles Road and; • an area of 2,759m². <p>Existing on the site are 14 two storey attached dwellings. The site previously contained the Peninsula Private Hospital. Lots 1 - 12 front McDonald Street and Lots 13 and 14 front Coles Road.</p> <p>The surrounding development consists of detached residential dwellings in a low density residential environment.</p>

Map:



SITE HISTORY

History relevant to the subject application includes the following:

PEX2014/0005: This application was a Planning Proposal submitted to Council to add an additional permitted use on the land to allow the development of 14 townhouses with a common basement car park. The Planning Proposal was reported to the Warringah Development Assessment Panel who recommended the proposal proceed to a gateway determination. The Planning Proposal was also reported to an Ordinary Council Meeting.

The Planning Proposal was made on 13 May 2016 to amend Schedule 1 to permit subdivision of the site into no more than 14 lots but only in conjunction with the erection of no more than 14 attached dwellings and basement car parking. The Planning Proposal was accompanied by a Voluntary Planning Agreement that set out a series of planning controls and "Site Development Plans" to guide the future detailed development of the site.

DA2016/0550: This application was for demolition works, construction of attached dwellings and subdivision of land (i.e. the construction of the 14 dwellings and basement carpark). The application was approved on 12 October 2016. The development has been constructed, including air conditioning units on the roof of each dwelling and a ventilation stack. These items did not form part of the original proposal and were the subject of a subsequent application to modify this consent.

MOD2018/0432: This application sought to modify the existing consent, retrospectively, for 14 air conditioning units and a single ventilation shaft from the basement projecting above the roof line, already constructed. This application was reported to the Northern Beaches Local Planning Panel at its meeting of 6 March 2019, with the officer recommendation of refusal based on the view loss caused to adjoining properties by the air conditioning units. The Panel resolved to permit the application to lodge amended plans that re-located these units to the basement parking area and amended the ventilation shaft.

The amended plans provided by the applicant showed the units on the individual terraces of each unit rather than the basement. Reasons cited for this location was: limited basement space, excessive heat

build up and adverse noise. Further justification for the terrace location was citing the provisions of the *State Environmental Planning Policy (Exempt & Complying Development) 2008*, which would permit the location of these units on this part of the site without consent.

The Panel subsequently resolved to approve these plans on 9 May 2019.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 9 May 2019 and the notice of determination was issued on 14 May 2019. The review was lodged on 7 June 2019 and is to be considered by the NBLPP on 6 November 2019, which is within 6 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Hence, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act and the proposed amendments can be considered as part of this review.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mr Roger Ireland	27 Coles Road FRESHWATER NSW 2096
David John Baldwin	25 Coles Road FRESHWATER NSW 2096
Mr Geoffrey Inman Way Ms Doris Kerner	12 G McDonald Street FRESHWATER NSW 2096

Name:	Address:
Aleksander Strasek	12 H McDonald Street FRESHWATER NSW 2096
Nada Stewart Anthony Keith Stewart	12 D McDonald Street FRESHWATER NSW 2096
Mr Gerard Casey	12 I McDonald Street FRESHWATER NSW 2096
Harold James Redmond Exupher Ompoc Redmond	182 Wyndora Avenue FRESHWATER NSW 2096
Mr Graham John Fenwick Mrs Anne Lai Fong Fenwick	12 K McDonald Street FRESHWATER NSW 2096
Mrs Mary Elizabeth Pearson	12 L McDonald Street FRESHWATER NSW 2096
Mrs Jane Alison Mason	44 Alexander Street MANLY NSW 2095
Donna Ellen Macrae	7 / 30 Foam Street FRESHWATER NSW 2096
Mr Geoffrey William Andrews	2 / 15 McDonald Street FRESHWATER NSW 2096
Peter John Smart Ms Jane Margaret Easton	32 Coles Road FRESHWATER NSW 2096
Mr Timothy William Herlihy Mrs Virginia Carol Graham Herlihy	12 B McDonald Street FRESHWATER NSW 2096
Ms Gunilla Susan Rupp	11 / 11 Koorala Street MANLY VALE NSW 2093

A total of 16 submissions have been received.

Eight (8) of these submissions are in objection to the application, with the remaining 8 being from residents of No.12 K to L McDonald Street, in support of the application.

