

# 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 27 NOVEMBER 2019**

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



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

**Panel Members**

Lesley Finn	Chair
Brian Kirk	Town Planner
Robert Hussey	Town Planner
Nick Lawther	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 27 November 2019  
in the Council Chambers, Civic Centre, Dee Why  
Commencing at 1.00pm**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 20 November 2019	
<b>3.0</b>	<b>DEVELOPMENT APPLICATIONS .....</b>	<b>5</b>
3.1	Mod2019/0454 - 1 Surfview Road, Mona Vale - Modification of Development Consent DA2018/1771 granted for the demolition of the existing surf club building and construction of a new surf club building including a cafe, restaurant and function space.....	5
3.2	DA2019/0663 - 515 Pittwater Road, Brookvale - Demolition of all existing structures and the construction of a Shop Top Housing Development comprising 19 dwellings, ground floor business premises and car parking.....	26
3.3	DA2019/0795 - 22 Wattle Avenue, Fairlight - Demolition works and construction of a dual occupancy (attached) and swimming pools .....	101
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## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 20 NOVEMBER 2019**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 20 November 2019 were adopted by the Chairperson and have been posted on Council's website.

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### 3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1 MOD2019/0454 - 1 SURFVIEW ROAD, MONA VALE -  
MODIFICATION OF DEVELOPMENT CONSENT DA2018/1771  
GRANTED FOR THE DEMOLITION OF THE EXISTING SURF  
CLUB BUILDING AND CONSTRUCTION OF A NEW SURF CLUB  
BUILDING INCLUDING A CAFE, RESTAURANT AND FUNCTION  
SPACE

REPORTING OFFICER MATTHEW EDMONDS

TRIM FILE REF 2019/664498

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

#### PURPOSE

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

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#### RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2019/0454 for Modification of Development Consent DA2018/1771 granted for the demolition of the existing surf club building and construction of a new surf club building including a cafe, restaurant and function space at Lot 104 DP 1066371, 1 Surfview Road, Mona Vale subject to the conditions and for the reasons set out in the Assessment Report.



## MODIFICATION APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2019/0454
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<b>Responsible Officer:</b>	Sarah McNeilly, Watermark Planning (Consultant Planner)
<b>Land to be developed (Address):</b>	Lot 104 DP 2066371, 1 Surfview Road, Mona Vale
<b>Proposed Development:</b>	Modification of Development Consent DA2018/1771 granted for the demolition of the existing surf club building and construction of a new surf club building, including a café, restaurant and function space
<b>Zoning:</b>	RE1 Public Recreation
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	Northern Beaches Local Planning Panel
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Northern Beaches Council
<b>Applicant:</b>	Northern Beaches Council

<b>Date of Lodgment</b>	19 September 2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>Notified:</b>	28 September 2019 to 12 October 2019
<b>Advertised:</b>	28 September 2019
<b>Number of Submissions</b>	8
<b>Recommendation</b>	Approval

### EXECUTIVE SUMMARY

The proposal seeks to modify Development Consent No. DA2018/1771 for the demolition of the existing surf club building and construction of a new surf club building including a café, restaurant and function space at 1 Surfview Rd, Mona Vale in the following manner:

- Deletion of the ground floor public male and female sanitary facilities (on the basis that Council is concurrently proposing to improve and increase the existing sanitary facilities at Mona Vale Beach, as well as providing new toilet facilities in Apex Park);
- Minor modifications to the internal configuration, including infill of one through-site link; and
- Installation of a cafe shade structure.

The proposed modifications, which are substantially internal, are to enable improved amenity and utilisation of the space, to relocate public bathrooms to a separate building, and to provide additional



area to meet the operational requirements of the Surf Life Saving Club and ensure that the café shade structure reflects the architectural integrity of the building.

The public notification of the application resulted in 2 letters of concern and 6 supporting letters. The concerns raised included the possible lack of public facilities whilst waiting for Council to complete the proposed new stand-alone facilities; concerns regarding the distance to the alternate public toilet location and suggested relocation of the southern balcony to prevent weather effects requiring raised balustrades.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is appropriate, subject to conditions which will ensure that temporary WC facilities are provided during construction and until the alternate facilities are complete and accessible to the public.

As both the land owner and applicant for the application, Northern Beaches Council has a conflict of interest in assessing and determining this matter. As such, the application has been assessed by an external planning consultant and is referred to the Northern Beaches Local Planning Panel for determination.

## **PROPOSED DEVELOPMENT IN DETAIL**

The applicant seeks to modify Development Consent No. DA2018/1771 in the following manner:

### **Ground Level**

- Deletion of the public male and female sanitary facilities;
- Addition of public family change facility with entry off eastern elevation;
- Addition of public unisex accessible sanitary facility (with entry off western elevation) adjacent gym;
- Infill of smaller through-site link;
- Deletion of lifeguard room;
- Increase area of Nippers storage area;
- Increase area of general club storage area;
- Increase area of first aid room area and relocation (with entry off eastern elevation);
- Relocation of patrol room (with entry off eastern elevation);
- Relocate the club storage bin store;
- Addition of unisex accessible club change facility (with access off the through-site link);
- Installation of external free-standing shade structure to café deck;
- Increase gym area with new external entry to gym;
- Ventilated façade to plant area increased on return wall;
- Relocation of Mona Vale Board Riders room with roller door entry on return adjacent to beach side access to general storage area;
- Removal of roller door and opening on east façade from previous Mona Vale Board Riders Location;
- External staircase shifted to allow room for ground floor landing behind operable security screen; and
- Amendments to club change room layout.

**Level 1**

- Deletion of meeting room adjacent members' bar / kitchen;
- Relocation of members' kitchen, adjacent bar;
- Addition of access via sliding door between members' bar and external BBQ area;
- Addition of bench in external BBQ area;
- Increase glazed balustrade height to 1800mm on south and east elevations of southern balcony;
- Relocation of observation room;
- Addition of increased internal flexibility of function space to enable subdivision into meeting room space;
- Deletion of meeting room off central corridor;
- Increase storage room area, adjacent sanitary facilities; and
- Relocation of unisex accessible sanitary facility, from restaurant to serve entire surf lifesaving club;
- External staircase shifted to allow for ground floor landing behind operable security screen.

The proposed changes to the surf club do not change the footprint of the approved building with amendments to the internal layout, access, sanitary facilities and access being the key components of the proposal.

The applicant relies on the installation of alternate public toilet facilities in two separate locations to allow for the deletion of the ground floor public bathrooms, as follows:

- Newly proposed facilities in Apex Park to the west, which are currently on public exhibition and subject to a separate Part 5 assessment process, and
- Existing facilities to the north, the redevelopment of which is on public exhibition and subject to a separate Part 5 assessment process.

Whilst it appears likely that the new and redeveloped facilities will be approved, it is not a certainty at this point in time.

**ASSESSMENT INTRODUCTION**

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

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

**SUMMARY OF ASSESSMENT ISSUES**

- Pittwater 21 DCP – C5.5 Accessibility
- Building Code of Australia – Provision of public toilets and amenities





## SITE DESCRIPTION

<b>Property Description</b>	Lot 104 DP 1066371, 1 Surfview MONA VALE NSW 2103
<b>Detailed Site Description</b>	<p>The subject allotment comprises a large area of public open space on Surfview Road and adjacent the northern end of Mona Vale Beach in Mona Vale. The irregularly shaped allotment has an area of 38,110m<sup>2</sup> and is zoned RE1 Public Recreation.</p> <p>Surrounding allotments consist of further public open space to the north and south including sand dunes, parkland and the Mona Vale Golf Course. Residential properties are the primary use surrounding the open space area with both R2 and R3 zones to the west of the large lot.</p> <p>This application refers to the central area of the lot which is currently occupied by the two storey Mona Vale Surf Club building. The clubhouse sits fronting Surfview Road and Apex Park to the west and has immediate access to the beach to the east. It is surrounded by 319 existing time-restricted public parking spaces to the north and south. Significant Norfolk pine trees line the beachfront and parking area to the north.</p>



## SITE HISTORY

### Development Application No. DA2018/1771

Development Application No. DA2018/1771 approved the demolition of the existing surf club building and construction of a new surf club building including a café, restaurant and function space.



### **Prelodgment meeting**

A formal prelodgement meeting was undertaken for the proposed development on 29 August 2019. The conclusion of the Council staff in the prelodgement advice was as follows:

*The applicant proposes a series of modifications to the approved MV SLSC building, as follows:*

- a. Removal of the public amenities, to be replaced by additional storage area,*
- b. Inclusion of a 1.8m wind barrier on the southern elevation of the upper floor deck,*
- c. Minor amendments to internal layout,*
- d. Inclusion of an awning/roof over the external café seating area.*

*The proposed amendments do not alter compliance with any LEP or DCP standards/controls, and no concerns are raised in this regard.*

*However, should the applicant choose to seek consent for the amendments under the provisions of s4.55 of the EP&A Act, the applicant will need to satisfactorily demonstrate that the proposed modified development remains essentially and materially the same as that which was originally approved. The removal of all public amenities from the SLSC building may present some risk in this regard.*

*It is understood that a new, separate public amenities building will be provided elsewhere in the vicinity of the development. However, these works will not form part of the application to remove the public amenities from the approved MV SLSC building. With this in mind, there is also a potential risk that the public may perceive that the amenities are to be removed from the area in their entirety.*

*In this regard, it is recommended that the statement of environmental effects detail the manner in which the public amenities are to be approved/provided. Ideally, it would be beneficial if the provision of the public amenities was confirmed/approved prior to the lodgement of any future application to remove the public amenities from the approved MV SLSC building.*

### **APPLICATION HISTORY**

On 21 October 2019, amended plans and an amended statement of environmental effects were submitted to Council.

On 28 October 2019, the assessing officer and relevant Council staff met with the applicant to discuss concerns regarding compliance with the BCA and the provision of temporary amenities during construction.

On 1 November 2019, an amended BCA compliance report and further information on future replacement bathroom facilities for the Mona Vale Beach location was provided. However, temporary WC facilities were not addressed.





## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (EP&A Act)

### Section 4.55 (1A) Assessment

The relevant matters for consideration under Section 4.55(1A) of the EP&A Act are:

Section 4.55 (1A) – Modifications involving minimal environmental impact	Comments
A consent authority may, on the 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	The development as proposed to be modified, has a minimal and appropriate environmental impact, the same as approved in the original application.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development as proposed to be modified would still be substantially the same development as the development for which consent was originally granted.  Whilst the proposed amendments would still result in a building substantially the same as that granted consent, each of the various amendments proposed requires assessment to ensure appropriate built form and amenity outcomes.
(c) it has notified the application in accordance with: <ul style="list-style-type: none"> <li>i. the regulations, if the regulations so require, or</li> <li>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</li> </ul>	The application has been publicly exhibited in accordance with 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.	Eight submissions were received in relation to this application. See "Notification and Submissions Received" below.

### Section 4.15 Assessment

In accordance with Section 4.55(3) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 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 4.15C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.



<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Not Applicable
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 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 regulations	All relevant provisions of the EP&A Regulation 2000 have been taken into consideration during the assessment of the development application and this modification application.
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 Development Control Plan section in this report and found to be appropriate.</p> <p>(ii) The proposed development will not have a detrimental social impact on the locality.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the surf club building.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See the discussion on “Notification and Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	The deletion of the public toilet facilities from the Surf Club is undesirable. However, a condition of consent to ensure the provision of temporary facilities ensures that the application remains in the public interest.

## **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Pittwater 21 Development Control Plan.

As a result of the public exhibition of the application Council has received a total of eight (8) submissions, 2 objecting to the proposed modification and 6 supporting.

<b>Name</b>	<b>Address</b>
Gordon Kinlay	7 / 7/8-12 Darley Street East, Mona Vale
Tim Woolnough	23 Brinawa Street, Mona Vale
Bryce Munro	11 Grandview Parade, Mona Vale
Skye Rose	7 Jedda Place, Mona Vale
Richard Perry	22 Alexandra Crescent, Bayview
Mark Horton	2 Elwyn Close, Mona Vale



Jason Muller	31 Hillcrest Avenue, Mona Vale
Geri Moorman	12/ 19-23 Delmar Parade, Dee Why

The following issues were raised in the submissions:

- There is no guarantee that alternate toilet facilities will be provided. DA should not be approved until alternate toilets of adequate scale are approved.
- Public toilets to be too far from safe swimming zone
- Southern balcony should be relocated to eastern façade to avoid extreme weather conditions

The individual matters raised within the submissions are addressed below, as follows:

### 1. Loss of public facilities

Concerns have been raised that the proposed alternative facilities will not be completed until sometime after the surf club, may be reduced in size or no go ahead at all.

Comment: It is agreed that prior to being able to support the removal of the bathroom facilities, there needs to be certainty that appropriate alternate bathrooms are provided for the public users of the beach. Council's Building Surveyor has recommended approval for the proposal, subject to an assurance of the provision of interim bathroom facilities. Accordingly, a condition is proposed to address this matter.

### 2. Revised toilet location inaccessible to beachgoers

Concerns have been raised that the proposed alternative facilities will not be located on a convenient site.

Comment: The location of alternate bathroom facilities will be the matter of a separate approval. At this time, a case will need to be made for the location of the facilities. However, it is considered a reasonable assumption that toilets should be located in close proximity to the surf club and safe swim areas.

### 3. Southern balcony

Concerns have been raised regarding the location of the southern balcony due to weather exposure and a suggestion that it is relocated to the eastern façade and modifications made to the floor plan to allow for this.

Comment: The southern balcony was approved as part of the original Development Application. This amendment improves its exposure by increasing the height of balustrades to 1.8 metres to provide additional protection. These raised balustrades are glass and will have an appropriate visual impact.



## REFERRALS

Referral Body Internal	Comments
Environmental Health Referral	<p><b>Approval</b></p> <p>No conditions</p>
Building Control	<p><b>Approval</b> <b>Comments received 7/11/19</b></p> <p>Further to my DA referral comments to you contained in email dated 22/10/2019. I have reviewed the revised statement on Toilet facilities by the McKenzie Group and note as follows:</p> <p>The toilet facilities calculated by the Consultant are determined under F2.2, which states that the numbers of persons accommodated must be calculated according to D1.13, (based on floor areas) if it cannot be more accurately be determined by other means. Council can still fix the numbers if it wishes.</p> <p>There have been population numbers fixed by Council for the 1st floor and the café which I have based my calculations on. The difficulty with fixing population numbers is ongoing monitoring and therefore it may be best to determine the population numbers based on floor areas. The consultant has calculated the total number of toilets in the combined levels, where I have looked at the toilet numbers based on population of each floor level. The ground floor area population can be based on floor area, it does not have large population numbers apart from the café and outdoor seating.</p> <p>The toilet facilities for the café can be covered by the facilities provided within the ground floor area provided access is available during the operational hours of the café. This includes the accessible toilet which while not shown on the plans I have been assured is contained within the accessible change room.</p> <p>There is still the question of the public toilet facilities. As I indicated in my email of 22/10/19 the BCA does not require public facilities to be provided within the building. This comment has been echoed in the consultant's report.</p> <p>There is however a need for public toilet facilities to be provided external of the building if they are not to be provided as part of this development to offset the loss of existing public toilets and change facilities. This needs to be either temporary modules or permanent structures once the existing public toilets are demolished. This needs to be taken into consideration with the determination of this Modification.</p> <p><b>Recommendation:</b> <b>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of MOD2019/0454.</b></p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p> <p><b>Preceding Comments dated 22 October 2019</b> <u>Public Toilets and Amenities</u></p> <p><i>There is no requirement under the BCA for Public toilet facilities to be provided within the building. The requirements of the BCA are relative to the use of the building and</i></p>

	<p>the number, gender and particular needs of the occupants. It is not required to cater for persons who are not using the facilities within the clubhouse.</p> <p>Council has a responsibility to provide these facilities and therefore I have taken the view that there is a need for these public toilets as currently there is a lack of these facilities at Mona Vale Beach and there will be criticism from the general public if they are not provided as part of this development. It is likely that Council will need to supplement the public toilet facilities by extending or rebuilding the current public toilet block which is minimal and poorly located.</p> <p>The statement of environmental affects indicates that a new separate amenities building may be provided elsewhere in the vicinity of the development. I do not see justification in removing the proposed toilets at ground floor level based on this premise.</p> <p>I have therefore assessed the toilets against Part F2 of the BCA. The user groups under this Part are not clearly identified in Table F2.3 so I have assessed the facilities based on "Sports Venues or the like".</p> <p><b><u>Recommendation</u></b></p> <p>THAT MOD2019/0454 BE REFUSED ON THE GROUNDS THAT THE TOILETS AND AMENITIES ARE REQUIRED FOR USERS OF THE BUILDING, THE PUBLIC AND PATRONS USING THE CAFÉ. IN THIS REGARD THE APPLICATION IS CONTRARY TO PART F2 OF THE BCA.</p> <p><b><u>Further Recommendation</u></b></p> <p>That additional amenities be provided by the inclusion of (2) female WCs + (1) wash hand basin; (1) male WC + (2) urinals + (1) wash hand basin to compensate for the lack of facilities otherwise required for the café and to satisfy Table F2.3 of the BCA.</p> <p>Note: The Café should otherwise have its <b>own separate sanitary facilities</b> based on (F2.3a). I have based the requirements on the fixed population numbers i.e. 70 persons + (4) staff there is a need for - (2) female WCs + (1) washbasin; (1) Male WC + (1) Urinal + (1) Wash hand basin.</p> <p>The existing Public toilet block located to the North of the proposed building is located some 130m from the Café and is not considered an acceptable option to providing these additional toilets having regard to the distance of travel, there being no all-weather pathway and the unpleasantness and risk during times of inclement weather.</p> <p><b><u>The Accessible Public Toilet</u></b></p> <p>The location of the accessible public toilet with entry from the West Elevation is not considered acceptable as it does not give equitable and dignified access for persons with a disability.</p> <p><b><u>Recommendation</u></b></p> <p>The accessible public toilet is required to be repositioned in close proximity to the public toilets and the café.</p> <p><b><u>Toilet facilities 1<sup>st</sup> floor level</u></b></p> <p>The toilet facilities at 1<sup>st</sup> floor level comply with Part F2 of the BCA subject to the fixed population numbers being strictly applied i.e. Restaurant – 90 persons; Function room – 90 persons and members lounge 60 persons; I have also allowed for 10 staff</p>
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	<p>members and for the Accessible toilet to be included as (1) WC for male and female use (F2.2c).</p> <p><b>Planner's Comment 8/11/19:</b> It is noted that the original development consent includes a condition which states: "All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA)". An additional condition requiring the provision of temporary WCs during the construction of the Surf Club and up until the completion the replacement bathroom facilities be provided.</p> <p>A condition is also proposed requiring the provision of a WC within the Accessible Change Room on the southern ground floor of the Surf Club, and the revision of the floor plan to allow for an external door accessing this facility. This will ensure equitable access and access at all times for café patrons.</p>
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#### 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)

##### State Environmental Planning Policy No. 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 recreation and community 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 continuation of this land use, as proposed.

##### State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP)

The site is subject to the provisions of the CM SEPP. Accordingly, an assessment under the CM SEPP has been carried out as follows:

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

###### Comment:

The subject land has not been included on the Coastal Vulnerability Area Map under CM SEPP.



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

Comment:

The subject site is situated within the coastal environment area. The works are within the approved building envelope and will have no visual impact on the coastal area. The design retains the approved revegetation and has no impact on public foreshore access, coastal processes and is not within the vicinity of any known Aboriginal heritage sites.

The minor revisions to the development do not result in a further impact to the processes of the coastline and Mona Vale Beach, public foreshore access, Aboriginal heritage or native vegetation, other than what has been previously established by the approved development.

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

Comment:

The revised development remains consistent with the character, bulk and scale of the nearby built and natural environment.

Native foreshore vegetation will be unaffected.

No Aboriginal heritage sites are located within the vicinity of the development and public access to the foreshore is not affected. The revised development does not result in unreasonable overshadowing to the foreshore area or contributes to the loss of valued public domain views to the foreshore.

**Clause 15 Development in coastal zone generally – development not to increase risk of coastal hazards**

Comment:

The development has been considered by Council's Coastal engineer as a part of the original assessment and they were satisfied that the development is not likely to cause increase risk of coastal hazards on the subject site or other land. With no increase in the footprint, this comment remains valid.

As such, it is considered that the application does comply with the requirements of the CM SEPP.

**Pittwater Local Environmental Plan 2014 (PLEP 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

Aims of the PLEP 2014

The relevant aims of PLEP 2014 were achieved with the proposed redevelopment of the surf club being a positive development, consistent with the desired character for Pittwater. The development was considered to be a positive social and community facility, and has been sited and designed to ensure environmental and coastal concerns are adequately considered. Similarly, heritage and landscape considerations have been appropriately incorporated into the design. The proposed modifications will continue to achieve these aims.



#### Objectives of the Zone

The site is zoned RE1 Public Recreation and is a permissible use in the zone. The objectives of the RE1 Public Recreation zone are achieved providing a community facility, which will enhance recreational uses and which adds positively to the surrounding public open space. Subject to conditions of consent, the development will continue to achieve these objectives.