Of the 8 objections received, 3 were from residents within the land subject to the application. 5 were from adjoining properties, being:

- 182 Wyndora Avenue
- 2/15 McDonald Street
- 32 Coles Road
- 31 Coles Road
- Confidential, name and address withheld

The issues raised in the objections have been summarised and are addressed below:

The air conditioners result in an adverse loss of views to adjoining properties.

Comment: A discussion on the view loss impacts to adjoining properties is provided elsewhere in this report. In summary, the retention of the air conditioning units for Units 7 to 14, will still result in adverse view loss impacts and proposed amendments are not supported.

The air conditioners will result in adverse noise impacts to adjoining properties.

Comment: The original assessment of the application to modify the consent found that potential noise impacts would not be a valid reason to refuse the application. Review of the determination confirms that the assessment of this issue was correct and hence does not form part of the reasons of the

recommended refusal of the application.

REFERRALS

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

Nil

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	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	Air conditioning units:		
			Unit 1 - maximum of 9.2m	8.2%	No
			Unit 2 - maximum of 9.0m	5.9%	No
			Unit 3 - maximum of 9.1m	7.1%	No
			Unit 4 - maximum of 8.5m	N/A	Yes
			Unit 5 - maximum of 8.5m	N/A	Yes
			Unit 6 - maximum of 8.5m	N/A	Yes
			Unit 7 - maximum of 7.54m	N/A	Yes
			Unit 8 - maximum of 8.29m	N/A	Yes
			Unit 9 - maximum of 8.5m	N/A	Yes
			Unit 10 - maximum of 7.64m	N/A	Yes
			Unit 11 - maximum of 8.7m	2.4%	No
			Unit 12 - maximum of 9.0m	5.9%	No

			Unit 13 - maximum of 9.4m	10.6%	No
			Unit 14 - maximum of 9.6m	12.9%	No
			Ventilation stack - 8.57m	0.8%	No

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes

Detailed Assessment

4.6 Exceptions to development standards

As detailed in the assessment report on MOD2018/0432, the original application was made under Clause 4.55 of the Environmental Planning and Assessment Act 1979. As such, a Clause 4.6 request was not required for Council to consider the proposed variation to the height of buildings development standard. This remains true for the assessment of the proposal in the subject review.

A full assessment of the impacts of the air conditioning units and the ventilation stack is in Part D7 Views, below in this report.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	7.8m	No change	N/A
B3 Side Boundary Envelope	East (only side boundary) - 5m	Two encroachments of 1.43m and 0.84m in height for lengths of 12.1m and 3.785m respectively.	No new encroachments	N/A
B5 Side Boundary Setbacks	East - 0.9m	Retaining walls - nil Unit 14 - 1.19m Terraces of Units 1 to 6 - 3.0m	AC units for units 1 - 6: 9.07m AC units for unit 14: 2.84m	Yes Yes
B7 Front Boundary Setbacks	6.5m	North: Unit 1 - 6.5m, Waste storage - 3.66m West: 4.5m South: 6.5m	AC units - 9.07m AC units - 14.17m AC units - 9.04m	Yes Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	28.96% (799sqm of LOS) 37.11% (1,024m ² of deep soil plus planter boxes)	No change	N/A

***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 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
D7 Views	No	No
D9 Building Bulk	No	No

Detailed Assessment

A.5 Objectives

A detailed assessment of the proposal has found that the proposed amendments made under the review are not consistent with the following provisions of the WDCP 2011:

- Part D7 Views; and
- Part D9 Building Bulk.

Hence, the proposal is not consistent with the following objectives of WDCP 2011:

- To ensure development responds to the characteristics of the site and the qualities of the surrounding neighbourhood; and
- To ensure new development is a good neighbour, creates a unified landscape, contributes to the street, reinforces the importance of pedestrian areas and creates an attractive design outcome.

Therefore, it is recommended that the application be refused based on its failure to meet the objectives of the WDCP 2011.

D7 Views

In the previous assessment of the view loss undertaken for application MOD2018/0432, consideration of the potential view loss for the following properties was conducted:

- No. 15 McDonald Street
- No. 17 McDonald Street
- No. 19 McDonald Street
- No. 21 McDonald Street
- No. 23 McDonald Street
- No. 25 McDonald Street

During the notification of the subject proposal, submissions were received from the following properties, raising objection in regard to view loss:

- 182 Wyndora Avenue
- 2/15 McDonald Street
- 32 Coles Road

- 31 Coles Road

As part of this review, a full consideration of the potential view loss of the application, consistent with the objectives of Part D7 and the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, is provided below:

Merit consideration

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

- *To allow for the reasonable sharing of views.*

Comment: In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

1. Nature of the views affected

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

Comment to Principle 1:

All the above properties enjoy district and ocean views in an arc from the north-east (towards and over Curl Curl Headland) to the south-east (towards North Head).