#### Principal Development Standards

<b>Standard</b>	<b>Requirement</b>	<b>Proposed</b>	<b>%Variation</b>	<b>Complies</b>
Height of Buildings:	8.5m	7.973m	N/A	Yes

#### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

#### **Pittwater 21 Development Control Plan**

##### Built Form Controls

<b>Built Form Control</b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
Front building line	Merit	1.8m	N/A	Yes
Rear building line	3m	40m (MHWM)	N/A	Yes
Side building line	3m Darley St	89m	N/A	Yes
	3m Seabeach Ave	160m	N/A	Yes
Building envelope	-	-	N/A	N/A
Landscaped area	-	-	N/A	N/A

#### Compliance Assessment

<b>Clause</b>	<b>Compliance with requirements</b>	<b>Consistency Aims/Objectives</b>
A1.7 Considerations before consent is granted	Yes	Yes



Clause	Compliance with requirements	Consistency Aims/Objectives
A4.9 Mona Vale Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.2 Bushfire Hazard	N/A	N/A
B3.3 Coastline (Beach) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.3 Greywater Reuse	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.5 Rainwater Tanks - Business, Light Industrial and Other Development	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	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

<b>Clause</b>	<b>Compliance with requirements</b>	<b>Consistency Aims/Objectives</b>
<i>B8.6 Construction and Demolition - Traffic Management Plan</i>	Yes	Yes
<i>C5.1 Landscaping</i>	Yes	Yes
<i>C5.2 Safety and Security</i>	Yes	Yes
<i>C5.4 View Sharing</i>	Yes	Yes
<i>C5.5 Accessibility</i>	Yes	No
<i>C5.7 Energy and Water Conservation</i>	Yes	Yes
<i>C5.8 Waste and Recycling Facilities</i>	Yes	Yes
<i>C5.9 Signage</i>	Yes	Yes
<i>C5.10 Protection of Residential Amenity</i>	Yes	Yes
<i>C5.11 Third Party Signage</i>	Yes	Yes
<i>C5.14 Car/Vehicle/Boat Wash Bays</i>	Yes	Yes
<i>C5.15 Undergrounding of Utility Services</i>	Yes	Yes
<i>C5.16 Building Facades</i>	Yes	Yes
<i>C5.17 Pollution control</i>	Yes	Yes
<i>C5.18 Public Road Reserve - Landscaping and Infrastructure</i>	Yes	Yes
<i>C5.19 Food Premises Design Standards</i>	Yes	Yes
<i>C5.20 Liquor Licensing Applications</i>	Yes	Yes
<i>C5.21 Plant, Equipment Boxes and Lift Over-Run</i>	Yes	Yes
<i>C5.22 Environmental Sustainability</i>	Yes	Yes
<i>D9.1 Character as viewed from a public place</i>	Yes	Yes
<i>D9.2 Scenic protection - General</i>	Yes	Yes
<i>D9.3 Building colours and materials</i>	Yes	Yes
<i>D9.6 Front building line</i>	Yes	Yes
<i>D9.7 Side and rear building line</i>	Yes	Yes

#### Detailed Assessment

- **Accessibility**

##### *Clause C5.5 (Accessibility) of P21 DCP*

Council's Building Surveyor has stated that the location of the accessible public toilet with entry from the West Elevation is not considered acceptable as it does not give equitable and dignified access for persons with a disability

A condition is proposed requiring the provision of a WC within the Accessible Change room on the southern ground floor of the Surf Club, and the revision of the floor plan to allow for an external door accessing this facility. This will ensure equitable access and access at all times for café patrons.



### **Ocean Beach Plan of Management**

The revised development is satisfactory when considered against the Mona Vale Beach Plan of Management. The uses within the building are unchanged and fulfil the requirements of the POM.

### **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 21 Development Control Plan; and
- Codes and Policies of Council.

The proposal has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application, and does not result in an unreasonable impact on surrounding, adjoining, adjacent and nearby properties as a result of the proposed modifications.

In consideration of the proposal and the merit consideration the development the proposal is considered to be consistent with the applicable planning controls for the site and can be supported, subject to conditions of consent.

### **RECOMMENDATION**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, approves Modification Application No. Mod2019/0454 for Modification of Development Consent DA2018/1771 granted for the demolition of the existing surf club building and construction of a new surf club building, including a café, restaurant and function space on land at Lot 104 DP 1066371, 1 Surfview Road MONA VALE NSW 2103, subject to the following amendments:

- **New Condition 1A 'Modification Approved Plans', to read as follows:**

The development must be carried out in compliance (except as amended by any other condition of consent) with the Approved Plan and Supporting Documentation referred to in Condition 1, as modified by the following:

(a) Modification Approved Plans

<b>Architectural Plans – endorsed with Council's Stamp</b>		
Drawing No.	Dated	Prepared By
A.DA.02.004 Rev B – Proposed Site Plan	13.9.19	Warren and Mahoney
A.DA.10.001 Rev C – Ground Level	15.10.19	Warren and Mahoney
A.DA.10.002 Rev C – Level 1	15.10.19	Warren and Mahoney
A.DA.20.001 Rev C – North and East Elevations	15.10.19	Warren and Mahoney



A.DA.20.002 Rev C – South and West Elevations	15.10.19	Warren and Mahoney
A.DA.30.001 Rev c – Sections	15.10.19	Warren and Mahoney

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

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

- **Delete Condition 21 'Enhanced Accessibility'.**
- **New Condition 21 'Accessible Change Room', to read as follows:**

The Accessible Change room on the southern side of the ground floor is to:

- Make provision for the inclusion of an accessible WC, and
- Make provision for an external door with access available from the eastern external wall of the building.

Reason: To ensure equitable disabled access and availability of facilities at all times for café patrons.

- **New Condition 25A 'Temporary facilities', to read as follows:**

The applicant is to provide to Council's satisfaction, a plan detailing the provision of temporary WCs to be available to the public during the construction of the Surf Club, and up until the completion of replacement bathroom facilities at Mona Bale Beach. Additional documentation is to include the number and type of temporary WCs, the location of the structures and a Plan of Management of their operation.

Reason: To ensure the reasonable provision of replacement WC facilities for public use during the construction of the surf club and up until replacement facilities are constructed.

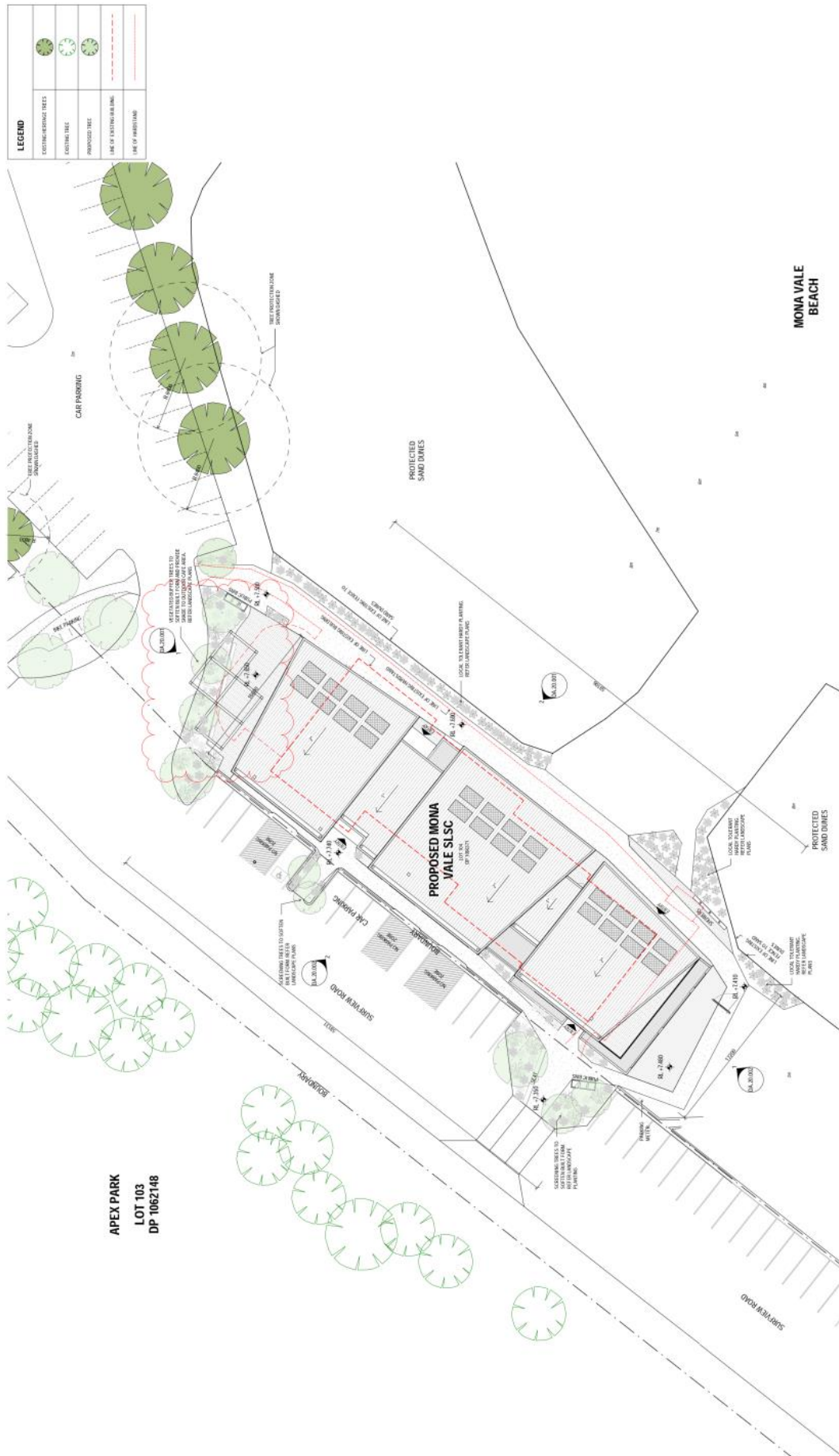
- **Amend Condition 40 'Plan of Management', to read as follows:**

A Plan of Management (POM) for the operation of the premises is to be prepared and submitted to Council for approval prior to the issuance of an occupation certificate. The POM must include measures to address:

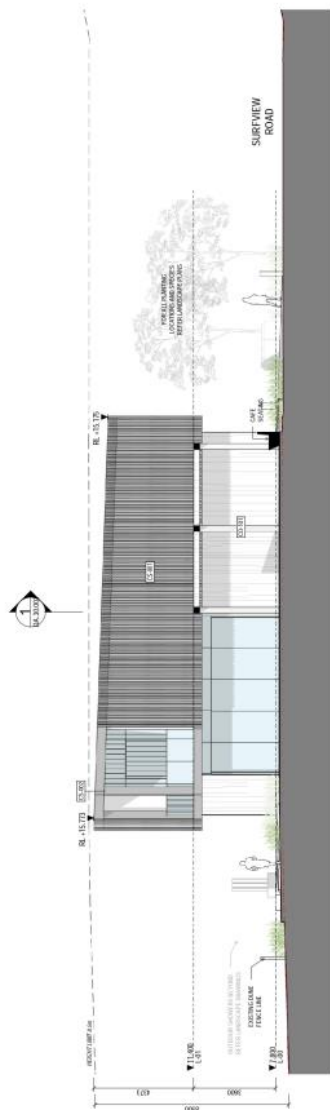
- Hours of operation
- Acoustics
- Capacity
- Complaints
- Major events including multiple functions
- Consistency with conditions of this consent
- The availability/accessibility of all bathroom facilities for use by all patrons of the café and restaurant during operating hours.

Reason: To minimise environmental impacts of the development.

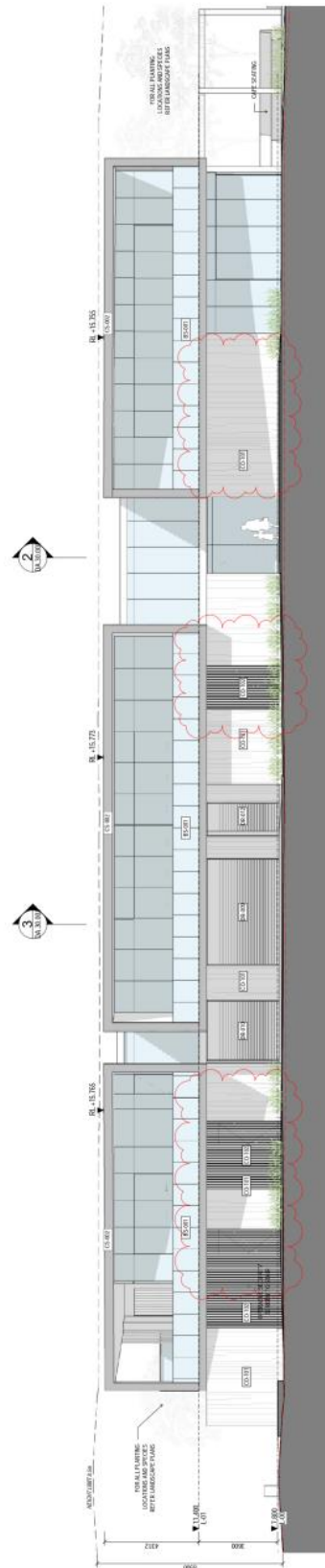




<div>Warren and Mahoney Architects Ltd</div> <div>Suite 13.02, Future Building Aurora Square, 95 The Street Aurora, Victoria 3105 Australia Phone: +61 3 8621 1800 www.warrenandmahoney.com</div>	<div><b>Notified Architect</b></div> <div>Nicholas Bandaru Principal R200 Reg. 4499 Designated Architects and Engineers www.warrenandmahoney.com</div>	<div><b>Revisions</b></div> <table><tr><td>A</td><td>15/10/18</td><td>USE OF SITE PLAN FOR APPLICATION</td></tr><tr><td>B</td><td>13/08/19</td><td>USE OF SITE PLAN FOR APPLICATION</td></tr></table>	A	15/10/18	USE OF SITE PLAN FOR APPLICATION	B	13/08/19	USE OF SITE PLAN FOR APPLICATION	<div><b>Notes</b></div> <p>All drawings to be made in consultation with the relevant authorities. Any changes to the drawings must be approved by the relevant authorities. The drawings are not to be used for construction.</p>	<div><b>Consultants</b></div> <div>Project Manager NORTHERN BEACHES COUNCIL MELODIE Structural Engineer TYP Mechanical Engineer NORTHROP</div>	<div><b>Client</b></div> <div><b>northern beaches council</b> Architect <b>WARREN AND MAHONEY</b></div>	<div><b>Project Title</b></div> <div><b>Mon Vale Surf Club</b> Surf View Road, Mon Vale, NSW</div>	<div><b>Drawing Title</b></div> <div><b>PROPOSED SITE PLAN</b></div>	<div><b>Drawing Details</b></div> <div>Scale: 1:200 Date: 13/08/19 Drawn by: MELODIE Checked by: TYP Revision: A DA.02.004</div>	<div><b>Drawing No.</b></div> <div><b>A DA.02.004</b></div>	<div><b>Development Status</b></div> <div><b>DEVELOPMENT APPLICATION</b></div>
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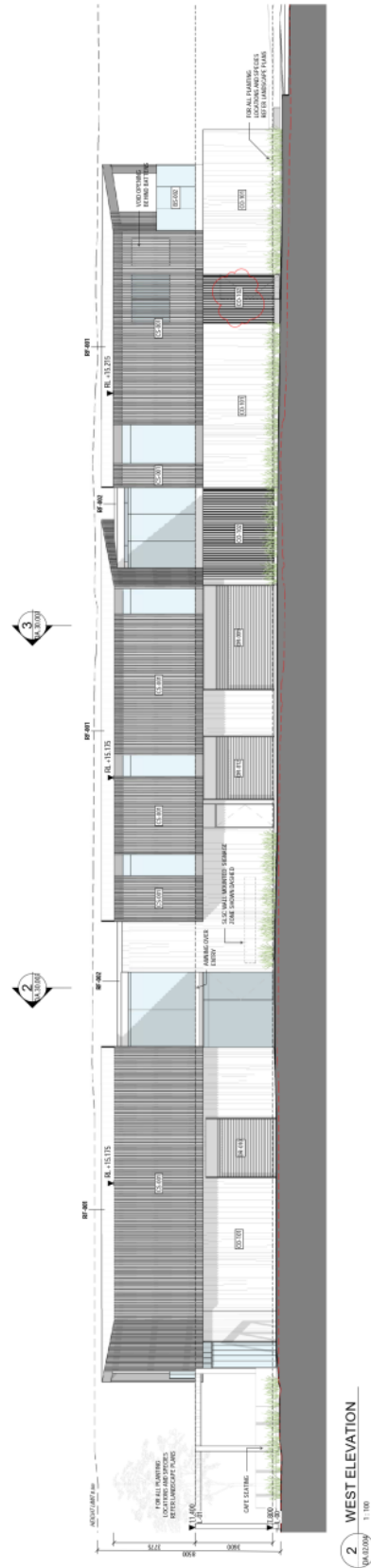
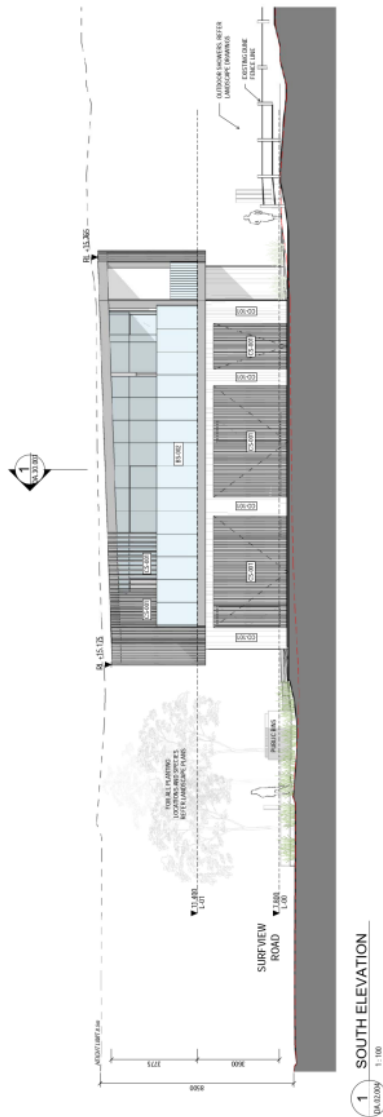