The views that will be affected are those obtained over the roof of the development, where the AC units protrude. These affected views consist of district views of the suburbs of Freshwater and Curl Curl, and views of the ocean and the horizon.

The photograph below illustrates the views enjoyed by the property to the east, No.2/15 McDonald Road, looking to east:



And from the same property to the south-east:



2. What part of the affected property are the views obtained

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

Comment to Principle 2:

The views are obtained from the upper level front rooms and balconies and over the front boundaries of the properties listed above, with the exception of 31 Moore Street. The views to either side of the attached dwellings are obtained from sitting and standing positions. The views over the top of the development are only obtained from standing positions and mainly include the views of the ocean and the horizon.

3. Extent of impact

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

Comment to Principle 3:

Views of the ocean and horizon between the AC units, from No.15A McDonald Street, will be retained. All other district and ocean views to each side of the subject site will be unaffected.

The views are mostly obtained over the front boundaries of the affected properties, from balconies and front facing rooms (including living areas).

The views that are being affected consist of some of the remaining ocean and horizon views obtained from No.15A McDonald Street, as well as some district views. The majority of the views that these properties previously enjoyed were lost as a result of the original development. As such, these remaining views are clearly important to the residents.

While the AC units are relatively small structures, they break up and interrupt what would otherwise be clear and intact views of the ocean and the horizon. These interruptions give the impression of view loss greater than a simple percentage calculation.

The ventilation stack is a relatively bulky structure that has been positioned within the view corridor between dwellings 6 and 7. This blocks most of this corridor when viewed from No. 15 and 17 McDonald Street.

Quantitatively, the view loss is assessed on each property as follows:

No. 2/15 McDonald Street - Moderate
No.17 McDonald Street - Moderate
No.182 Wyndora Avenue - Negligible
No.32 Coles Road - Negligible
No.31 Coles Road - Negligible

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one

or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4: As noted in the previous assessment, the decision to locate the AC units on the roof of the townhouses has been made at the convenience of the occupants of the development. The justifications put forward to retain the AC units on dwellings 1 to 7 in this application again, centre on the convenience of the residents and issues of building management ie. lack of space and generation of heat. These justifications are not considered valid. As stated in the previous assessment, there is clearly a more skilful design that could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. This conclusion is concurred with, as part of this review.

The key development standard that impacts on view loss for the affected properties in this particular case is the height of the AC units. The height limit for this site is 8.5m. The heights of the AC units and ventilation stack are as follows:

Air conditioning units

Dwelling 7 - maximum of 7.54m
Dwelling 8 - maximum of 8.29m
Dwelling 9 - maximum of 8.5m
Dwelling 10 - maximum of 7.64m
Dwelling 11 - maximum of 8.7m
Dwelling 12 - maximum of 9.0m
Dwelling 13 - maximum of 9.4m
Dwelling 14 - maximum of 9.6m

Four of seven units would exceed the height standard.

The non-compliant AC units on dwellings 11, 12, 13 and 14, cause view loss as they sit on the highest parts of the development and result in loss of the horizon and ocean views from adjoining properties. None of these six AC units are considered to be reasonable in this context, especially as there is a more skilful design (i.e. moving the units off the roof to the terraces of each dwelling) that could still allow the dwellings to have air conditioning while preserving the remaining views.

The compliant AC units on dwellings 7, 8 and 9 cause the loss of district views from most of the affected properties as well as a section of ocean views from No. 17 McDonald Street. The district views are not as valuable as ocean views, however, again, there is a more skilful design possible. In this regard, these three AC units are considered to be unreasonable and should be removed.

The compliant AC unit on dwelling 10 and the non-compliant units on dwellings 11 and 12 cause the following view loss:

- From No. 17 McDonald Street - loss of views of some vegetation and some views of dwellings 13 and 14,
- From the upper level of No. 15 McDonald Street - loss of views of some vegetation and some views of dwellings 13 and 14, and
- From the ground floor of No. 15 McDonald Street - loss of some ocean and views of some vegetation.