1 NORTH ELEVATION  
DA.03.004 1:100



2 EAST ELEVATION  
DA.03.005 1:100

Warren and Mahoney Architects Ltd Suite 13.03, Future Building Aurora Square, 95 The Street Aurora, Victoria 3142 Australia Phone: +61 3 9027 1800 www.warrenmahoney.com.au	Nominated Architect Nicholas Handman R200 196, 4499 Registered Architect and Designer www.warrenmahoney.com.au	Revisions <table><tr><th>Rev</th><th>Date</th><th>Description</th></tr><tr><td>A</td><td>15.10.19</td><td>DEVELOPMENT APPLICATION</td></tr><tr><td>B</td><td>13.08.19</td><td>DA AMENDMENTS</td></tr><tr><td>C</td><td>15.10.19</td><td>DA AMENDMENTS</td></tr></table>	Rev	Date	Description	A	15.10.19	DEVELOPMENT APPLICATION	B	13.08.19	DA AMENDMENTS	C	15.10.19	DA AMENDMENTS	Notes All drawings to be made in consultation with the relevant authorities. Architectural elements - specific details. Structural elements - specific details. Mechanical elements - specific details. Electrical elements - specific details. Other elements - specific details.	Consultants <table><tr><th>Consultant</th><th>Details</th></tr><tr><td>Project Manager</td><td>NORTHERN BEACHES COUNCIL</td></tr><tr><td>Structural Engineer</td><td>TYP</td></tr><tr><td>Mechanical Engineer</td><td>NORTHERN BEACHES COUNCIL</td></tr><tr><td>Electrical Engineer</td><td>NORTHERN BEACHES COUNCIL</td></tr><tr><td>Other</td><td>NORTHERN BEACHES COUNCIL</td></tr></table>	Consultant	Details	Project Manager	NORTHERN BEACHES COUNCIL	Structural Engineer	TYP	Mechanical Engineer	NORTHERN BEACHES COUNCIL	Electrical Engineer	NORTHERN BEACHES COUNCIL	Other	NORTHERN BEACHES COUNCIL	Client  <b>northern beaches council</b> Architect:  <b>WARREN AND MAHONEY</b>	Project Title <b>Mona Vale Surf Club</b> Surf View Road, Mona Vale, NSW All dimensions for work on site unless indicated otherwise. Site is shown in context of the wider area. This drawing is not valid for construction.	Drawing Status <b>DEVELOPMENT APPLICATION</b>	Drawing Details <table><tr><th>Detail</th><th>Date</th><th>Drawn by</th><th>Checked by</th><th>Revision</th></tr><tr><td>Scale</td><td>1:100</td><td>NBM</td><td>NBM</td><td>A DA.20.001</td></tr><tr><td>Date</td><td>15.10.19</td><td></td><td></td><td></td></tr><tr><td>Drawn by</td><td>NBM</td><td></td><td></td><td></td></tr><tr><td>Checked by</td><td>NBM</td><td></td><td></td><td></td></tr><tr><td>Revision</td><td></td><td></td><td></td><td></td></tr></table>	Detail	Date	Drawn by	Checked by	Revision	Scale	1:100	NBM	NBM	A DA.20.001	Date	15.10.19				Drawn by	NBM				Checked by	NBM				Revision				
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<div>WARREN AND MAHONEY Architects Ltd Suite 13.03, Plaza Building Aurora Square, 95 PHE Street Parramatta NSW 2150 Australia Phone +61 2 8621 1888 www.warrenmahoney.com</div>		<div>Notified Architect Nicholas Bandaru Phone +61 2 8621 1888 Fax +61 2 8621 1889 Registered Architects and Engineers www.warrenmahoney.com</div>	<div>Revisions</div> <table><tr><td>A</td><td>15.10.19</td><td>DEVELOPMENT APPLICATION</td></tr><tr><td>B</td><td>13.08.19</td><td>REVISIONS TO ELEVATIONS</td></tr><tr><td>C</td><td>15.10.19</td><td>DA AMENDMENTS</td></tr></table>	A	15.10.19	DEVELOPMENT APPLICATION	B	13.08.19	REVISIONS TO ELEVATIONS	C	15.10.19	DA AMENDMENTS	<div>Notes</div> <p>All drawings to be read in conjunction with the following documents: - Australian Standards - Specifications - Council of the City of Parramatta - Council of the City of Parramatta - Council of the City of Parramatta</p>	<div>Consultants</div> <p>Project Manager: <b>WARREN AND MAHONEY</b> Architect: <b>WARREN AND MAHONEY</b> Mechanical Engineer: <b>WARREN AND MAHONEY</b> Electrical Engineer: <b>WARREN AND MAHONEY</b> Structural Engineer: <b>WARREN AND MAHONEY</b></p>	<div>Client</div> <div><b>northern beaches council</b></div> <div>Architect: <b>WARREN AND MAHONEY</b></div>	<div>Project Title</div> <p><b>Mona Vale Surf Club</b> Surf View Road, Mona Vale, NSW</p> <p>All dimensions to be verified on site before producing the final drawing. The drawing is not to be used for construction.</p>	<div>Drawing Title</div> <p><b>SOUTH &amp; WEST ELEVATIONS</b></p> <div>Drawing Status</div> <p><b>DEVELOPMENT APPLICATION</b></p>	<div>Drawing Details</div> <table><tr><th>Rev</th><th>Date</th><th>Description</th></tr><tr><td>1</td><td>15.10.19</td><td>1. 1008.A1</td></tr><tr><td>2</td><td>15.10.19</td><td>2. 1008.A1</td></tr><tr><td>3</td><td>15.10.19</td><td>3. 1008.A1</td></tr><tr><td>4</td><td>15.10.19</td><td>4. 1008.A1</td></tr><tr><td>5</td><td>15.10.19</td><td>5. 1008.A1</td></tr><tr><td>6</td><td>15.10.19</td><td>6. 1008.A1</td></tr><tr><td>7</td><td>15.10.19</td><td>7. 1008.A1</td></tr><tr><td>8</td><td>15.10.19</td><td>8. 1008.A1</td></tr><tr><td>9</td><td>15.10.19</td><td>9. 1008.A1</td></tr><tr><td>10</td><td>15.10.19</td><td>10. 1008.A1</td></tr><tr><td>11</td><td>15.10.19</td><td>11. 1008.A1</td></tr><tr><td>12</td><td>15.10.19</td><td>12. 1008.A1</td></tr><tr><td>13</td><td>15.10.19</td><td>13. 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1008.A1	37	15.10.19	37. 1008.A1	38	15.10.19	38. 1008.A1	39	15.10.19	39. 1008.A1	40	15.10.19	40. 1008.A1	41	15.10.19	41. 1008.A1	42	15.10.19	42. 1008.A1	43	15.10.19	43. 1008.A1	44	15.10.19	44. 1008.A1	45	15.10.19	45. 1008.A1	46	15.10.19	46. 1008.A1	47	15.10.19	47. 1008.A1	48	15.10.19	48. 1008.A1	49	15.10.19	49. 1008.A1	50	15.10.19	50. 1008.A1	51	15.10.19	51. 1008.A1	52	15.10.19	52. 1008.A1	53	15.10.19	53. 1008.A1	54	15.10.19	54. 1008.A1	55	15.10.19	55. 1008.A1	56	15.10.19	56. 1008.A1	57	15.10.19	57. 1008.A1	58	15.10.19	58. 1008.A1	59	15.10.19	59. 1008.A1	60	15.10.19	60. 1008.A1	61	15.10.19	61. 1008.A1	62	15.10.19	62. 1008.A1	63	15.10.19	63. 1008.A1	64	15.10.19	64. 1008.A1	65	15.10.19	65. 1008.A1	66	15.10.19	66. 1008.A1	67	15.10.19	67. 1008.A1	68	15.10.19	68. 1008.A1	69	15.10.19	69. 1008.A1	70	15.10.19	70. 1008.A1	71	15.10.19	71. 1008.A1	72	15.10.19	72. 1008.A1	73	15.10.19	73. 1008.A1	74	15.10.19	74. 1008.A1	75	15.10.19	75. 1008.A1	76	15.10.19	76. 1008.A1	77	15.10.19	77. 1008.A1	78	15.10.19	78. 1008.A1	79	15.10.19	79. 1008.A1	80	15.10.19	80. 1008.A1	81	15.10.19	81. 1008.A1	82	15.10.19	82. 1008.A1	83	15.10.19	83. 1008.A1	84	15.10.19	84. 1008.A1	85	15.10.19	85. 1008.A1	86	15.10.19	86. 1008.A1	87	15.10.19	87. 1008.A1	88	15.10.19	88. 1008.A1	89	15.10.19	89. 1008.A1	90	15.10.19	90. 1008.A1	91	15.10.19	91. 1008.A1	92	15.10.19	92. 1008.A1	93	15.10.19	93. 1008.A1	94	15.10.19	94. 1008.A1	95	15.10.19	95. 1008.A1	96	15.10.19	96. 1008.A1	97	15.10.19	97. 1008.A1	98	15.10.19	98. 1008.A1	99	15.10.19	99. 1008.A1	100	15.10.19	100. 1008.A1	<div>Drawing No</div> <p><b>A DA.20.002</b></p>
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ITEM 3.2	DA2019/0663 - 515 PITTWATER ROAD, BROOKVALE - DEMOLITION OF ALL EXISTING STRUCTURES AND THE CONSTRUCTION OF A SHOP TOP HOUSING DEVELOPMENT COMPRISING 19 DWELLINGS, GROUND FLOOR BUSINESS PREMISES AND CAR PARKING
REPORTING OFFICER	STEVE FINDLAY
TRIM FILE REF	2019/664511
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plan and Elevations 3 <a href="#">↓</a> Clause 4.6

## PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is development to which *State Environmental Planning Policy No 65 – Design Quality of Residential. Apartment Development* applies and is 4 or more storeys in height.

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2019/0663 for Demolition of all existing structures and the construction of a Shop Top Housing Development comprising 19 dwellings, ground floor business premises and car parking at Lot D DP 410277, 515 Pittwater Road, Brookvale for the reasons set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/0663
<b>Responsible Officer:</b>	Lashta Haidari
<b>Land to be developed (Address):</b>	Lot D DP 410277, 515 Pittwater Road BROOKVALE NSW 2100
<b>Proposed Development:</b>	Demolition of all existing structures and the construction of a shop top housing development comprising 19 dwellings, ground floor business premises and car parking
<b>Zoning:</b>	Warringah LEP2011 - Land zoned B5 Business Development WLEP Land identified in Schedule 1 Additional Permitted Uses. Refer to attached extract of WLEP2011
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Tuyute Pty Ltd
<b>Applicant:</b>	Tuyute Pty Ltd
<b>Application Lodged:</b>	26/06/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	13/07/2019 to 03/08/2019
<b>Advertised:</b>	13/07/2019
<b>Submissions Received:</b>	8
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 21.8%
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$ 10,545,829.03

### Executive Summary

This report provides an assessment of a proposed mixed-use (shop top housing) development at No. 515 Pittwater Road, Brookvale (the site). The site is located on the western side of Pittwater Road and is situated within the B5 Business Development zone under WLEP 2011.

The proposal involves the demolition of existing buildings and construction of a 4-storey development containing business premises (175m<sup>2</sup>), 19 residential apartments and two levels of basement car

parking.

Primarily, the assessment has found that the proposal cannot be supported due to non-compliance with the 11.0m 'Height of Buildings' Development Standard under the WLEP 2011, which is not justified or well founded. The proposed variation of 2.4m (21.8%) is excessive and there are not sufficient environmental planning grounds to justify contravening the standard to that extent.

Based on a detailed assessment of the proposal against the suite of planning controls applying to the development, it is considered that the proposal does not satisfy the appropriate controls, particularly in relation to building separation requirements of the Apartment Design Guide. Where areas are undergoing change, a sharing of these setbacks is important so as not to unreasonably constrain the potential for future development on adjoining sites. The assessment has found that the current proposal will unreasonably constrain future development on the site to the south, known as the Brookvale Hotel Site.

The DA was publicly exhibited in accordance with the WDCP 2011 and a total of 8 submissions were received, each of which objected to the proposal. The issues and concerns raised in the submissions are addressed in this report.

Accordingly, it is recommended that the NBLPP, as the determining authority due to the Clause 4.6 Variation to the building height of 21.8%, refuse the application for the reasons detailed within the recommendation section of this report.

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

The development application seeks development consent for demolition works and construction of a mixed used development consisting of retail and residential units with associated car parking and landscaping. Specifically, the development comprises 19 residential units, 175m<sup>2</sup> of business premises and 2 levels of basement carparking.

The shop-top-housing development has an overall building height of 13.4m (4 storeys) and contains:

- 2 x studio units, 8 x 1 bedroom unit, 8 x 2 bedroom units and 1 x 3 bedroom units
- Business premises totalling 175m<sup>2</sup>
- Car parking over two (2) basement levels, accommodating a total of 42 spaces
- Bicycle parking for 22 bikes
- Plant and bin storage rooms

Vehicular access is provided from the rear (west) of the site, via a Right of Way from Old Pittwater Road. Pedestrian access is from the primary frontage with Pittwater Road.

#### **ASSESSMENT INTRODUCTION**

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

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

to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks  
Warringah Development Control Plan - C3 Parking Facilities  
Warringah Development Control Plan - C4 Stormwater  
Warringah Development Control Plan - D7 Views  
Warringah Development Control Plan - D9 Building Bulk

## SITE DESCRIPTION

<b>Property Description:</b>	Lot D DP 410277 , 515 Pittwater Road BROOKVALE NSW 2100
<b>Detailed Site Description:</b>	<p>The site comprises one (1) allotment, which is legally described as Lot 4, DP 410277, commonly known as No. 515 Pittwater Road, Brookvale.</p> <p>The site is described as an 'irregular' shaped allotment with a frontage to Pittwater Road of 20.14m, rear boundary of 16.47m, northern side boundary of 51.81m and southern side boundary of 40.31m. The site has total site area of 849.2m<sup>2</sup>.</p> <p>The site is currently occupied by a two storey commercial building with detached smaller building/shed and an open, uncovered parking at the rear. Vehicular access is via a driveway from Old Pittwater Road to the west (shared with adjoining developments).</p> <p>The subject site is surrounded by a mix of industrial, commercial, and retail uses. The site immediately to the north is No. 517 Pittwater Road, which is occupied by a more recent shop top housing development and the development to the south is the Brookvale Hotel, which incorporates a drive through bottle shop. The site to the west is occupied by a relatively new 5 storey mixed use development which has vehicular access off Old Pittwater Road. It contains commercial development facing Roger Street with 4 levels of residential above.</p> <p>The development along Roger Street to the south-west of</p>



the site has been developed for a variety of industrial and warehouse uses interspersed with commercial uses and shop-top housing developments (existing and approved, but not yet constructed). Development along old Pittwater Road to the north-west of the site (beyond the B5 zone) is characterised by low density residential development, Brookvale Oval and Brookvale Public School.

Map:



## **SITE HISTORY**

### **Pre-Lodgement Meeting**

A pre-lodgement meeting was held with Council on 30 March 2017 in relation to the current proposal. At the meeting, Council raised concerns with the proposal in terms non-compliance with the building height development standard under WLEP 2011.

### **Development Application History**

The application was lodged with Council on 26 June 2019. The preliminary assessment of the proposal found that the application was deficient and unsupportable for a number of reasons as detailed within this report.

An opportunity was presented to the applicant to withdraw the application, in the form of a letter dated 30 September 2019. The applicant was advised that failure to withdraw the application would result in Council reporting the application based upon the information provided at lodgement.

The applicant advised Council that the application would not be withdrawn and in response to the issues letter raised within Council's letter, the applicant submitted amended plans and additional information to address the RMS, Traffic, and Development Engineers comments.

The applicant notes that the following changes have been made and are detailed in the Schedule of Amendments:

1. Increased setback of 4.5m from the boundary to Unit 305 at level 3 to allow for greater building separation to 517 Pittwater Rd. Unit 305 has subsequently been revised from a 1 bedroom + study unit to a 1 bedroom unit.
2. Clarification regarding the provision of sliding privacy screens to western units for privacy (Units 106, 107, 206 & 207), please refer to DA201 for further detail
3. Additional planters added to the balconies of Unit 304 & 305 to increase visual privacy to Evolve Apartments to the west.
4. NW corner of façade revisited to reflect the increased setback at the top level and ensure form / materiality promotes daylight access to the Brook Apartments to the north.
5. Corridor provided adjacent to Unit 106 at level 1 for access to OSD basin from common property. Unit 106 has subsequently reduced in internal area
6. Glazing specification upgraded to follow Acoustic Logic recommendations in response to conditions requested by the Brookvale Hotel's acoustic consultant Steven Cooper.

The following additional reports have also been provided:

- A revised Traffic Report, prepared by Varga Traffic Planning in response to Council's Traffic Engineering and RMS comments; and
- Amended stormwater plans in response to Council's Development Engineering comments.

The amended plans represent a reduced impact. In this respect, the amended application differed only in minor respects from the original application, and did not result in greater environmental impact and, in accordance with the provisions of Clause A.7 of the Warringah Development Control Plan 2011, further notification and advertising were not required, nor warranted.

This assessment report is based on the amended plans and information submitted to date by the applicant.

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) –	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent

Section 4.15 Matters for Consideration'	Comments
Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>authority to consider "Prescribed conditions" of development consent. These matter can been addressed via a condition of consent, should be application be worthy of approval.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, No additional information was requested. However, the applicant lodged additional information in attempt to address some of the concerns raised in the assessment of the application.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can been addressed via a condition of consent, should be application be worthy of approval.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can been addressed via a condition of consent, should be application be worthy of approval.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent, should the application be worthy of approval.</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><b>(i) Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report. Although the development does not comply with the provisions of Clause 4.3 – 'Height of Buildings' Development Standard, the development is not considered to have an adverse environmental impact on the natural and built environment.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the mixed residential and commercial character of the proposal.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and</p>



Section 4.15 Matters for Consideration'	Comments
	proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site does not contain any significant physical constraints which would prevent the construction of the proposed development on this site. Therefore, the site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	<p>The planning controls contained within WLEP 2011 and the WDCP 2011 provide the community with a level of certainty as to the scale and intensity of future development, and the form and character of development that is in keeping with the desired future character envisaged for the locality, as well as the guiding design principles under SEPP 65.</p> <p>The proposal does not satisfy all of the relevant planning controls, hence the proposal is not considered to be in the public interest.</p>

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 8 submission/s from:

Name:	Address:
Mr Jarrard James Scott	108 / 517 Pittwater Road BROOKVALE NSW 2100
Patricia Louise Hoy	116 / 517 Pittwater Road BROOKVALE NSW 2100
Mr Tulio Mastroianni	306 / 517 Pittwater Road BROOKVALE NSW 2100
Ms Palma Pamela Mastroianni Mr Fabian Boldt	109 / 517 Pittwater Road BROOKVALE NSW 2100
Kim Janeill Hawthorn	311 / 517 Pittwater Road BROOKVALE NSW 2100
Mr Neil Leonard Forster	23 Orchard Road BROOKVALE NSW 2100
Mrs Leonie Vivienne Simpson	26 Jordan Road WAHROONGA NSW 2076
Mr Anthony Betros	4/500 Elizabeth Street SURRY HILLS NSW 2010

The matters raised within the submissions are addressed as follows:

- **Non-compliant and Excessive Height**

The submissions raised concerns that the height of the proposal is unreasonable and would result in additional impact when viewed from the surrounding residential properties, particularly the development to the north.

Comment:

This matter has been addressed later in this report (refer to the section 'Detailed Assessment of the Variation to Clause 4.3 – Height of Buildings Development Standard' under Warringah Local Environmental Plan 2011).

The development is assessed against the Height of Buildings Development Standard under the WLEP 2011 and has been appropriately considered in relation to the requirements of Clause 4.6 of the WLEP 2011, wherein it was found that the development is inconsistent with the objectives of the Development Standard.

This issue constitutes a reason for the refusal of the application.

- **Traffic impacts and Pedestrian safety**

The submissions raised concerns that the increase in traffic from the development would result in traffic impacts on local roads, safety impacts for cars and pedestrians and an increased demand for on-street parking. Issues have also been raised in relation to the capacity of the existing driveway from Old Pittwater Road to provide for the proposed development.

Comment:

The Traffic and Parking Assessment Report submitted with the application, advises that the proposed traffic generation for the development is considered to be acceptable and that the existing driveway is capable of accommodating the new traffic volumes and would not substantially increase congestion on the surrounding road network.

Council's Traffic Engineer and RMS has reviewed the application has raised no objection subject to conditions.

Therefore, this issue should not be given determining weight.

- **Impact of construction on existing residents (Noise)**

Concerns have been raised regarding the excavation and construction impacts associated with the development and the potential impact on the suitability of adjoining development.

Comment:

With regards to excavation and construction management, appropriate conditions which go to minimising impact can also be imposed on a consent should this application be approved.



Therefore, this issue should not be given determining weight.

- **Construction impacts**

The submissions raised concerns that the impacts associated with the construction of the development will be significant on the adjoining properties, given the shared access arrangements at the rear of the site.

Comment:

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

This matter, while clearly an issue for surrounding residents, can be suitably conditioned and so should not form a reason for refusal of the application.

- **Solar Access and Light Impact**

The submissions raised concerns that the proposal would result in unreasonable solar access and light impacts for future residents.

Comment:

This matter has been discussed in detail under the WDCP 2011 section of this report. In summary, the impacts, while relatively minor, are a direct result of the non-compliance with the height of buildings development standard. Therefore, the associated impacts do form a reason for refusal in the recommendation.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objections subject to conditions to ensure compliance with the Building Code of Australia.
Environmental Health (Contaminated Lands)	No objection subject to conditions.
Environmental Health (Industrial)	No objection subject to conditions.
Landscape Officer	No existing significant landscape features are present on the site.  No objections are raised to the proposed landscape plan, subject to conditions.
NECC (Development Engineering)	Development Engineers have reviewed the proposal including the additional information submitted the applicant, and advised that the proposal cannot be supported for the following reasons:  <u>Stormwater drainage</u>  The revised plans were received by Council on 15 October 2019 and

Internal Referral Body	Comments
	<p>reviewed in the respect of the previously raised issues. It appears that the calculated volume of the OSD-2 has not been achieved with indicated levels on the section DCP 2. This issue needs to be clarified by the appointed hydraulics consultant and will require the stormwater drainage plans to be amended accordingly.</p> <p>It is also noted that the Applicant has not addressed the issue raised within the request for indication of adequate access to the Onsite Stormwater Detention (OSD) system, as required under section 4.9 of Council's OSD Technical Specification. Both of the OSD systems are located on the first floor within the building.</p> <p><u>Vehicle access</u></p> <p>The applicant has submitted swept path diagram for the 9.7 m Council Waste Truck Turning Path Entering via Old Pittwater Road (Project No 17234 and plan dated 01.10.2019). It is noted that the proposed path is over the location of existing power pole and a segment of the path is outside of the vehicular crossing. Adjustment of the vehicular crossing width and a relocation of the existing power pole shall be considered for future proposal.</p> <p>The proposed vehicular access to the underground parking from Old Pittwater Road and through the lot 112 of DP1213005 (property at 23 Roger Street) can be only partially achieved through the established easement (R) up to the proposed location for the loading bay. The Applicant shall demonstrate that the development site will have the rights for a vehicular access and pedestrian access through the lot 112 of DP1213005 (property at 23 Roger Street) from the Old Pittwater Road to the proposed entry to the underground parking. Any proposed easement shall be Limited in Stratum and that must be clearly indicated on the plan.</p> <p>In relation to achieving the complying access for all vehicles, the Applicant shall provide long sections along the vehicle swept paths for egress and ingress maneuver to the underground parking in accordance with AS/NZS2890.1. A long section through the center line of the proposed Fire Exit and pedestrian entry at the front and at the back are required within any future concept design. Bollards shall be in place of the perimeter of a waiting area fronting the lift on the basement 1 car park.</p> <p>•</p>
Strategic and Place Planning	<p>The proposal is considered acceptable in terms of Council's Strategic Planning.</p> <p><b>Draft Brookvale Structure Plan</b></p> <p>On 8 August 2017, Council endorsed the Draft Brookvale Structure Plan for public exhibition. The Draft Plan was exhibited for 6 weeks until 20 November 2017.</p>

Internal Referral Body	Comments
	<p>The Draft Brookvale Structure Plan Map designates the subject site as Town Centre (Mixed Use).</p> <p>The strategic intent for the Town Centre is focused on revitalisation, activation, providing for employment growth and encouraging residential development in mixed use arrangements to assist viable commercial redevelopment and provide housing choice and affordability.</p> <p>The Draft Brookvale Structure Plan (DBSP) recommends the following changes to the zoning, land use and development controls for the Town Centre (Mixed Use) area which includes the site:</p> <ul style="list-style-type: none"> <li>• rezoning from B5 Business Development to B4 Mixed Use, with a requirement for ground and first floor retail/business/office uses, and the option for residential uses (shop top housing) above first floor level</li> <li>• increasing the maximum building height from 11m (3 storeys) to 21m (6 storeys)</li> </ul> <p>Character and built form recommendations include:</p> <ul style="list-style-type: none"> <li>• active street frontages and enhanced pedestrian environment</li> <li>• two-storey podiums with setbacks above podium</li> </ul> <p>In response to over 100 submissions received on the DBSP, Council has engaged consultants to undertake a traffic and transport study for Brookvale-Dee Why. At the same time, LGA-wide housing and employment studies have commenced as part of the LEP review. These studies will assist in ensuring all options are considered for the future growth and development of Brookvale as a vital Strategic Centre for the region. Once the transport, housing and employment studies are complete, the DBSP will be revised and finalised for implementation through subsequent LEP and DCP amendments.</p> <p>The proposed development does not preclude the strategic land use intent expressed in the DBSP. Under the B4 zoning recommended by the DBSP, shop top housing will remain permissible. The site is a good location for residential and employment growth and the proposed development will contribute to revitalisation of the traditional town centre.</p> <p><i>Building Height and Commercial Component</i></p> <p>At a maximum height of 13.4m, the proposed development exceeds the LEP height limit of 11m. The proposed variation to the current height controls and consideration of grounds to justify this variation is a matter for development assessment.</p>

Internal Referral Body	Comments
	<p>While the proposed development is well within the height limit of 21m (6 storeys) envisaged by the DBSP, given the strategic intent to require the first two levels to be commercial, it would be prudent to include a greater floor to ceiling height in the first level above ground level to allow for possible future conversion to commercial use.</p> <p><i>Vehicular Access</i></p> <p>The proposed vehicular access from Old Pittwater Road to the rear of the site is acceptable and it is assumed that an appropriate easement to achieve right of way for this access will be secured.</p> <p><b>Conclusion</b></p> <p>Strategic Planning considers the proposal to be acceptable. These comments are provided in relation to the strategic planning framework for Brookvale. They do not indicate any assessment of the application against relevant planning controls.</p>
Strategic and Place Planning (Heritage Officer)	<p>The proposal seeks consent for the construction of a new shop top housing development on the site. The heritage item is located to the north west of the property across a number of other shop top housing developments and Old Pittwater Road. Given the separation afforded by the road and the existing development in between, there is considered to be no impact upon the heritage item or its significance.</p> <p>The facade of the existing building at 515 Pittwater Road is however of interest as an example of an Art Deco shopfront. Given the proposal foreshadows the demolition of the existing building which is not heritage listed, Heritage would recommend that an archival recording of the facade be undertaken to preserve a record of the facade as is.</p> <p>Therefore Heritage raises no objections to the proposal and requires one condition of consent, being the archival recording.</p>
Strategic and Place Planning (Urban Design)	<p>The proposal seeks to demolish the existing structures on site and construct a four (4) storey shop top housing development containing ground floor business premises and 19 residential apartments above. There are two basement levels below providing parking, storage and the servicing requirements for the building. Access to the site is from the rear, via ROW to Old Pittwater Road. Pedestrian access is from Pittwater Road.</p> <p>The proposal cannot be supported due to the following issues:</p> <p><b>Apartment Design Guide (ADG) – Building separation distance</b> Neighbouring apartment to the north has units facing the common boundary. Proposed north boundary setback distance of 3 to 4.2m is inadequate. Total building separation of 9m will be required as ADG recommend 45degree angle of relief to be provided with blank walls</p>



Internal Referral Body	Comments
	<p>condition to achieve visual privacy (ADG page 64). Therefore a 6m site setback will be required from the north boundary where there are next door apartment units fronting on to which currently are set backed 2 to 3m.</p> <p>Building separation to the western neighbouring apartment would need to be 12m. Therefore the proposed 11m (approximate as no dimension given) does not comply.</p> <p><b>Solar Access</b></p> <p>Shadow diagrams and sun penetration diagrams submitted indicates 5 units facing south receive no sun in mid-winter which is non-compliant with the ADG (Maximum 15% of units to receive no sunlight - 26% proposed). The south facing units will also be exposed to the existing operations of the hotel which could be a source of noise for the residents. Proponent should investigate the possibility of just having east and west facing units. Such a modification to the design would represent an improved relationship between the adjacent properties as it would avoid acoustic exposure to the south whilst also improving amenity to the units.</p> <p><b>Building Height</b></p> <p>The proposed development has a maximum height control of 11m. The proposal exceeds the maximum height limit for the site by 2.4m. The proponent states: There are developments within the immediate vicinity of the site of similar or greater variations; the development fits with the emerging character, land use typology, bulk, scale and streetscape of new development in this area and there are no significant adverse environmental impacts created as a result of this development.</p> <p>The surrounding developments that appears 4 to 5 storeys from Pittwater Road have units addressing Old Pittwater Road side which has higher road levels (4 to 6m higher compared to Pittwater Road).</p> <p>The breach of height cannot be supported. As communal open space of 25% of the site area has not been provided as required by the ADG (page 55), the proposal should have the top storey footprint reduced to create more landscaped roof area for a communal garden area and reduce the breach of building height accordingly. Issues of visual and acoustic privacy to neighbouring properties should be addressed at the roof deck.</p>
Traffic Engineer	<p>The information provided indicates that: "<i>The swept turning path diagrams demonstrate the largest vehicle accessing the site entering and exiting simultaneously with a B99 car travelling in opposite direction. The largest vehicle is a 9.7m long rigid truck(LRV) during both construction and future use.</i>"</p> <p>While the swept path diagrams demonstrate that the simultaneous enter and exit of a LRV and B99 will be possible, this will require the widening of the driveway crossing to accommodate the manoeuvres, as well as the relocation of the street lighting pole due to the conflict of</p>



Internal Referral Body	Comments
	the turning path with the existing street light. This can be a condition  Therefore no objection is raised on the proposal subject to conditions.
Waste Officer	No objection subject to condition.

External Referral Body	Comments
Ausgrid: (Electricity Supply)	The application was referred to Ausgrid under clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure). Ausgrid provided their comments on 21 September 2019 in which no objection was raised subject to conditions.  The conditions provided by Ausgrid may be included in a consent should this application be approved.
Concurrence – NSW Roads and Maritime Services (s100 – Dev. on proposed classified road)	The application was referred to the RMS for comment as traffic generating development under Schedule 3 of SEPP Infrastructure. The RMS provided their comments on 6 September 2019. The RMS has indicated that the following additional information is required to properly assess the application: <ol style="list-style-type: none"> <li>1. <i>The subject development is relying on an existing vehicular access on Old Pittwater Road and it is likely that residents and visitors will also use the left-in only driveway from Pittwater Road. It is requested that the applicant demonstrates that the existing vehicular access arrangements on Old Pittwater Road and Pittwater Road can accommodate the swept path movements for the longest vehicle at the time of both construction and future use. It is also noted that the submitted swept paths indicate that manoeuvrability for service vehicles is constrained and may impact on vehicles entering/exiting simultaneously via Old Pittwater Road. Updated swept path plans addressing this issue need to be submitted for further review.</i></li> <li>2. <i>It is not clear whether the largest vehicle servicing this development will have the necessary clearance height when entering/exiting the proposed on-site loading bay.</i></li> <li>3. <i>It is noted that there is an inconsistency in the listed parking spaces between the Statement of Environmental Effects and the Traffic Report provided. Documents should be updated to reflect the proposed final number of parking spaces at the development site.</i></li> </ol> <p><u>Comment</u></p> <p>The applicant provided additional information including the swept turning path in an attempt to address the RMS concern, the additional information was referred to RMS on 4 October 2019. on 14 November 2019, RMS provided their comments i, in which RMS raised no objection subject to conditions.</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**

SEPP No. 55 – Remediation of Contaminated Lands establishes State-wide provisions to ensure the appropriate remediation of contaminated land. The SEPP states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. The *Managing Land Contamination: Planning Guidelines* were prepared to assist councils and developers in determining when land has been at risk.

Clause 7 of the SEPP requires that a consent authority must not grant consent to a development, unless it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

In response to these requirements, the applicant has submitted a Stage 1 Environmental Site Assessment, prepared by Environmental Investigation Services (EIS), dated 26 June 2018. The report concludes that *"based on the scope of work undertaken for the assessment, EIS are of the opinion that the historical land uses and potential sources of contamination identified would not preclude the proposed development"*.

The application was also referred to Council's Environmental Health Officer, who reviewed the application and raised no objection to the proposal subject to conditions. Accordingly, based on the information submitted, the requirements of SEPP have been satisfied and the land is considered to be suitable for the development subject to conditions.

**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 4 storey "shop top housing" development (plus basement car parking) for the provision of 19 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 the time of 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 site is located in the B5 zone within the Brookvale Town Centre, having a streetscape presence to Pittwater Road.



Because of the diverse range and age of development surrounding the site, the built form features of the area are varied and consist of one, two, three and four storey commercial and mixed-use buildings.

Given the urbanised and commercial character of the area, there are no remaining natural or topographical features and therefore the height of the development is considered, in the context to surrounding development, to achieve a scale commensurate to its role as a mixed-use building within the centre.

However, the assessment of the application has identified that the development does not provide sufficient public benefits to support a claim for increased building height in the form of a whole uppermost level. In this regard, the development cannot rely on consistency with other development to seek a non-compliance with building height standards, it needs to provide a development that respects the amenity of adjoining development, as well as providing a high level of amenity for the future occupants of the development.

The proposed variation of 21.8% (2.4m) to the Height of Buildings Development Standard under WLEP 2011, has been found to be excessive in its own right and will result in an adverse impact on adjoining developments. Overall, there are insufficient environmental planning grounds provided by the applicant to justify contravening the Development Standard to such an extent.

Therefore, the non-compliance with the Height of Buildings Development Standard, which ultimately determines the contextual fit of the development with the surrounding locality, cannot be supported.

Accordingly, it is considered that the proposal does not satisfy this principle.

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

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

*Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignment, 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 proposed development contains many examples of good design in terms of its architecture, including the levels of articulation, design of balconies, and strongly defined architectural elements presenting to the primary Pittwater Road frontage.

However, while the architectural design of the building is a positive feature of the development, the height and bulk of the structure is not consistent with the controls applicable to the site and the development will result in a built form and scale that does not meet the requirements of the current controls for the site.

Accordingly, it is considered that the proposal does not satisfy this principle.

#### **Principle 3: Density**

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

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

Comment:

The planning controls under WLEP 2011 and the WDCP 2011 do not specify a maximum housing density for the zone. The appropriate density is determined by how the development responds to the Design Quality Principles of SEPP 65, and the relevant controls contained within the WLEP 2011 and the WDCP 2011.

This assessment has found that the development, as proposed, does not achieve a satisfactory level of compliance and consistency with these controls, in particular, the overall height of the building and the building separation.

In this regard, the proposed number of units and the density is considered to be excessive for this site.

Accordingly, it is considered that the proposal does not satisfy this principle.

**Principle 4: Sustainability**

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

Comment:

The proposal includes demolition of all structures currently on the site and excavation works to accommodate the new development.

In this regard, a condition of consent will be imposed requiring the submission of a Construction Management Plan (CMP) detailing disposal and recycling of demolition and excavation materials, should the Development Application be approved.

In addition, a BASIX Certificate for the residential component of the development has been submitted with the application. The certificate confirms that the development is capable of achieving the water and energy targets and has obtained a pass for thermal comfort.

Accordingly, it is considered that the proposal satisfies this principle.

**Principle 5: Landscape**

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

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

Comment:

There are no minimum landscaped open space provisions applying to development within this zone under the WDCP 2011. This is due to the dense urban environment and envisaged character of



development in Brookvale, which will predominantly comprise abutting mixed-use developments.

Accordingly, due to the urban context within which this site is located, landscaping has not been provided nor could be provided at ground level.

Notwithstanding, small areas of landscaping are incorporated in front of some of private balconies fronting Pittwater Road. However, these areas are not expansive and area purely for aesthetic purposes.

Accordingly, it is considered that the proposal does satisfy this principle.

#### **Principle 6: Amenity**

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

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

##### Comment:

The development has been assessed against the various amenity requirements of the Apartment Design Guideline (ADG), where it has been found that the development does not comply with some of the requirements.

The assessment has found that the proposed development does not provide adequate building separation to the adjoining property to the north and south and as result, the amenity of the future development on the site to the south will be compromised.

Accordingly, it is considered that the proposal does not satisfy this principle.

#### **Principle 7: Safety**

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

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

##### Comment:

The application is not accompanied by a formal Crime Risk Assessment given the number of units is less than 20. However, the development provides secure access which is separated from all vehicular access points. All apartments provide balconies and windows which provides passive surveillance over Pittwater Road to the east, Old Pittwater Road to the west and adjoining properties.

Accordingly, it is considered that the proposal satisfies this principle.

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

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

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

Comment:

This principle essentially relates to design responding to the social context and needs of the local community in terms of lifestyles, affordability and access to social facilities and optimising the provision of housing to suit the social mix and provide for the desired future community.

The provision of a mix of apartment sizes in this location is considered desirable due to the site's close proximity to a major bus interchange, commercial facilities and other opportunities within the Brookvale Town Centre and being within walking distance to a major regional shopping centre (Warringah Mall), recreational facilities (Brookvale Oval) and other public amenities and facilities.

The development provides a reasonable mix of apartments and includes active street front uses on the ground floor level which is considered to contribute to the social context by encouraging and providing for social interaction and engagement.

Accordingly, it is considered that the proposal satisfies this principle.

**Principle 9: Aesthetics**

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

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

Comment:

The proposed development is considered to be appropriate in terms of the composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the resultant building. The aesthetics of the development respond positively to the environment and context, contributing in an appropriate manner to the desired future character of the area.

Accordingly, it is considered that the proposal satisfies this principle.

**APARTMENT DESIGN GUIDE**

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

Development Control	Criteria / Guideline	Comments
<b>Part 3 Siting the Development</b>		
Site Analysis	Does the development relate well to its context	<b>Not Consistent</b>

	and is it sited appropriately?	<p>A context plan is provided accompany the application.</p> <p>The building form does not reflect the current character as anticipated by the WLEP 2011 for the site and the siting of the development as it relates to the adjoining development is not appropriate.</p>
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<p><b>Not consistent</b></p> <p>Whilst the development responds to the streetscape, the design of the development does not optimise solar access to the Brookvale Hotel, if developed on its own right.</p>
<b>Public Domain Interface</b>	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p><b>Consistent</b></p> <p>The development has been found to be consistent with the current and desired streetscape character by providing an improved public domain interface.</p>
<b>Communal and Public Open Space</b>	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> <li>1. Communal open space has a minimum area equal to 25% of the site</li> <li>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)</li> </ol>	<p><b>Not Consistent</b></p> <p>The proposed development does not provide any communal open space for the residents of the development.</p> <p>It is considered that the development should provide some form of communal open space for the use of the 40 plus residents.</p> <p>Accordingly, the development is found to be inconsistent with this requirements of the guide.</p>
<b>Deep Soil Zones</b>	Deep soil zones are to meet the following	<b>Consistent</b>



	<p>minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="3">7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td><td></td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m		<p>The development provides sufficient area of Deep Soil zone considering the B5 zoning. It is noted that the proposed edge planters on levels 1-3 are relatively narrow.</p> <p>However, the provision of planters in the form proposed is supported by Council's Landscape Officer.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)													
Less than 650m <sup>2</sup>	-	7%													
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m														
Greater than 1,500m <sup>2</sup>	6m														
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m														
<b>Visual Privacy</b>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separation depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p><b>Not Consistent</b></p> <p><b>(i) North Boundary</b> The development does not provide sufficient building separation between the subject building and the adjoining development to the north. The setback to this boundary varies between 3.0m to 4-5.0m, and as result the amenity of the adjoining development will be adversely impacted in terms of visual impact and lighting. The impact primarily relates to the 4th storey of the development, which is non-compliant with the building height development standard.</p> <p><b>(ii) South Boundary</b> There proposed development provides a setback of Nil to 2.9m to the southern boundary (adjoining the Brookvale Hotel Site), which is not consistent with the requirement of this guide. The proposed building separation to the</p>	
Building height	Habitable rooms and balconies	Non-habitable rooms													
Up to 12m (4 storeys)	6m	3m													
Up to 25m (5-8 storeys)	9m	4.5m													
Over 25m (9+ storeys)	12m	6m													

		<p>Brookvale Hotel Site will limit the future development of that site, if it were to be developed on its own right. Furthermore, the amenity of the proposed units that will face the Brookvale Hotel Site will be significantly compromised.</p> <p>Therefore, it is considered that the south facing units (5 units) located in the middle of the site should be deleted, and this space should be used as landscape courtyard/buffer for the units facing east and west.</p> <p><b>(iii) West Boundary</b> Building separation to the western neighbouring apartment building would need to be 12.0m. Therefore, the proposed 11.7m does not comply with the 12.0m requirement, however the building separation on this boundary is minor and found to be acceptable.</p> <p>The issue of non-compliance with the building separation requirements in relation to the northern and southern boundaries has been included as a reason for refusal.</p>
<b>Pedestrian Access and entries</b>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p><b>Consistent</b></p> <p>The development provides level pedestrian access to all floor levels from the basement car parking area.</p>
<b>Vehicle Access</b>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high</p>	<p><b>Consistent</b></p> <p>The proposed vehicular</p>



	quality streetscapes?	access has been assessed by Council's Traffic Engineer who has raised no objections to the proposal in terms of the location of the vehicular access.
<b>Bicycle and Car Parking</b>	<p>For development in the following location:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p><b>Consistent</b></p> <p>An assessment of car parking provision, having regard to WDCP 2011 and location of the site, has been undertaken.</p> <p>In summary, the amount of car parking is sufficient for the development, as addressed elsewhere in this report.</p>
<b>Part 4 Designing the Building</b>		
<b>Amenity</b>		
<b>Solar and Daylight Access</b>	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	<p><b>Consistent</b></p> <p>14 units (74%) will receive a minimum of 2 hours of direct sunlight between 9.00am and 3.00pm in mid-winter.</p>
	<ul style="list-style-type: none"> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	<p><b>Not Consistent</b></p> <p>5 units (26%) will receive no direct sunlight between 9.00am and 3.00pm in mid winter.</p> <p>This non-compliance is</p>

		addressed in detailed in the urban design referral comments. In summary, the amenity of the south facing units will be significantly compromised in terms of solar access and these units will be exposed to the impacts from the existing operations of the hotel which could be a source of noise and lighting for the future residents.												
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximise to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> <li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</li> </ul>	<p><b>Consistent</b></p> <p>63% of the units are naturally cross ventilated.</p>												
	<ul style="list-style-type: none"> <li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li> </ul>	<p><b>Consistent</b></p> <p>No apartments exceed the 18.0m requirement.</p>												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1"> <thead> <tr> <th colspan="2">Minimum ceiling height</th> </tr> </thead> <tbody> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>For 2 storey apartments</td> <td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td>Attic spaces</td> <td>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</td> </tr> </tbody> </table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	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	<p><b>Consistent</b></p> <p>The floor to ceiling heights of the apartments within the development meet the minimum 2.7m as required by the ADG.</p>
	Minimum ceiling height													
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	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													
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p>	<p><b>Consistent</b></p>												

	<table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	All apartments within the development comply with the minimum area.				
Apartment type	Minimum internal area															
Studio	35m <sup>2</sup>															
1 bedroom	50m <sup>2</sup>															
2 bedroom	70m <sup>2</sup>															
3 bedroom	90m <sup>2</sup>															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows:	<b>Consistent</b>  All apartments within the development comply with the minimum balcony area and depth.														
	<table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p>		Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>
	Dwelling Type	Minimum Area	Minimum Depth													
Studio apartments	4m <sup>2</sup>	-														
1 bedroom apartments	8m <sup>2</sup>	2m														
2 bedroom apartments	10m <sup>2</sup>	2m														
3+ bedroom apartments	12m <sup>2</sup>	2.4m														
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.	<b>Not Applicable</b>  There are no ground floor apartments															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	<b>Consistent</b>  The maximum number of apartments off a circulation core on a single level is 3.  The proposed development includes access to all floors via a lift.														
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	<b>Not Applicable</b>  The development is 4 storeys.														
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><td></td><td></td></tr></table>			<b>Consistent (subject to condition)</b>  The proposed building												

	<table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td></tr><tr><td>1 bedroom apartments</td><td>6m<sup>2</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>2</sup></td></tr><tr><td>3+ bedroom apartments</td><td>10m<sup>2</sup></td></tr></table> <p>At least 50% of the required storage is to be located within the apartment.</p>	Dwelling Type	Storage size volume	Studio apartments	4m <sup>2</sup>	1 bedroom apartments	6m <sup>2</sup>	2 bedroom apartments	8m <sup>2</sup>	3+ bedroom apartments	10m <sup>2</sup>	<p>includes resident storage areas for all units within the building and as well as within the basement levels.</p> <p>A condition of consent could be imposed if the application is to be approved to ensure the proposed storage areas are allocated in accordance with the size requirements of the ADG for the respective units.</p>
Dwelling Type	Storage size volume											
Studio apartments	4m <sup>2</sup>											
1 bedroom apartments	6m <sup>2</sup>											
2 bedroom apartments	8m <sup>2</sup>											
3+ bedroom apartments	10m <sup>2</sup>											
<b>Acoustic Privacy</b>	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	<p><b>Consistent (subject to condition)</b></p> <p>An acoustic assessment which considers both internal and external noise sources including surrounding traffic noise, noise emissions associated with traffic generated by activities on site was submitted. The acoustic assessment found that noise generated by the development will comply with all relevant standards.</p>										
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	<p><b>Consistent</b></p> <p><b>(i) Noise</b> The development has been designed in a manner to minimise impacts of external noise and to mitigate noise transmission, as discussed elsewhere in this report.</p> <p><b>(ii) Pollution</b> The completed development is unlikely to impact adversely on air quality or alter the microclimate of the area.</p> <p>No details regarding dust control relating to the construction have been</p>										

		provided. These details will be required to be submitted as a condition of consent, should the application be worthy of approval.
<b>Configuration</b>		
<b>Apartment Mix</b>	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable location within the building.	<p><b>Consistent</b></p> <p>The development proposes a mix of studio, one, two, and three bedroom apartments. Given the town centre location and the variety of land uses, it is considered that the development has the capacity to accommodate numerous residents who have opportunities to live, work and leisure within the same district.</p> <p>Further to this, the apartments proposed will offer a different housing type and affordability to that of detached housing which is generally seen throughout the Northern Beaches.</p>
<b>Ground Floor Apartments</b>	Do the ground floor apartments deliver amenity and safety for their residents?	<p><b>Not Applicable</b></p> <p>The development does not have ground level apartments .</p>
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<p><b>Consistent</b></p> <p>The development is respectful of the surrounding residential character through the massing and as such, it is considered that the facade treatment is appropriate to enhance the streetscape and character of the area.</p>
<b>Roof Design</b>	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open	<p><b>Consistent</b></p> <p>The roof space is not readily accessible and</p>



	space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	cannot be used to serve the residential accommodation.				
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<b>Consistent</b>  The landscape works within the proposed development are satisfactory.				
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:				<b>Consistent</b>  There is no minimum landscaped open space provision required under the WDCP 2011 for such development within the zone.  This is due to the dense urban environment and envisaged character of development in Brookvale Town Centre, which is abutting mixed development (shop top housing or retail/office) development sites. Due to the urban context within which this site is located, no landscaping has been provided at ground level.	
	Plant type	Definition	Soil Volume	Soil Depth		Soil Area
	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm		10m x 10m or equivalent
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm		6m x 6m or equivalent
	Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm		3.5m x 3.5m or equivalent
	Shrubs			500-600mm		
	Ground Cover			300-450mm		
	Turf			200mm		
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.				<b>Consistent</b>  The site is close to public transport ("B-Line") and has ready access to services and amenities. It is well located in terms of providing for additional retail floor space and residential accommodation.	