This view loss from No. 17 McDonald Street and the upper level of No. 15 McDonald Street is

considered to be minor/negligible, despite the breach of the height limit. However, the ground floor of No. 15 McDonald Street loses views of the ocean from the AC units on dwellings 10 and 11. Given that there is a more skilful design possible, the retention of these units is not supported. The unit on dwelling 12 could remain.

The non-compliant AC units on dwellings 13 and 14 cause the following view loss:

- From No. 17 McDonald Street - no view loss,
- From the upper level of No. 15 McDonald Street - loss of views of some district views, and
- From the ground floor of No. 15 McDonald Street - loss of some ocean and views of some vegetation.

This view loss from the upper level of No. 15 McDonald Street is not unreasonable, despite the breach of the height limit. However, the ground floor of No. 15 McDonald Street loses views of the ocean from the AC units on dwellings 13 and 14. Given that there is a more skilful design possible, it has to be recommended that these two AC units (on dwellings 13 and 14) also be removed.

Overall, the AC units for dwelling to 7-11, 13 and 14 cause unreasonable view loss and should be removed. There is clearly a more skilful design that could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.

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

Comment: The proposal, as submitted, is not an innovative design solution and will not improve the urban environment.

- *To ensure existing canopy trees have priority over views.*

Comment: No existing canopy trees are impacted by the modification.

Conclusion

Having regard to the above assessment, it is concluded that the modification, as submitted, is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the modification cannot be supported.

Notwithstanding the amendments proposed, the expected view loss to the following dwellings:

- No.15 McDonald Street; and
- No.17 McDonald Street;

as a result of the retention AC units to dwellings 13 and 14, are still considered to be unreasonable.

In conclusion, a review of the view loss made in the original assessment confirms two (2) important findings, being that:

- this assessment was fair and correct; and
- the amendments proposed made as part of the review are insufficient to meet the objectives of Part D7 Views.

Therefore, the application is recommended to be refused.

D9 Building Bulk

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment; and*
- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The potential view loss impact of the AC units for dwellings 7 to 14 have been assessed in detail above (Part D7 Views). The retention of the AC for units 7 to 14 would still result in a development that is not acceptable from the perspective of building bulk. Therefore, the application is recommended for refusal.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

The subject application seeks to review the determination (approval) made by the NBLPP on 9 May 2019. The approved plans required the relocation of all 14 air conditioning units from the roof.

The subject review seeks to retain the air conditioning units on dwelling 7 to 14.

The application received 16 submissions, with 8 of these submissions objecting to the proposal. Concerns raised included, noise, view loss and the retrospective nature of the application.

View loss is the key issue with this modification, as it relates to the breach of the height limit and the bulk of the structures.

A review of the assessment has found that the proposed retention of the 7 AC units will still result in unreasonable view loss and should be removed from the roof. It is also affirmed that the original height estimate and finding of adverse view loss in the original assessment was correct.

Therefore, it is recommended that the application be refused and the applicant remove all the AC units from the roof and retain the the ventilation stack in its approved form.
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 REV2019/0028 for the Review of Determination of Modification 2018/432 Demolition works construction of attached dwellings and subdivision of land on land at Lot 2 DP 1226906, 12 K McDonald Street, FRESHWATER, Lot 3 DP 1226906, 12 J McDonald Street, FRESHWATER, Lot 4 DP 1226906, 12 I McDonald Street, FRESHWATER, Lot 5 DP 1226906, 12 H McDonald Street, FRESHWATER, Lot 6 DP 1226906, 12 G McDonald Street, FRESHWATER, Lot 7 DP 1226906, 12 F McDonald Street, FRESHWATER, Lot 8 DP 1226906, 12 E McDonald Street, FRESHWATER, Lot 9 DP 1226906, 12 D McDonald Street, FRESHWATER, Lot 10 DP 1226906, 12 C McDonald Street, FRESHWATER, Lot 11 DP 1226906, 12 B McDonald Street, FRESHWATER, Lot 12 DP 1226906, 12 A McDonald Street, FRESHWATER, Lot 13 DP 1226906, 27 Coles Road, FRESHWATER, Lot 14 DP 1226906, 25 Coles Road, FRESHWATER, Lot 1 DP 1226906, 12 L McDonald Street, FRESHWATER, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part A.5 Objectives of the Warringah Development Control Plan 2011.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part D7 Views of the Warringah Development Control Plan 2011.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part D9 Building Bulk of the Warringah Development Control Plan 2011.