		The proposed development appropriately utilises existing infrastructure whilst expanding the retail offer and providing new residential accommodation on a well located and serviced site.
<b>Awnings and Signage</b>	<p>Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.</p> <p>Signage must respond to the existing streetscape character and context.</p>	<p><b>Not Applicable</b></p> <p>The DA does not propose any signage and as such, this clause is not considered in the assessment of this application.</p> <p>It is noted that the retail premises located on the ground floor of the development will require signage in the future, and this will be subject to future development applications or be exempt development under the provision of State Environmental Planning (Exempt and Complying Development Codes) 2008.</p>
<b>Performance</b>		
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	<p><b>Consistent</b></p> <p>A BASIX certificate report has been prepared for the development. The BASIX certificate confirms that required targets for water, thermal comfort and energy efficiency will be met.</p>
<b>Water Management and Conservation</b>	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<p><b>Consistent</b></p> <p>Water management and conservation through the means of retention of</p>

		<p>stormwater for reuse has been assessed as compliant and further, compliance with the supplied BASIX Certificate can be conditioned, if the application is approved.</p> <p>Areas of landscaping are located throughout the site, and these areas will allow for natural water infiltration into the ground.</p>
<b>Waste Management</b>	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	<p><b>Consistent</b></p> <p>Subject to condition.</p>
<b>Building Maintenance</b>	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	<p><b>Consistent</b></p> <p>The application includes a Schedule of Materials and Finishes which ensures the longevity and sustainability of the building.</p>

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

The application has been accompanied by a BASIX certificate that lists commitments by the applicant as to the manner in which the development will be carried out. The requirements outlined in the BASIX certificate have been satisfied in the design of the proposed development. Nonetheless, a condition could be imposed, should the application be worthy of approval to ensure such commitments are fulfilled during the construction of the development.

#### SEPP (Infrastructure) 2007

##### Clause 45 - Electricity Infrastructure

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

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

Comment:

The application was referred to Ausgrid under clause 45(2) of State Environmental Planning Policy (Infrastructure) 2007. Ausgrid provided their comments on 21 September 2019 in which no objection was raised subject to conditions.

**Clause 102 – Residential development adjacent to a road corridor**

Clause 102 applies to residential development adjacent to a road corridor or freeway with an annual average daily traffic volume of more than 40,000 vehicles and which the consent authority considers would be likely to be adversely affected by road noise or vibration. The RMS has published traffic volume maps for NSW ('Traffic Volume Maps for Noise Assessment for Building on Land Adjacent to Busy Roads'). The noise assessment for the development is indicated on Map 12 as mandatory under Clause 102 of the SEPP Infrastructure.

Clause 102(2) also requires the consent authority to consider any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette. The supporting guidelines (as published by The Department of Planning in 2008) guide development adjacent to railway lines and along motorways, tollways, freeways, transit ways and other 'busy' roads. For new residential developments, internal noise levels of 35 dB (A) have been set for bedrooms during the night-time period and 40 dB (A) for other habitable rooms.

Clause 102(3) prohibits the consent authority from granting consent to residential development adjacent to a road corridor or freeway unless it is satisfied that appropriate measures will be taken to ensure that the above-mentioned LAeq levels are not exceeded. As the site is located adjacent to Pittwater Road which has volume in order of 47,000 vehicles per day, this Clause applies to the proposed development.

In this regard, the applicant has submitted an acoustic report (prepared by Acoustic Logic, dated 19 June 2018). In summary, the acoustic report recommends design measures to minimise the acoustic impact of the traffic on residential development.

Therefore, the subject application is considered to satisfy the provisions of Clause 102 subject to a condition to be included in the consent if the application is worthy of approval to adopt the recommendations of the acoustic report in the design of the proposed development.

**Clause 104 - Traffic generation development**

Clause 104 and Schedule 3 of the SEPP requires that the following development(s) are referred to the RMS as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Apartment or residential flat building	300 or more dwellings	75 or more dwellings

Comment:



The development consists of 19 residential apartments and relying on an existing vehicular access on Old Pittwater Road, which is within 90 metres of Pittwater Road, a classified road (Arterial Road).

The application was referred to the RMS for comment as traffic generating development under Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007.

RMS provided their final comments on 14 November 2019, in which no objection was raised subject to conditions.

Therefore, the subject application is considered to satisfy the provisions of Clause 104 subject condition to be included in the consent if the application is worthy of approval to adopt the RMS imposed conditions.

#### 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	13.4m	21.8%	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	No
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11.0m
Proposed:	13.4m

Percentage variation to requirement:	21.8%
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**Assessment of request to vary a development standard:**

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

**Clause 4.6 Exceptions to development standards:**

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

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

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

**Comment:**

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

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

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

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

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

**Clause 4.6 (4)(a)(i) (Justification) Assessment**

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

*" The proposal is considered to be consistent with this objective, as the development is reflective and*



*consistent with existing and approved development in the immediate area".*

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

- 1. The site-specific environmental planning grounds that support the proposed variation to the height of building development standard in this circumstance relate to the existing development which adjoins the site; the constraints and impacts that those development impose on this site; the minimization of potential adverse impacts on adjoining properties by quality design and layout of the proposal and benefits to the Pittwater Road streetscape of the development of a new contemporary mixed use development.*
- 2. There is considered to be a lack of adverse amenity impacts arising from the proposal as it will not result in adverse overshadowing, overlooking, acoustic impacts or lack of parking for the development.*
- 3. The sustainable management of the site's redevelopment by providing a variety of unit types and sizes, including accessible units at the upper levels and creating business opportunities at ground floor level and constructing a new contemporary building on Pittwater Road that will restore and enhance the built form of streetscapes.*

The written request solely relies on the fact that development is compatible with development in the area and this is not agreed with. In this regard, the applicant has not presented information to demonstrate that the variation to the Development Standard will achieve a better outcome compared to a compliant development.

Furthermore, the non-compliant component of the development (i.e. the 4th storey) will have adverse impact on the adjoining development to the north and south, and therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

#### **Clause 4.6 (4)(a)(ii) (Public Interest) Assessment**

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

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

#### **Comment:**

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B5 Business Development zone. An assessment against these objectives is provided below.

#### **Objectives of the Development Standard**

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



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

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

Comment:

The proposed height is considered to be compatible with the height of development within the vicinity of the site. However, the increased height is contingent upon a development providing public benefit and not resulting in adverse impact on the adjoining developments.

When considered solely against the objectives and requirements of WLEP 2011, which envisages that buildings are not to exceed the 11.0m height limit, the proposed development of 13.4m is considered to be excessive and unjustified, particularly given the adverse impact on the adjoining properties.

Accordingly, it is considered that the proposal does not satisfy this Objective.

The development does not meet this objective.

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

Comment:

As noted above, the proposed height is considered to be compatible with the height of other approved developments within close proximity of the site. In this regard, the subject development would blend in with the developments adjoining the site.

However, the impact of the development on the future development of the Brookvale Hotel site and the existing adjoining development to the north is considered unacceptable and given that the development is being assessed against the 'Height of Buildings' Development Standard under the WLEP 2011, the proposed building height exceeds the permitted building height of 11.0m and, in this regard, the visual and amenity impact of the development would be significantly lessened if the development achieved compliance or significantly improved levels of compliance.

Accordingly, it is considered that the proposal does not satisfy this objective.

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

Comment:

The proposed development will not unreasonably impact on the scenic quality of Warringah's coastal and bush environments.

The development does satisfy this objective.

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

Comment:

The proposed development exhibits an acceptable architecture and overall aesthetics, which would contribute positively to the streetscape of Pittwater Road.

However, the proposed building height exceeds the permitted building height and, in this regard, the visual impact of the development would be significantly lessened if the development achieved compliance or significantly improved levels of compliance.

Accordingly, it is considered that the proposal does not satisfy this Objective.

In conclusion, a variation to the Building Height Development Standard under Clause 4.6 of WLEP 2011 cannot be supported for reasons that the proposed height of the development is inconsistent with the objectives of the Standard.

### **B5 Zone Objectives**

The underlying objectives of the B5 Business Development are:

- ***To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in location that are close to, and that support the viability of, centres.***

#### Comment:

The proposed development is for a mixed-use development, which comprises commercial uses at the ground level and residential apartments above. The proposal is not a land use that is envisaged in the above objective, however, Schedule -1 Additional permitted uses should be considered along with the above objective in this circumstance.

The proposed development will include retail/business uses on the ground level in a location that will support the viability and activation of the Brookvale Town Centre.

Accordingly, the proposal is consistent with the above objective.

- ***To provide for the location of vehicle sales or hire premises.***

#### Comment:

This objective is not applicable to the proposed development as it does not propose vehicles sales and hire premises.

- ***To create a pedestrian environment that is safe, active and interesting by incorporating street level retailing and business uses.***

#### Comment:

The proposal will create a pedestrian environment which is safe and active by incorporating street level

commercial uses and therefore the proposal is found is consistent with the above objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B5 zone, where they are relevant to the proposed development.

**Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment**

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the standard and the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard cannot be assumed.

**Warringah Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
B5 Side Boundary Setbacks	Merit Assessment	<b>North:</b> Nil to 4.27m <b>South:</b> Nil to 2.9m	<b>Not Supported</b> (refer to discussion below)
B7 Front Boundary Setbacks	Consistent with adjacent buildings	consistent with adjacent buildings	Yes
B9 Rear Boundary Setbacks	Merit Assessment	Ground level – nil to basement and service areas. Level 1 & 2 – 1.0m Level 3 – 4.6m to wall of rear units	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B6 Merit Assessment of Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	No	No
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Easements		
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **B6 Merit Assessment of Side Boundary Setbacks**

##### Description of Inconsistency

<b>5 Side Boundary Setbacks</b>	Merit Assessment	<b>North:</b> Nil to <b>South:</b> Nil to
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##### Merit consideration:

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

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

##### Comment:

Whilst the proposed development is generally satisfactory with regards to providing deep soils landscape areas, it is considered that the top floor, which is the non-compliant floor, needs to be



reduced in extent by increasing the setbacks of that level to the northern and southern boundaries of the site to minimise adverse impacts and in doing so increase deep soil landscape areas.

The development is therefore not consistent with this objectives.

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

Comment:

The setback to the north, particularly associated with the top floor (Level 3) will become visually dominant when viewed from the adjoining development to the north. The development is therefore not consistent with this objective.

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

Comment:

As discussed above, the bulk and scale of the development as it relates to Level 3 is not minimised when viewed from the adjoining development to the north. The development is therefore not consistent with this objective.

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

Comment:

The proposed development does not provide adequate separation between buildings and therefore the amenity of future development to the south and existing development to the north will be compromised as result of the development. In addition, the amenity of the south facing units within the development will also be compromised given the inadequate separation provided to the Brookvale Hotel site.

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

Comment:

The proposed setbacks do not detract from the reasonable sharing of views from the neighbouring properties to the north and the east. The proposed setbacks do not have any bearing on view sharing from the neighbouring properties to the west along Old Pittwater Road. The proposal satisfies this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

### **C3 Parking Facilities**

Appendix 1 of the WDCP 2011 requires development to provide on-site car parking at the following rates (note: required car parking spaces are rounded up):

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Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
<b>Residential</b> 1 Bedroom (10) 2 Bedroom (8) 3 Bedroom (1)	1 Bedroom (10) - 1 space per dwelling = <b>10 spaces</b> 2 Bedroom (8) - 1.2 space per dwelling = <b>9.6 space</b> 3 Bedroom (1) - 1.5 per dwelling = <b>1.5 spaces</b>	22 spaces (rounded up)	32 spaces	+10
Residential Visitors (19 dwellings)	1 space per 5 dwellings = 3.8 spaces	4 spaces (rounded up)	5 spaces	+1
<b>Business Premises</b> 175m <sup>2</sup> GLFA	1 space per 40m <sup>2</sup> = 4.4 spaces	5 spaces (rounded up)	5 spaces	complies
<b>Total</b>		<b>32 spaces</b>	<b>42 spaces</b>	<b>+11 spaces</b>

The proposed development complies with the car parking rates as stipulated under Appendix 1 of WDCP 2011.

#### C4 Stormwater

An assessment of the stormwater issues was conducted by Council's Development Engineers, which is detailed in the referral section of this report. The Development Engineers advise that there is insufficient information provided to demonstrate the suitability of the development in relation to compliance with the requirement of this Clause.

Therefore, this matter forms a reason for refusal.

#### D7 Views

Due to the topography and location of the site, it is unlikely that the proposed development will affect any significant views.

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, were applied to the proposal.

While no objections regarding view loss were received in response to the public exhibition, a review of view impacts was undertaken having regard to all surrounding properties and the proposal is

satisfactory in providing reasonable view sharing.

#### **D9 Building Bulk**

Clause D9 seeks to minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.

In respect to the requirements of this Clause, Council's Urban Designer has reviewed the proposed development and has raised concerns with the bulk and scale as it relates to the adjoining development. The proposed is found to be inconsistent with the following requirements of this Clause:

1. Side and rear setbacks are to be progressively increased as wall height increases.
2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.

For the above reasons, the proposal is found to be inconsistent with the provisions of this Clause.

Accordingly, this issue has been included as a reason for refusal.

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

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

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

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

#### **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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
- Inconsistent 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 results of the assessment reveal the following:

#### **Urban Design and Stormwater Engineering**

In terms of internal referrals are concerned, Council's Urban Designer has raised fundamental concerns with the design of the proposal. Council's Development Engineering section has also indicated that additional information is required to properly assess the stormwater requirements for the proposal.

#### **Public Exhibition**

Furthermore, the public exhibition period generated eight (8) submissions, raising concerns including excessive height, traffic impacts and safety, solar and light pollution, construction impacts, and amenity impact on the units of the adjoining development to the north. These matters have been addressed within the report and many are concurred with and have been included as reasons for refusal of the application.

#### **SEPP 65/ADG**

The assessment of the application against the provisions of SEPP 65 found that the proposal is inconsistent with a number of the design principals and a number of relevant requirements as contained in the associated ADG, particularly as it relates to building separation.

#### **WLEP 2011**

The assessment of the proposed development against the provisions of WLEP 2011 found that the proposal does not comply with the 'Height of Buildings' Development Standard under the WLEP 2011, which permits a maximum building height of 11.0m within the B5 Business Development zone. The development exceeds this maximum limit by 2.4m (21.8%) which equates to one (1) additional storey. In this regard, it has been found that whilst the proposed is generally compatible with nearby shop top housing developments, the development is inconsistent with the objectives of the Development Standard. Furthermore, the applicant has not provided sufficient justification for the substantial departure from the height standard.

As such, the proposal has been found to be inconsistent with the provisions of the WLEP 2011 in relation to height and the Clause 4.6 Variation is not supported.

#### **WDCP 2011**

The proposal is inconsistent with the provisions of WDCP 2011 in relation to Building Bulk and the Side Setback controls.

On balance, the proposal is unsatisfactory in relation to the height non-compliance, the negative impacts on neighbouring properties and is contrary to maintaining and protecting the public interest.

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

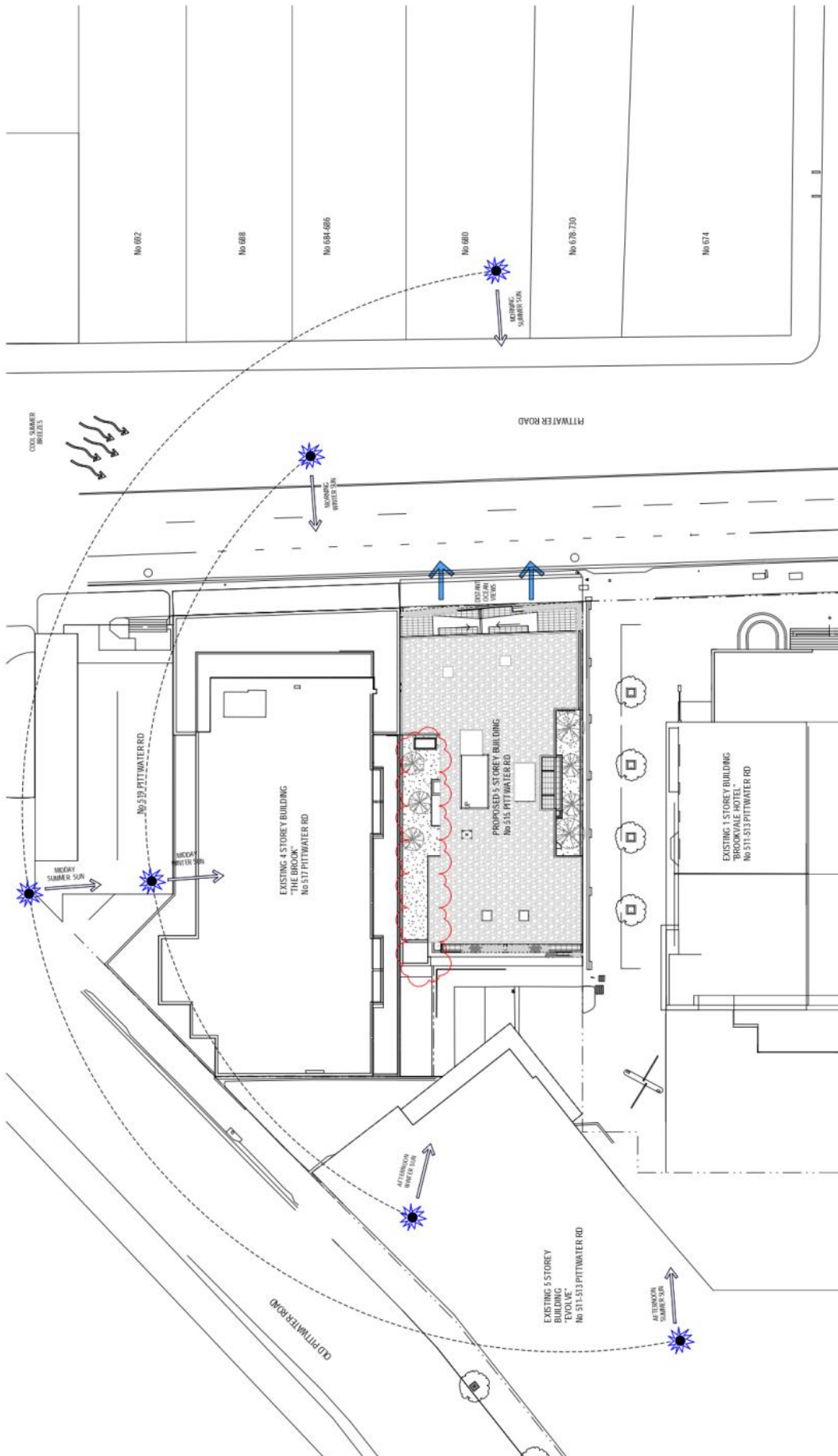
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.



## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0663 for the Demolition of all existing structures and the construction of a shop top housing development comprising 19 dwellings, ground floor business premises and car parking on land at Lot D DP 410277,515 Pittwater Road, BROOKVALE, for the reasons outlined as follows:

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development and its associated Apartment Design Guide.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B6 Merit Assessment of Side Boundary Setbacks of the Warringah Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4 Stormwater of the Warringah Development Control Plan.
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 D9 Building Bulk of the Warringah Development Control Plan.



**1 SITE PLAN**  
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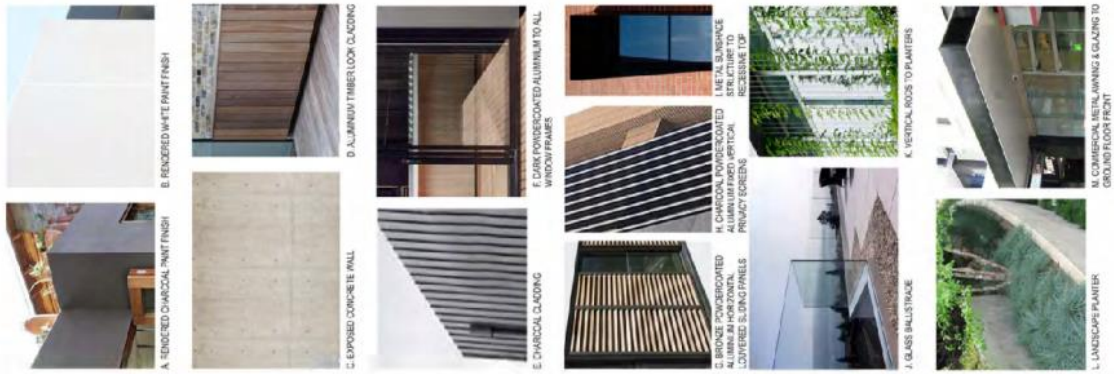
**DA-010**  
SUBMITTAL NO. 1  
DATE: 24.10.19  
SCALE: 1:200 @ A1  
CHECKED BY: SOA  
DRAWING TITLE: SITE PLAN

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**PROJECT:** BROOKVALE APARTMENTS  
155 PITTWATER ROAD, BROOKVALE  
(LOT 5) DP 410277  
CLIENT: TUVUTE PTY LTD.

**NOTES:**  
1. REFER TO DA-010 FOR ALL NOTES.  
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**DEVELOPMENT APPLICATION**  
This document is a Development Application (DA) for the proposed development. It is submitted to the Northern Beaches Council for consideration. The DA is subject to the provisions of the Environmental Planning and Assessment Act 1979 (EPA) and the Local Government Act 1995 (LGA). The DA is not a guarantee of approval and is subject to the discretion of the Council. The DA is not a guarantee of approval and is subject to the discretion of the Council. The DA is not a guarantee of approval and is subject to the discretion of the Council.



**DA-200 A**

DATE: 19.09.18  
SCALE: 1:100 @ A1  
PROJECT: EAST 6 SOUTH ELEVATION

DESIGNED BY: FS  
CHECKED BY: AL  
DRAWN BY: AL

PROJECT: BROOKVALE APARTMENTS  
517 PITTPATER ROAD, BROOKVALE  
(DOT D DP 41027)  
CLIENT: TUVUITE PTY LTD.

ARCHITECTS  
INTERIOR DESIGNERS  
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NOTES  
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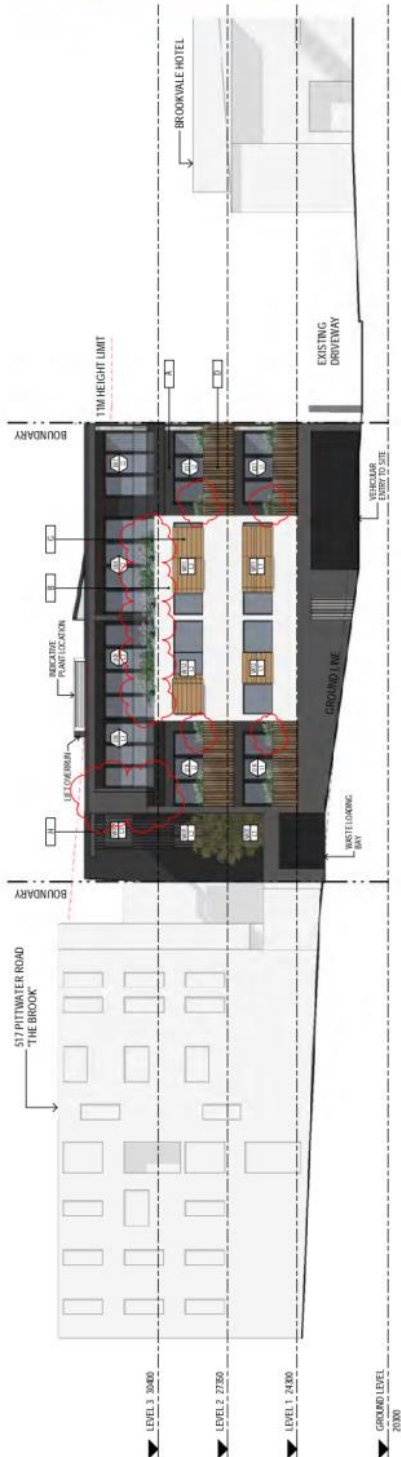
PLANNED BY: FS  
DATE: 19.09.18  
PROJECT: BROOKVALE APARTMENTS

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CLIENT: TUVUITE PTY LTD.

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**DA-201 B**  
CARE 610  
DATE: 24.10.19  
SCALE: 1:100 @ A1  
DRAWN BY: [Name]  
CHECKED BY: [Name]  
PROJECT: BROOKVALE APARTMENTS  
355 PITTSWATER ROAD, BROOKVALE  
(LOT 5) DP 410277  
CLIENT: TUVU PTY LTD.

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**NOTES**  
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**DEVELOPMENT APPLICATION**  
The use of this drawing is restricted to the project and site for which it was prepared. It is not to be used for any other purpose without the written consent of the architect. Any use of this drawing for any other purpose is a breach of the Architectural Profession Act 2002 and may result in disciplinary action being taken against the architect.

**DATE: 24.10.19**  
BY: [Name]  
FOR: [Name]



# APPENDIX 1

## Clause 4.6 – Height Standard

**Clause 4.6 Variation Request to the  
Height of Buildings Development Standard under  
Clause 4.3 of Warringah LEP 2011**

**Shop top Housing comprising ground floor business  
premises and 19 residential apartments**

**515 Pittwater Road, Brookvale**

## 1 Introduction

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### 1.1 Commission

*JVUrban Pty Ltd* has been commissioned by *Tuyute Pty Ltd*, (“the Applicant”), to prepare a written request (‘Variation Request’) pursuant to cl4.6 of *Warringah Local Environmental Plan 2011* (the LEP) in respect of a proposed development for shop top housing development comprising ground floor business premises and nineteen (19) residential apartment, at 515 Pittwater Road, Brookvale (the Site).

The Proposal is described in detail in Section 3 of the Statement of Environmental Effects (SEE) prepared by *JVUrban Pty Ltd* dated June, 2019 and generally comprises:

- demolition of all structures on site;
- site excavation for two basement levels;
- construction of shop top housing comprising ground floor business premises and a mix of 19 residents apartments above.

The Proposal exceeds the 11.0m maximum Height of Buildings (HOB) development standard under cl4.3 of the WLEP, having a maximum building height of 13.4m at its highest point.

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

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

### 1.2 Material Relied Upon

This Variation Request has been prepared based on the Architectural Drawings prepared by *Squillace Architects*, dated September 2018.

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

## 2 The Relevant LEP Provisions

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### 2.1 Warringah Local Environmental Plan 2011

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

Clause 2.2 and the Land Zoning Map of the LEP provide that the entire Site is zoned B5 Business Development Zone and the Land Use Table in Part 2 of the LEP specifies the objectives of this zone as follows:

- *To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of centres.*
- *To provide for the location of vehicle sales or hire premises.*
- *To create a pedestrian environment that is safe, active and interesting by incorporating street level retailing and business uses.*

The proposed land use is defined as a shop top housing which is permissible with development consent in the B5 Business Development Zone pursuant to the WLEP 2011.

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

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

*“(1) The objectives of this clause are as follows:  
(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,  
(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,  
(c) to minimise any adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,  
(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.  
The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.”*

The Height of Buildings Map designates a maximum 11.0m height limit for the Site (see Figure 1).



## 2 The Relevant LEP Provisions

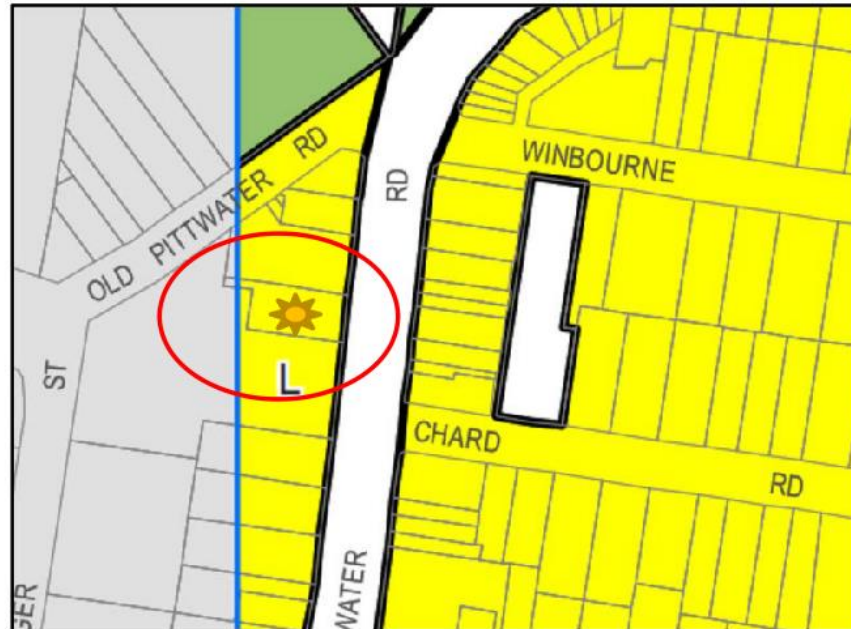


Figure 1 Extract of WLEP 2011 Map (HOB\_10A)

The WLEP Dictionary contains the following definitions:

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

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

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
  - (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,
- including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

### 2.1.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of the LEP states the objectives of the clause as follows:

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

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) (see Section 4.7), Preston CJ ruled that there is no provision that requires the applicant to demonstrate compliance with these objectives for the consent

## 2 The Relevant LEP Provisions

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authority to be satisfied that the development achieves these objectives. Furthermore, neither cl4.6(3) nor cl4.6(4) expressly or impliedly requires that development that contravenes a development standard *“achieve better outcomes for and from development”*.

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

Clause 4.6(2) provides that:

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

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

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

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

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

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

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

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*

## 2 The Relevant LEP Provisions

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

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

Clause 4.6(5) provides that:

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

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

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

### 3 The Nature of the Variation

The proposed shop top housing development will result in a maximum height above existing ground level of 13.4m, constituting a non-compliance of up to 2.4m. The following figures show the 11.0m LEP height line across the elevations and section plan of the proposed building. These elevations also show the outlines of the adjoining developments – “The Brook” (No. 517 Pittwater Rd – north of the site) and “Evolve” (No. 23 Roger St – west of the site). In each case these adjoining developments are non-compliant with the 11m height limit and taller than the proposed building.



**Figure 2: Extract of Eastern Elevation – Pittwater Road - showing LEP 11.0m height line**  
(Source: Squillace Architects, September 2018)



**Figure 3: Extract of Southern Elevation – facing Brookvale Hotel – 11.0m line in red**  
(Source: Squillace Architects, September 2018)



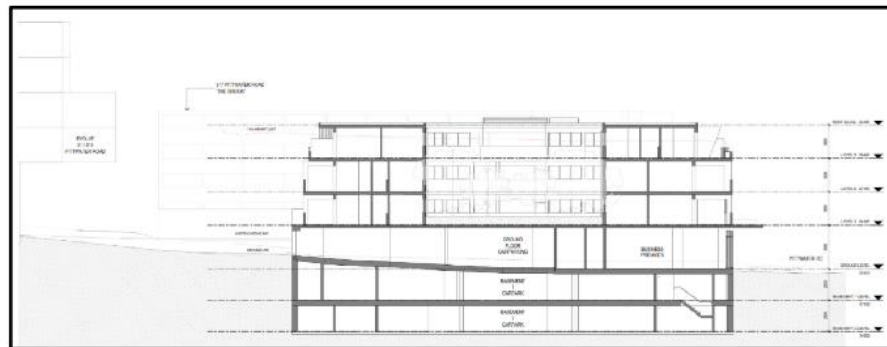
**Figure 4: Extract of Western Elevation (rear) - showing LEP 11.0m height line**  
(Source: Squillace Architects, September 2018)



### 3 The Nature of the Variation



**Figure 5: Extract of Northern Elevation – 11.0m height line in red**  
(Source: Squillace Architects, September 2018)



**Figure 6: Extract of Section plan – 11.0m height line in red**  
(Source: Squillace Architects, September 2018)

## 4 Case Law

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### 4.1 Introduction

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

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

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

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

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

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

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

The 4<sup>th</sup> ‘test’ is required to be demonstrated under cl4.6(3)(a) - see Section 5.1.

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

## 4 Case Law

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

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

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

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

In the Judgment of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (“*Four2Five*”) Pearson C expanded on the earlier Judgments of *Winten* and *Wehbe*, indicating that whilst consistency with zoning and standard objectives of the development standard is addressed specifically in d4.6(4)(a)(ii), there remains an onus of also demonstrating that there are “*sufficient environmental planning grounds*” such that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

## 4 Case Law

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The environmental planning grounds that support the proposed variation to the HOB development standard in this circumstance are detailed in the main body of this Statement and summarised in Section 5.2.2 of this variation request.

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

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

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

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

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

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

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



## 4 Case Law

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

Accordingly, whilst the Judgments in *Winten* and *Wehbe* related to variation requests under SEPP 1, the methodology and reasoning expressed in those Judgments continues to be the accepted basis upon which to assess variation requests pursuant to cl 4.6 with minor areas of differing interpretation.

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

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

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

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

## 4 Case Law

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

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

Step 1 - Is the planning control that the applicant seeks to contravene a development standard?

Step 2 - Is the consent authority satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required by cl 4.6(3) by demonstrating that:

- compliance is unreasonable or unnecessary; and
- there are sufficient environmental planning grounds to justify contravening the development standard?

Step 3 - Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out?

Step 4 - Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

Step 5 - Where the consent authority is the Court, has the Court considered the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

## 5 Assessment of the Variation

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

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

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

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,
- (b) the proportion or percentage of the area of a site which a building or work may occupy,
- (c) the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance of a building or work,
- (d) the cubic content or floor space of a building,
- (e) the intensity or density of the use of any land, building or work,
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
- (i) road patterns,
- (j) drainage,
- (k) the carrying out of earthworks,
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
- (m) the provision of services, facilities and amenities demanded by development,
- (n) the emission of pollution and means for its prevention or control or mitigation, and
- (o) such other matters as may be prescribed.

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

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

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

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

1. The 2<sup>nd</sup> 'test' in *Winten* and the 1<sup>st</sup> and 2<sup>nd</sup> 'ways' in *Wehbe* – i.e. the underlying objectives or purpose of the standard is satisfied or the objectives are not relevant; and

## 5 Assessment of the Variation

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2. The 4<sup>th</sup> 'way' in *Wehbe* - the development standard has been virtually abandoned or destroyed by the consent authority's own actions.

These aspects are discussed in the following paragraphs.

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

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

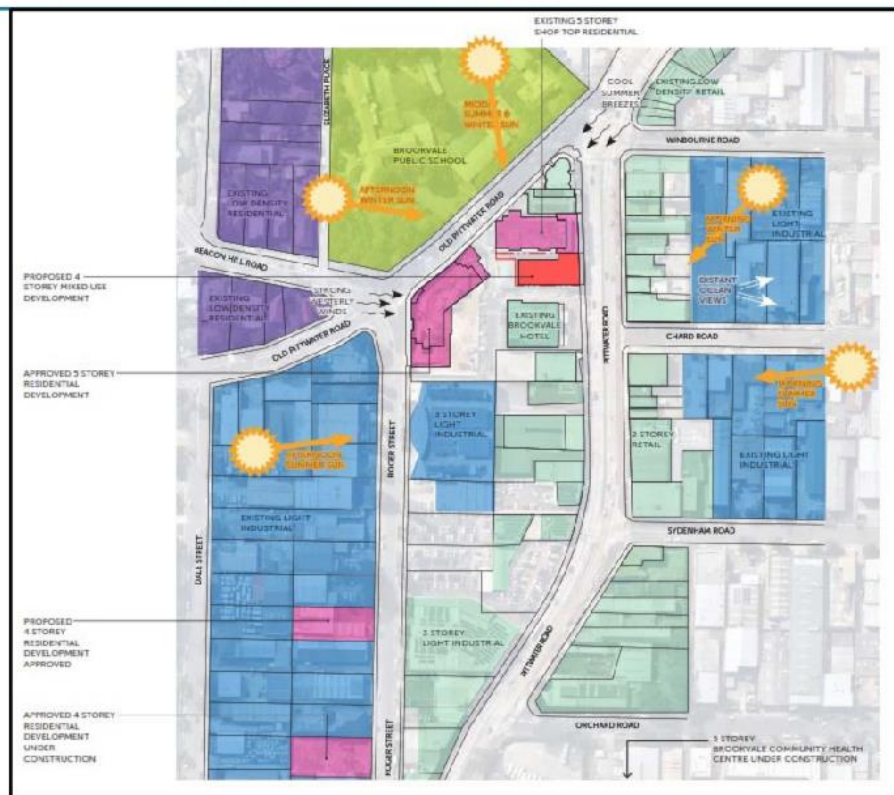
- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal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

Each objective is addressed in turn, as follows:

**Objective (a)** is to ensure that buildings are compatible with surrounding and nearby development.

The proposal is considered to be consistent with this objective, as the development is reflective and consistent with existing and approved development in the immediate area. The following (Figure 7) provides a visual presentation of the development located within the vicinity of the subject site.

## 5 Assessment of the Variation



**Figure 7 – Typology and scale of development in the vicinity of the subject site**

The above, together with Figures 2 – 6, demonstrate that the adjoining buildings (No. 517 Pittwater Road and 23 Roger Street/511-513 Pittwater Road) are both higher, larger and bulkier buildings in scale and appearance than the proposed building (Refer to Figures 2 – 6 above).

Both adjoining developments were supported with non-complying maximum building heights. The proposed building, being lower than both adjoining developments, does not draw attention to itself within this precinct. It is four (4) storeys above street level, with recessed upper level, similar to No. 517 (“The Brook”). The development is respectful of its locational context and surrounding development. There is no attempt to emulate the design, colours or materials of the existing, tired development in the precinct, rather it presents a modern, fresh street appearance that is complementary to the emerging built form in the area.

The following map shows that there is a total of five (5) other developments in the vicinity of the subject site where developments over the 11m height limit have been approved.



## 5 Assessment of the Variation

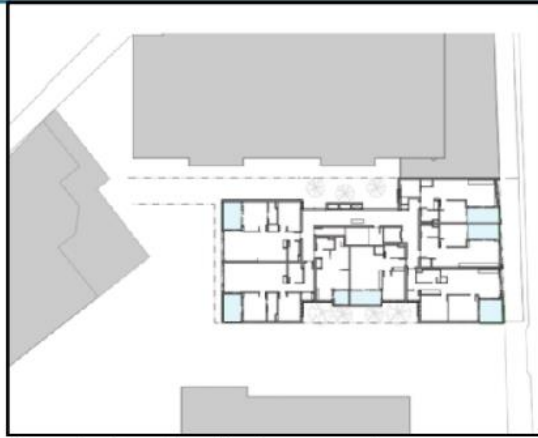


*Figure 8 – Location of approved developments approved above the 11m height limit*

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

The design and layout of the building addresses each of these elements and achieves a development that respects the existing adjoining and adjacent development. The following figures demonstrate that privacy, open space and amenity have been adequately addressed in the design and layout of the proposal. The development is a combination of blank walls built to the boundary (facing Pittwater Road and to part of the southern boundary), upper level setbacks for building separation, privacy and solar access. Each element takes into consideration the existing adjoining and adjacent development.

## 5 Assessment of the Variation



**Figure 9 – Location of private open for new apartments**



**Figure 10 – Location of blank walls, privacy screens and habitable rooms of adjoining development**

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

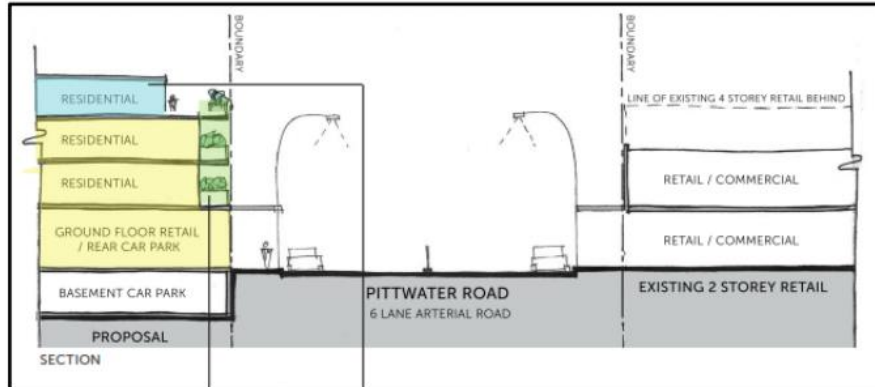
The subject site is located within a highly urbanized environment. There will be no impact on the coastal or bush environment. The proposal is neutral in terms of this objective.

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

The proposal is located along a busy section of Pittwater Road, Brookvale. It will be visible while travelling north and south. The proposal is a fresh, contemporary building that 'fits' with the streetscape along this section of Pittwater Road. The following figure shows a cross-section of Pittwater Road – looking north towards the traffic lights at the intersection of Old

## 5 Assessment of the Variation

Pittwater Road.



**Figure 11 – Cross section of Pittwater Road showing the relative sections on the eastern and western side of Pittwater Road**



**Figure 12 – Photomontage of proposal looking north along Pittwater Road**



**Figure 13 – Photomontage of proposal looking south along Pittwater Road**

New residential accommodation on this site is considered a positive outcome in terms of passive surveillance of both street frontages and furthering the activation of the Pittwater Road frontage, particularly considering the operating hours of the adjoining hotel. The external appearance of the new development is modern, varied and interesting.

## 5 Assessment of the Variation

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### The abandonment of the development standard by the consent authority's actions

In addressing this matter, Figure 8 above shows five (5) developments in the vicinity of the subject site where approval has been issued for development in excess of the maximum height limit. While it could therefore be argued that Council has indeed adopted an informal policy of allowing greater bulk and scale of developments in this area, it is not sufficiently clear to the applicant as to the site specific reasons and justifications for these variations. Moreover, it is not known, whether in each case, the circumstances warrant such variation and support. Therefore, an argument that the objectives of the height limit are abandoned or destroyed by Council's own actions is not purported to gain support in this case.

The case for abandonment could argue that the approval of these developments – their scale and bulk in each case - is such that the character and nature of the area is forever changed and the emerging character is not reflective of Council's local planning instrument. Therefore, in order to be consistent and 'fit' with this built form outcome new development will continue to seek variations. This may not be deemed a 'bad thing' by Council and able to be easily and genuinely supported.

The case against abandoned would argue that each site was considered and approved on its own merit and set of circumstances, not seeking to create any change in built form outcome except for the subject site, based on its own location context, constraints and opportunities.

In this case, the development is flanked by bigger, bulkier, non-compliant development, that together with the Brookvale Hotel has created an isolated development site. This site is currently underdeveloped and impacted by the adjoining developments. It seeks to optimise its potential while acknowledging those design elements that constrain it. The development provides a transition in height from the single storey hotel development to the taller developments at No. 517 Pittwater Road and 23 Roger Street. The upper level is recessed and the building sits within the lap of the two flanking buildings. On this basis alone, the development does not need to rely on any abandonment argument to support the proposed height variation.



## 5 Assessment of the Variation

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

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

The site-specific environmental planning grounds that support the proposed variation to the height of building development standard in this circumstance relate to the existing development which adjoins the site; the constraints and impacts that those development impose on this site; the minimization of potential adverse impacts on adjoining properties by quality design and layout of the proposal and benefits to the Pittwater Road streetscape of the development of a new contemporary mixed use development.

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

As demonstrated above, there is considered to be a lack of adverse amenity impacts arising from the proposal as it will not result in adverse overshadowing, overlooking, acoustic impacts or lack of parking for the development.

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

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

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

However, the consent authority must also be satisfied that the development will be consistent with the objectives of the B5 Business Development Zone which are expressed in the Land Use Table to cl2.3 of the LEP as follows:



## 5 Assessment of the Variation

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- *To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To provide for the location of vehicle sales or hire premises.*
- *To create a pedestrian environment that is safe, active and interesting by incorporating street level retailing and business uses.*

The Proposal is consistent with the objectives of the B5 Zone for the following reasons: The first objective is to provide a mix of businesses that support the viability of centres. The ground floor business premises is 175sqm – large enough to cater for a variety of businesses. The proposal is consistent with the objective.

The second objective is to provide for vehicle sales and hire premises. This objective is not relevant to this site due to its site characteristics.

The third objective is to create an active street frontage with street level and business uses. The proposal provides ground floor business premises and is consistent with the objective.

Accordingly, it follows that the proposed development is in the public interest because it is consistent with the objectives of the HOB development standard under the WLEP 2011 and the objectives of the B5 Business Development Zone under the WLEP 2011.

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

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

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

## 5 Assessment of the Variation

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

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

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

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

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

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

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular Site and this design is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 5.3, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. Accordingly, there would be no significant public benefit in maintaining the development standard in this instance; and
- It is considered that there are no other matters of relevance that need to be taken into consideration by the Court.

## 6 Conclusion

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

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

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

- The proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.3 of the WLEP 2011 and is consistent with the relevant objectives of the B5 Business Development Zone and therefore, the proposed development is in the public interest;
- The proposed shop top housing development will not result in significant adverse environmental harm in that the environmental amenity of neighbouring properties will be preserved and adverse impacts on the amenity of the locality will be minimised to a reasonable level;
- There are direct social and economic benefits for the property owner and local residents with new shops replacing old, tired premises, activation of the street frontage, an attractive contemporary development, increased passive surveillance and the opportunity for business premises in the area to occupy new, fresh and modern premises.

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

- a lack of adverse environmental amenity impacts;
- the sustainable management of the site's redevelopment by providing a variety of unit types and sizes, including accessible units at the upper levels and creating business opportunities at ground floor level;
- constructing a new contemporary building on Pittwater Road that will restore and enhance the built form of streetscapes; and
- the provision of high quality residential living within the small centre which will increase surveillance and perceived safety in the area.

## 6 Conclusion

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- Provision of basement parking for residents and commercial premises – not seeking to consume on-street areas for the development (except as existing retail credits).

Accordingly, this written request can be relied upon by the consent authority in accordance with cl4.6(4) of the LEP.

The consent authority can assume the concurrence of the Secretary pursuant to the Notice issued on 21 February 2018. Alternatively, the Court can use its powers under s39(6) of the Court Act and be satisfied that contravention of the development standard does raise any matter of significance for State or regional environmental planning, there is no public benefit of maintaining the development standard and there are no other relevant matters required to be taken into consideration.

Accordingly, the consent authority can exercise its power pursuant to cl4.6(2) to grant development consent to the proposed development notwithstanding the contravention of the development standard.

ITEM 3.3	DA2019/0795 - 22 WATTLE AVENUE, FAIRLIGHT - DEMOLITION WORKS AND CONSTRUCTION OF A DUAL OCCUPANCY (ATTACHED) AND SWIMMING POOLS
REPORTING OFFICER	MATTHEW EDMONDS
TRIM FILE REF	2019/664522
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plan and Elevations

## PURPOSE

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

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2019/0795 for Demolition works and construction of a dual occupancy (attached) and swimming pools at Lot 26 DP 11828, 22 Wattle Avenue, Fairlight for the reasons set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/0795
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<b>Responsible Officer:</b>	Jordan Davies
<b>Land to be developed (Address):</b>	Lot 26 DP 11828, 22 Wattle Avenue FAIRLIGHT NSW 2094
<b>Proposed Development:</b>	Demolition works and construction of a dual occupancy (attached) and swimming pools
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Stuart Peter Angus Rebecca Emiko Angus-Smith
<b>Applicant:</b>	Stuart Peter Angus Rebecca Emiko Angus-Smith

<b>Application Lodged:</b>	26/07/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New second occupancy
<b>Notified:</b>	06/08/2019 to 20/08/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	10
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 1,500,001.00
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### Executive Summary

The proposed development seeks consent for demolition works and construction of a dual occupancy (attached) with swimming pools. Each dwelling consists of four (4) bedrooms, single garage with a car stacker and a swimming pool. The application is referred to the Local Planning Panel for determination as the application received ten (10) submissions against the development. The application is recommended for refusal due to inconsistency with the predominant streetscape character as required by Clause 3.1.1 of the Manly Development Control Plan.

### PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for the construction of an attached dual occupancy each consisting of:

- Single width garage with car stacker (two spaces);
- Ground floor consisting of four (4) bedrooms, bathroom and en-suite;
- Lower ground floor consisting of rumpus, kitchen, dining room, living room, courtyard and terrace;
- In-ground swimming pool;
- Associated site works to facilitate the development and landscaping.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)  
 Manly Development Control Plan - 3.10 Safety and Security  
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size  
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)  
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features  
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 26 DP 11828 , 22 Wattle Avenue FAIRLIGHT NSW 2094
<b>Detailed Site Description:</b>	The subject site consists of one (1) allotment located on the northern side of Wattle Avenue.

The site is regular in shape with a frontage of 12.8m along Wattle Avenue and a depth of 35.6m. The site has a surveyed area of 456m<sup>2</sup>.

The site is located within the R1 General Residential zone and accommodates a single storey dwelling house and detached garage.

The site has a gradual fall from the northern boundary to the southern boundary, falling 3m across the site. There is a existing retaining wall along the front boundary of approximately 1m in height.

The site is clear of any canopy trees and consists only of grass landscaped area, low lying shrubs and bamboo plants along the site and rear boundary.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by a mixture of detached dwellings, semi-detached dwellings and residential flat buildings. Adjoining the site to the east is a two storey dwelling, to the west is a 3 storey residential flat building and to the north is a two storey dwelling. Across the road (to the south) are two storey dwellings with detached garages.

A site inspection was conducted by the assessing officer on 19 August 2019.

Map:



## SITE HISTORY

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

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

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. No matters have arisen that require further consideration.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is only relevant should consent be granted.</p>



Section 4.15 Matters for Consideration'	Comments
	<p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). The proposal is capable of complying with the BCA.</p> <p>Clause 143A of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the proposal is for a type of residential accommodation which is permissible in the zone.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The proposal is not considered suitable for the site given the inconsistency with the predominant streetscape character of Wattle Avenue. In particular, the proposed design does not reflect the built form characteristics of the surrounding buildings, material choice, spatial dimensions and landscape setting of the locality.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	The application is not considered to be in the public interest due to the streetscape presentation being at odds with the predominant character of the locality.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

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



As a result of the public exhibition process council is in receipt of 10 submission/s from:

Name:	Address:
Mr Antonio Natalino Di Meola	3 / 26 Wattle Avenue FAIRLIGHT NSW 2094
Mr Graeme John Turner	1 Roselands Avenue FRENCHS FOREST NSW 2086
Mrs Kelly Jane Ducat	69 Balgowlah Road FAIRLIGHT NSW 2094
Ms Carol Margaret Payne	15 / 101 Pacific Parade DEE WHY NSW 2099
Mr Arne Nicholas Borg	19 Wattle Avenue FAIRLIGHT NSW 2094
Robert Frank Hurst	75 Balgowlah Road FAIRLIGHT NSW 2094
Mrs Diane Dennis	14 Wattle Avenue FAIRLIGHT NSW 2094
Ms Suzanne Christine De Monchaux	31 Wattle Avenue FAIRLIGHT NSW 2094
Withheld	FAIRLIGHT NSW 2094
Mr Jean Pierre Schmid	20 Amaroo Avenue ELANORA HEIGHTS NSW 2101

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

- The proposal is not in keeping with the predominant streetscape character.
- The proposal does not comply with the 55% open space requirement and the 'footprint' of the development does not comply with the DCP.
- The additional driveway will result in a loss of on-street parking in an already narrow street.
- Garage width exceeds the 50% of the lot width.
- Concern regarding damage to the palm trees along the western boundary during construction.
- Concern regarding the proximity of the pools to the rear lot boundary which could present a privacy concern.
- Concern with increased stormwater run-off as a result of the additional building footprint.
- The future residents would not likely use the car stackers and the proposal will have a traffic and parking impact.

The matters raised within the submissions are addressed as follows:

- *The proposal is not in keeping with the predominant streetscape character.*  
Comment:  
Council's assessment of the application has found that the proposal in the current form is not consistent with the predominant streetscape character and for this reason the application is recommended for refusal.
- *The proposal does not comply with the 55% open space requirement and the 'footprint' of the development does not comply with the DCP.*  
Comment:  
The proposed development consists of 33% open space which is well below the DCP control. Council's assessment of the application considers that additional open space should be provided throughout the site, in particular within the front setback to assist in achieving better consistency with the street character.
- *The additional driveway will result in a loss of on-street parking in an already narrow street.*

Comment:

The second driveway location would result in the loss of one (1) on street car parking space. The proposal provides two (2) off-street parking spaces per dwelling by using a car stacker within each garage. The proposal complies with the off-street parking requirements and therefore the loss of one (1) on street parking space where compliant on-street parking is provided would not be an unreasonable outcome.

- *Garage width exceeds the 50% of the lot width.*

Comment:

Council's assessment of the applicant has found that the proposed garages are 58% of the lot width and non-compliant with the control. The current garage design is not supported due to being inconsistent with the streetscape character and is discussed in detail elsewhere within this report.

- *Concern regarding damage to the palm trees along the western boundary during construction.*

Comment:

The applicant has provided an arborist report which addresses the potential impact to the palm trees along the western boundary. The arborist report contains recommendations for tree protection during construction which if implemented, would ensure construction could be undertaken while maintaining tree health.

- *Concern regarding the proximity of the pools to the rear lot boundary which could present a privacy concern.*

Comment:

The pools are compliant with the rear setback requirements under Clause 4.1.9.2 and landscaping has been recently established along the rear site boundary which would assist in mitigating overlooking of the rear site. The edge of the pool concourse would be raised 0.7m above the ground level which is not considered excessive or would result in direct overlooking of the adjoining properties when coupled with landscape screening along the rear boundary.

- *Concern with increased stormwater run-off to 6 Balgowlah Road as a result of the additional building footprint.*

Comment:

In accordance with Council's Policy, the applicant has investigated the potential of a stormwater drainage easement through the rear property 6 Balgowlah Road. The owner of 6 Balgowlah Road has provided a letter refusing to grant an easement to the benefit 22 Wattle Avenue. The applicant has therefore proposed on-site detention and a level spreader as an alternative solution. Council's development engineers have reviewed this proposal and consider it an acceptable solution in accordance with Council's policy, when considering an easement could not be granted through the rear property.

- *The future residents would not likely use the car stackers and the proposal will have a traffic and parking impact.*

Comment:

The use of mechanical car stackers within residential areas are not expressively prohibited by the DCP. In light of this, the use of car stackers would be an acceptable solution to provide off-street parking to comply with Council's requirements and provide two (2) off-street car parking spaces per dwelling.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application seeks approval to construct a new dual occupancy and associated works.</p> <p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation, and the completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p> <p>There are no significant trees within the site impacted by the works. A Arboricultural Impact Assessment is submitted with the application that satisfies the DA Lodgement Requirements. This addresses the impact and protection of existing palms within adjoining property in close proximity to the works. All existing trees and vegetation shall generally be protected during all stages of works.</p> <p>A Landscape Plan is submitted that generally satisfies the DA Lodgement Requirements, and would be acceptable subject to conditions.</p>
NECC (Development Engineering)	<p>2nd Engineering referral A new set of the stormwater management plan has been submitted. There is an issue about the location of the level spreader. The spreader should not located within 2 meters of the property boundary to minimise the impact of the downstream property. However, the setback of the level spreader can be resolved subject to conditions.</p> <p>Development Engineering has no objection to the application, and the matters could be addressed via conditions.</p> <p>1st Engineering referral The total impervious area of the proposed development is over the maximum allowable areas in accordance with Council's Manly Specification for On site Stormwater Management. As such, an on site stormwater detention system (OSD) is required in the development.</p> <p>Furthermore, on site stormwater drainage shall follow the natural fall of the land and be discharged by a gravity system in accordance with the section 3.7 of Council's Manly DCP 2013. The applicant shall obtain an easement from either No.75 Balgowlah Road or No. 20 Wattle Avenue.</p> <p>The applicant proposed a combined charged and level spreader</p>

Internal Referral Body	Comments
	<p>system to discharge the on site stormwater into Wattle Avenue. The submission has been assessed. However, Development Engineering cannot support the design in accordance with the above specification and Manly DCP 2013.</p> <p>The applicant shall amend the design with an OSD system with a drainage easement.</p>
Strategic and Place Planning (Urban Design)	Council's Urban Designer has reviewed the application, with particular attention to the issue of streetscape character. The current design is not supported due to the reasons outlined under Section 3.1.1 of this assessment report.

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

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

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

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

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

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

##### SEPP 55 - Remediation of Land

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

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

A BASIX certificate has been submitted with the application (see Certificate No. 1007361M dated 18 June 2019).

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

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Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	50

### 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	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.6m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (273.18sqm)	FSR: 0.59:1 (272.8sqm)	N/A	Yes

#### Compliance Assessment

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



Clause	Compliance with Requirements
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

### Manly Development Control Plan

#### Built Form Controls

Built Form Controls - Site Area: 455.3sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250sqm	1 dwelling per 228sqm	9%	No
	Dwelling Size: 112sqm (4 bedroom 3 bathrooms)	136.4sqm	N/A	Yes
4.1.2.1 Wall Height	East: 7.3m (based on gradient 1:7.5)	7.3m	N/A	Yes
	West: 7.3m (based on gradient 1:7.5)	7.4m	1.4%	No
4.1.2.2 Number of Storeys	2 storey	2 storey	N/A	Yes
4.1.2.3 Roof Height	Pitch: maximum 35 degrees	10 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	6m facade/Consistent with adjoining	Facade setback 6m Garage setback 0m, however consistent with adjoining garage.	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.5m - 1.8m (based on wall varying wall height)	1m	60%	No
	Windows: 3m	No side boundary windows proposed	N/A	Yes
4.1.4.4 Rear Setbacks	8m	8m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (250sqm)	33% (150sqm) (Includes pool area as occupies less than 30%)	40%	No
	Open space above ground 40% of total open space	15.8% (23.7sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of	30.5% (76.5sqm)	13%	No

	open space (87.6sqm)			
	1 native trees (area C)	11 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	36sqm per dwelling	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	7.4m/58%	19%	No
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	0.8m	N/A	Yes
	1m curtilage side and rear/1.5m water side	0.5m side and 1m rear/ 1.7m water	Side setback 50%	No - Side setback
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	No	No
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	No	No
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	No
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	No	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	Yes	Yes

#### Detailed Assessment

#### **3.1.1 Streetscape (Residential areas)**

##### Manly DCP 3.1.1 Streetscape (Residential Areas)

The predominant character of the streetscape is defined by various period type developments dating from the 1920's, through to contemporary style recent developments of an understated nature. There is a distinct and recognisable character in the area, and Wattle Street in particular, not least of which is the brick masonry character of well defined architectural detail across various architectural periods in time.

Whilst acknowledging the epoch of contemporary architecture and its validity, the architectural response to context, character and streetscape is lacking in acknowledgement of the predominant character outlined above; textured and smooth face brick, sandstone and red tiled roofing and generous landscaped front setbacks.

Compounding the issue of the material selection is the scale and bulk across the site, particularly in terms of site coverage and the placement of the two garage structures to the zero lot alignment of the front boundary. In order to provide consistency in the streetscape, a more consistent alignment of building setback and materiality could provide sufficient cohesiveness in terms of character and streetscape.

##### 3.1.1.1 Complementary Design and Visual Improvement

The DCP requires that development in the streetscape should be designed to:

- i) *Complement the predominant building form, distinct building character, bui*

Council's Comment:

A contemporary approach to massing, architectural style and built form could achieve the same outcomes of providing a contemporary style development whilst remaining sympathetic to the predominant materiality of the streetscape; face brick, textured face brick, sandstone and some other more contemporary material responses to the streetscape with fences and garages

- vi) *Visually improve existing streetscapes through innovative design solutions.*

Council's Comment:

There is an opportunity to provide a contemporary design that can sit in harmony with the existing streetscape. Contemporary form and abstraction of mass are not discouraged, however this combined with an alternative to the standing seam metal cladding is highly encouraged through rigorous testing of the elements; form, massing, scale and materiality should not be explored in isolation.

- vii) *incorporate building materials and finishes complementing those dominant in the locality.*

Council's Comment:

As discussed above, the stark and contemporary contrast of the proposed material requires further consideration in terms of achieving a contemporary design whilst remaining sympathetic to the predominant character and materiality.

- b) *In lower density areas including LEP Zones R2, E3 & E4, setbacks should*

Council's Comment:

A 6m setback reflecting the predominant streetscape setbacks along the street will be required to meet the character and streetscape test to reflect orderly development throughout the local area.

Of note is the garages that extend into the 6m landscaped setback zone. The predominant figure ground in the streetscape, particularly to the northern lower side of the street, reveals at most a single garage in this setback zone, whilst some lot frontages to the southern lower site are clear of built structures retaining a distinct landscape setback zone.

3.1.1.3 Roofs and Dormer Windows

- a) *Roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings.*

Council's Comment:

The distinctive form of the proposed development subverts the predominance of the hip and gable type roof forms in the streetscape and context. The contemporary form and abstraction of geometries in bulk and mass are not be discouraged. However, this combined with the materiality as an overall expression of modern architecture cannot be supported given the context of the site. As previously discussed, the

simple acknowledgement of materials in the masonry face brick would contribute considerably to the character and streetscape of the local area, a well established area of high value in presentation, streetscape and distinct character.

#### 3.1.1.4 Garages, Carports and Hardstand Areas

a) *Garages, carports and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:*

i) *its roof form, material choice and detailing by being subserviated to the associate dwelling;*

ii) *being compatible with the streetscape and the location in relation to front setback criteria.*

#### Council's Comment:

The location of the garage structures to the front setback (2 x single garages) is not supported. Compliance with the minimum front setback control of 6m to the building line would address the predominant setbacks along the street. Strategies that address permeability, reduced bulk and scale to the street frontage in line with the predominant figure ground of the immediate context of the streetscape would better address the bulk and scale issues at the boundary.

### **3.10 Safety and Security**

The control requires at least one (1) habitable room window to face the street to allow for passive surveillance. The dwellings do not contain any windows from a habitable room fronting the street to allow for passive surveillance and in this regard, the proposal is inconsistent with the requirements of the control.

#### **4.1.1.1 Residential Density and Dwelling Size**

The subject land is located within the residential density area D3 which requires a maximum density of one (1) dwelling per 250sqm of site area. The proposed dual occupancy would result in a density of one (1) dwelling per 228sqm of site area.

Although non-compliant with the control, a dual-occupancy is a permissible form of development within the R1 General Residential Zone and Council has no fundamental issue with the construction of a dual occupancy on the subject site.

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

The proposal has a minor non-compliance with regard to wall height on the western facade, with the requirement being 7.3m (based on a slope of 1:7.5) and the proposed wall height of 7.4m.

The minor non-compliance does not present an unreasonable impact with regard to overshadowing, view loss or considered incompatible with regard to the height of the adjoining property to the west. The non-compliance with wall height is not a reason for refusal given the minor nature of the non-compliance.



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

The DCP requires that front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity. The proposed development has two garages with zero setback to the front boundary and limited area for landscaping. When considered in the context of the adjoining sites 20 and 24 Wattle Avenue, the proposal is inconsistent the spatial characteristics of these two properties. The flat building on 24 Wattle Street provides a 6m setback with a landscaped front garden. The dwelling on 20 Wattle Street consists of one garage with a zero setback, with the remainder of the front setback area consisting of landscaped gardens and a generous setback to the dwelling behind.

The proposed development consists of two garages as the dominant characteristic of the site with minimal opportunity for landscaping within the front setback area. The adjoining properties consist of some spatial separation and landscaping between the main dwelling and the street, however the proposed development consists of one continuous building from the front boundary, providing no visual relief or area to establish landscaping. The proposed front setback of the garages and spatial characteristics of the development are inconsistent with the streetscape and for this reason, the development is not supported.

#### 4.1.5 Open Space and Landscaping

The site is located in area OS3 which requires 55% of the site to consists of open space. The proposed development consists of 33% open space (inclusive of swimming pools) and is well below compliance with the control. It is considered the proposal allows for a sufficient area of open space within the rear yard for residential amenity, however, the limited area of open space at the front of the dwelling due to the garages is not consistent with the landscaped setting of Wattle Avenue and contributes to non-compliance with the control.

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

Control 4.1.6.1 '*Parking Design and the Location of Garages, Carports or Hardstand Areas*' require consideration of the following controls:

*a) The design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.*

Comment: As discussed in detail elsewhere within this report, the proposed design is not considered to be sympathetic to the streetscape character and does not reflect the predominant character of the locality. The dominance of the two garages abutting the front boundary is compounded by the contemporary material choice of metal cladding and a roof form that does not reflect the predominant character of the locality. The northern side of Wattle Avenue is characterised by one garage presenting to the street and a generous landscaped setback to the dwelling facade, with sufficient area for deep soil planting to consist of low-medium height vegetation.

*b) Garage and carport structures forward of the building line must be designed and sited so as not to dominate the street frontage. In particular:*

- i) garages and carports adjacent to the front property boundary may not be permitted if there is*
- ii) carports must be open on both sides and at the front; and*

Comment: There are reasonable options for the site to be developed that allows for the garages to be setback from the street and consist of a form that is more sympathetic to the predominant character of the area. The two garage structures forward of the building line is not reflective of the landscaped setting of the northern side of Wattle Avenue, which consists of one garage and a landscaped buffer to the main dwelling.

*c) the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.*

Comment: The garage width presents a non-compliance consisting of 58% of the width of the lot frontage.

The proposal is considered inconsistent with the above controls with regard to garage location and design and for this reason, the proposal is not supported based on non-compliance with the controls.

#### **4.1.9 Swimming Pools, Spas and Water Features**

The DCP requires the outer edge of the pool concourse to be setback a least 1m from the side boundary. Each of the proposed pools are setback 0.5m from the side boundary. Although non-compliant with the control, the pools are not considered to present an unreasonable impact with regard amenity which can be overcome by the existing boundary fencing and additional landscape planting around the perimeter of the pools.

#### **4.4.5 Earthworks (Excavation and Filling)**

The DCP control limits the amount of excavation to 1m, except for when a basement is proposed. The proposed development includes a portion of excavation up to 1.6m in depth to facilitate the lower ground floor. The excavation is addressed in the submitted geotechnical report which concludes the excavation does not present an unacceptable risk to adjoining properties. Although non-compliant with the numerical control, the proposed amount of excavation is not considered a fundamental issue with the development.

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

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

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

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

### **CONCLUSION**

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

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

- Codes and Policies of Council.

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

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

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

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

## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0795 for the Demolition works and construction of a dual occupancy (attached) and swimming pools on land at Lot 26 DP 11828, 22 Wattle Avenue, FAIRLIGHT, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.
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 3.1.1 Streetscape (Residential areas) of the Manly Development Control Plan. The proposal is not considered to complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality.
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 3.10 Safety and Security of the Manly Development Control Plan. The proposal fails to provide an adequate level of passive surveillance upon the street.
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 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan. Specifically, the front setback of the garages are not consistent with the prevailing building lines and landscape setting of the immediate vicinity.
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 4.1.5 Open Space and Landscaping of the Manly Development Control Plan.













ITEM 3.4	DA2019/0342 - 79A LAUDERDALE AVENUE, FAIRLIGHT - ALTERATIONS AND ADDITIONS TO AN EXISTING RESIDENTIAL BUILDING, USE AS A DUAL OCCUPANCY AND STRATA SUBDIVISION
REPORTING OFFICER	ANNA WILLIAMS
TRIM FILE REF	2019/664537
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plan and Elevations 3 <a href="#">↓</a> Clause 4.6

## PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection and the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2019/0342 for Alterations and additions to an existing residential building, use as a dual occupancy and strata subdivision at Lot 11 DP 867302, 79A Lauderdale Avenue, Fairlight for the reasons set out in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/0342
<b>Responsible Officer:</b>	Renee Ezzy
<b>Land to be developed (Address):</b>	Lot 11 DP 867302, 79 A Lauderdale Avenue FAIRLIGHT NSW 2094
<b>Proposed Development:</b>	Alterations and Additions to an existing residential building to create an attached dual occupancy and strata subdivision
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Stepping Stone Custodian Pty Ltd
<b>Applicant:</b>	Stepping Stone Custodian Pty Ltd
<b>Application Lodged:</b>	09/04/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New second occupancy
<b>Notified:</b>	30/04/2019 to 14/05/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	13
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 20% 4.4 Floor space ratio: 100%
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$ 1,200,000.00

### Executive Summary

This application seeks consent for alterations and additions to the existing building and use as a dual occupancy (attached) with strata subdivision. This report provides an assessment of Development Application No. DA2019/0342.

The subject site is zoned R1 General Residential under Manly Local Environmental Plan 2013 (MLEP 2013). Development for the purpose of a 'dual occupancy' is permissible with consent.

The site is the subject of a prior approval for alterations and additions to the existing building and use as a dual occupancy (attached) and strata subdivision under DA326/2016. The DA was refused by the

Northern Beaches Development Determination Panel and was subsequently approved by the Land and Environment Court.

The current proposal has a design which is mostly consistent with the consent issued by the Court with the exception of a number of plans which appear to be inconsistent and includes conflicting design detail.

The assessment of the application has concluded that notwithstanding the developments non-compliance with the building height and floor space ratio development standards, that the application be refused due to inconsistencies within the plans submitted and lack of information, specifically the erection of height poles to provide certainty of any impacts of the proposal on existing views from surrounding sites.

The application was publicly exhibited in accordance with Manly Development Control Plan 2013 (MDCP 2013) and a total of twelve (12) submissions were received. The issues and concerns raised in the submissions are addressed in this report. The application seeks variations to the building height and floor space ratio development standards in excess of 10%, and is referred to the Northern Beaches Local Planning Panel to refuse the application for the reasons detailed within this report.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks alterations and additions to the existing building and use as a dual occupancy (attached) with strata subdivision and a front fence. Specifically, the proposed works include:

### **Unit 1 - Lower Ground Floor** (RL24.280 - 24.640)

2 x bedrooms  
Bathroom  
Study/living/bedroom  
Laundry  
2 x sub floor store rooms (RL24.580 + RL24.640)  
Courtyard (16.5m<sup>2</sup>)

### **Ground Floor** (RL26.860)

Open-plan living, kitchen and dining area  
2 x bedrooms  
Ensuite  
WC  
Internal stair access  
3 x parking spaces accessed from western driveway access  
Bin enclosure  
Pedestrian access from Lauderdale Avenue

### **Unit 2 - First Floor** (RL29.670)

2 x bedrooms  
Bathroom  
Laundry  
Open-plan living, kitchen and dining area  
Bin storage  
Single car space (on suspended slab) accessed from eastern driveway access

### **Second Floor** (RL32.310)

1 x bedroom with walk-in-robe and ensuite  
South facing deck (33.5m<sup>2</sup>)

The subject application has been overlaid with the stamped plans approved via agreement with Council during Land and Environment Court proceedings for the matter *Stepping Stone Proprietary Limited v Northern Beaches Council [2018] NSWLEC 1638* and the design appears to merge two different schemes resulting in contradictory documentation.

## **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 - Part 2 Permitted or prohibited development  
 Manly Local Environmental Plan 2013 - 4.3 Height of buildings  
 Manly Development Control Plan - 3.4.3 Maintenance of Views  
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size  
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
 Manly Development Control Plan - Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 11 DP 867302 , 79 A Lauderdale Avenue FAIRLIGHT NSW 2094
<b>Detailed Site Description:</b>	<p>The subject property is commonly known as 79A Lauderdale Avenue and legally known as Lot 11 in DP 867302 and is located on the southern side of Lauderdale Avenue.</p> <p>The property is irregular in shape and has a frontage of 13.24m to Lauderdale Avenue, an average depth of 20m and an overall site area of 264.8m<sup>2</sup>. The property currently contains a part 2, part 3 storey building with vehicular access via two existing driveways from Lauderdale Avenue</p>

to a hard stand space above a garage area to the front of the existing building.

The property slopes from the front at Lauderdale Avenue to the rear and includes a crossfall of approximately 5 metres. The land further slopes to the rear at the adjoining battle-axe property toward the harbour foreshore.

The area is characterised by land sloping down toward the harbour foreshore with residential development on both sides of Lauderdale Avenue. This provides a situation in which dwellings on the northern side of Lauderdale Avenue are at a higher level of topography and often have water views over and around the dwellings on the lower southern side of the street.

A sewerline intersects the property at the rear of the property. There is also an easement for carriageway which services the subject site and the adjoining battle-axe allotment.

Map:



## SITE HISTORY

Development Application No. DA0326/2016 for alterations and additions to the existing building and use as a dual occupancy with strata subdivision was lodged with Council on 25 November 2016. On 8 September 2017, the application was refused by the Development Determination Panel.

On 18 October 2017, a Review of Determination of DA0326/2016 was lodged with Council. The application was subsequently withdrawn on 5 December 2017.

On 22 December 2017, the Applicant lodged a Class 1 Appeal with the NSW Land and Environment Court.



On 25 June 2018, a s34 Conciliation Conference was held. Following this, amended plans were received on 23 July 2018 and 4 October 2018.

Consent to DA0326/2016 was issued by the NSW Land and Environment Court on 7 December 2018.

On 18 March 2019, a Notice of Appearance was lodged with the Supreme Court of NSW by a neighbouring property seeking judicial review of the NSW Land and Environment Court consent for Stepping Stone Pty Limited v Northern Beaches Council [2018] NSWLEC 1638.

As Council is an active party to these proceedings, Council's legal Counsel have been informed of the progression of this application and have facilitated communication to the owner and Applicant in relation to Council's position with the lack of height poles and unacceptable plans. At the time of writing this report, this matter had not been resolved in the Supreme Court.

Development Application No. DA2019/0342 for alterations and additions to the existing building and use as an attached dual occupancy with strata subdivision was lodged with Council on 9 April 2019. This application is the subject of this assessment.

On 19 September 2019, the Applicant was sent a request for the installation of height poles to facilitate view loss assessments and additional information to correct conflicting drawing details within the plans submitted. At the time of writing this report, no response had been received in relation to Council's request and no height poles had been erected.

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

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

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



Section 4.15 Matters for Consideration'	Comments
Regulation 2000 (EP&A Regulation 2000)	<p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the erection of height poles and to clarify numerous inconsistencies and conflicting design details on the plans submitted with the application. No response was received in relation to these issues. This matter forms a reason for refusal for this application.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent..</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the	The site is considered suitable for the proposed development.

Section 4.15 Matters for Consideration'	Comments
development	
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	The subject application creates uncertainty and confusion due to the inconsistencies with the documentation submitted which fails to provide a clear built form. Further, Council on a number of occasions has requested that the Applicant submit amended plans which correlate between plan numbers and height poles to establish the full impact of the additional height on adjoining properties. As Council has received no response in this regard, these issues form reasons for 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 13 submission/s from:

Name:	Address:
Ms Patricia Ann Rochester	6 / 76 Lauderdale Avenue FAIRLIGHT NSW 2094
Clive Williams	3 / 29 Victoria Parade MANLY NSW 2095
Monique Licardy	Invalid Address NSW
Mrs Michelle Montgomery	72 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Lloyd Anthony Stuart Robson	98 Pitt Road NORTH CURL CURL NSW 2099
Mr Robert Lynton Adams Mrs Pamela Grace Adams	75 Lauderdale Avenue FAIRLIGHT NSW 2094
Ms Deborah Anne Taylor	1 / 68 Lauderdale Avenue FAIRLIGHT NSW 2094
Mrs Ruth Jan Neighbour	37 Beatrice Street BALGOWLAH HEIGHTS NSW 2093
Mrs Suzanne Irene Shearer	42/25 Marshall Street MANLY NSW 2095
Mr Benjamin Mark Neighbour	5 / 78 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Jason Barry Warburton Mrs Idette Kristine Warburton Ms Katherine Sarah Hadfield Mr John Malcolm Boulton	C/- Jade Swimming Pools Pty Ltd 488 Windsor Road BAULKHAM HILLS NSW 2153

Name:	Address:
Miss Jennifer Grace Chapman	Po Box 1078 MANLY NSW 1655
Mr Jonathan Ian Trope	1 / 90 Lauderdale Avenue FAIRLIGHT NSW 2094

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

- Precedent created for further height non-compliance with development in this area. Proposal is 1.3 times over.*  
*It appears the roof line is 1.83m above the requirements.*  
*The two additional stories are an unsightly addition.*

Comment: The proposed development seeks to replace the existing gabled roof structure with an additional level with a skillion roof. The difference in height above the existing ridge line is between 0.42m and 0.74m. While the structure will be 10.2m in total height which is up to 1.7m above the 8.5m height limit, it is noted that the existing building is approximately 10.1m in height measured from existing ground level. The additional height located further to the north of the existing ridge line is not considered to result in any material difference when viewed from Lauderdale Avenue.

Notwithstanding, the application has undergone a thorough assessment of this height breach which is addressed in further detail within Clause 4.6 of this assessment report. As a view loss assessment has not been undertaken with the benefit of height poles for the current scheme, the proposed height breach is considered unacceptable in this instance subject to a full understanding of the impact of the works on view loss to neighbouring properties.

Should this application be considered worthy of approval, it is not considered to create any adverse precedent in this location as each site is subject to a merit assessment dependent on the site constraints. This issue does not hold determining weight.

- FSR and Density*  
*Proposed FSR is 1.1:1 more than double the FSR standard of 0.5:1*  
*Block is undersized at 264.8m<sup>2</sup>, zoned for 300m<sup>2</sup> per residential dwelling, resulting in 2.6 times the density.*

Comment: The existing development on this site provides a density of 1 dwelling/88.3m<sup>2</sup> given there are three (3) separate domiciles currently. The proposed development will provide a reduced density of 1/132.4m<sup>2</sup> by reducing the development to two (2) units. It is noted that the site is undersized given the density control is 1 dwelling/300m<sup>2</sup> and the site has a total area measuring 264.5m<sup>2</sup>. While the development will result in a non-compliant FSR of 1:1, a detailed assessment of FSR under Clause 4.6 of MLEP 2013 has satisfactorily demonstrated that there will be no additional adverse impacts as a result of the increase to floor space.

- View loss*

Comment:  
A view loss assessment has been provided under clause 3.4.3 Maintenance of Views within the MDCP section of this report. While view loss is potentially considered to be minor in the context of the proposed development, it cannot be definitively determined due to inconsistencies with



the plans which show the location of the proposed second floor level in two different locations.

While height poles are evident on the site, these are uncertified and were apparently erected for the previous development application. Due to the Applicant failing to install accurate height poles for the current scheme on the site, a proper analysis of view loss is not able to be made.

- *Impact on on-street parking. Four additional apartments will increase the number of cars without dedicated parking.  
The parking design and manoeuvring is too restrictive and will not be used.*

Comment:

The proposed development is reducing the number of dwellings on the site from three (3) down to two (2). The plans indicate that the site will accommodate four (4) resident parking spaces and one (1) visitor space.

While in principal this arrangement meets Council requirements for parking, the plans submitted with the application provide two different arrangements for parking which are contradictory. As the actual proposed arrangement is unclear, the application is not supported in this respect. This issue forms a reason for refusal.

- *Drawings are confusing. No significant change from earlier application.  
Conflicting detail of top floor on plans. Application is not consistent with 'Regulation 56', procedural fairness and the notification is invalid because the drawings show 2 different top floor proposals.  
Is there a deck or pop-up garden, furniture, plants?*

Comment:

As indicated, the plans set submitted to Council and subsequently notified provides conflicting designs and contradictory layouts. Council wrote to the Applicant on 19 September 2019 and on a number of subsequent occasions specifically identifying the following issues with the plans:

*DA11-Issue I dated 17.07.2018 – This Site Plan shows the location of the proposed second floor addition offset to the east of the site and not in the centre. This is repeated on DA21 Issue I – Section 3*

*DA13-Issue I dated 17.07.2018 – The proposed pervious areas identified against the northern façade of the building will not facilitate the proposed parking identified on DA15 for two (2) vehicles. This is again repeated on DA18 Issue I – Carport-Ground Floor Plan*

*DA30-Issue I – 3D Views 1 – View 1 and 2 indicate a mansard style roof line to the north which is inconsistent with the roof and façade identified on DA32-Issue L – 3D Views 3 and DA25-Issue L – North Elevation.*

Further inconsistencies with the plans have been identified subsequent to those listed above. The Applicant has failed to address the many inconsistencies with the plans and therefore the development is uncertain and not supported.

- *Plans are not in accordance with the Land and Environment Court judgement.  
The Statement of Environmental Effects is misleading because it is not based on plans incorporated in the Applicant's agreement with Council and the LEC judgement.  
The top floor deck remains unchanged from the last plan. Plans on website show the top floor in different positions.*



Comment:

This submission references a previous development application DA326/2016 which was refused by the Northern Beaches Development Determination Panel on 8 September 2017 and subsequently appealed in the NSW Land and Environment Court. The Appeal was upheld following a s34 agreement based on amended plans.

While the Applicant's Statement of Environmental Effects claims that the current application is a complete replica of the Court approved scheme, the plans are in fact not entirely consistent with the Court approved stamped plans. This issue with the plans submitted with the current development application providing inconsistent design schemes is a major issue with the application and forms a reason for refusal.

- *Privacy impact from eastern windows adjoining Unit 02 Second Floor Level bedroom and Study Request for a privacy screen along the eastern side of the deck with some planting. Privacy treatment to W20 (bathroom) and W19 (bedroom) which overlook west side living/dining area.*

Comment:

**Second Floor**

Privacy concerns are raised by the owners of the property to the east of the site, No. 77 Lauderdale Avenue Fairlight. Specifically, the areas of concern include the east facing windows at second floor level. These windows adjoin a bedroom and walk-in-robe/ desk area. While these windows are setback 3.0m on the second floor plan DA17, other plans within the set show this facade with only a 1.3m setback.

Notwithstanding the inconsistent depiction of the second floor level, the windows on the eastern facade adjoin low traffic, low impact spaces being a bedroom which would likely contain window coverings and will generally look into the main roof and garage roof of this adjoining property. Were the application to be supported, a condition of consent could be imposed requiring translucent glazing to the these windows.

**First Floor**

In relation to W19 and W20 at First Floor Level, these windows are highlight windows with a sill height measuring 1.8m. There is no concern with privacy impacts from these windows.

**Second Floor Deck**

As previously identified, the location of this second floor deck adjoining the bedroom is identified in different locations on different plans between 2.2m and 3.0m from the eastern boundary. Notwithstanding, as this deck adjoins a bedroom, it is not considered likely to be a source of impact on the adjoining properties. This issue does not hold determining weight.

- *Materials.  
Request that the finishes be conditioned to ensure a high end finish.*

Comment:

Were the application to be supported, the finishes detailed on the plans would form part of any approval. This issue does not hold determining weight.

- *Increased height will impact on light/sun to No. 75 Lauderdale Avenue.*

Comment:

The application was accompanied by shadow diagrams showing the existing and proposed shadows of the development during the winter solstice. As No. 75 Lauderdale Avenue is to the south-east of the subject site there is no additional shadow impact on this property from the proposed development.

- *Applicant has used surrounding buildings as comparable examples from an angle that misrepresents their height, bulk and scale which is three (3) storeys from the south but present as only one (1) storey above street level.  
Proposal is a gross over development.*

Comment:

Lauderdale Avenue contains a varied range of housing types, styles and scales including residential flat buildings, dwelling houses and dual occupancies. The subject site and the immediately adjoining property to the east both present large bulky roof forms over the street level portion of the development. The proposed development replaces the existing roof expanse with habitable floor space which will be commensurate in scale with the large mansard roof form of No. 77. The proposal is considered acceptable in terms of its bulk and scale and presentation to Lauderdale Avenue.

- *Errors and omissions in the Statement of Environmental Effects referencing the court judgement dated 11 December 2018 (Stepping Stone Proprietary Limited v Northern Beaches Council [2018] NSWLEC 1638.*

*This consent is subject to proceeding seeking judicial review. This DA is an abuse of process. We require Council to advise the legal basis upon which it has permitted the DA to proceed given the Judgement of the Land and Environment Court.*

Comment:

The inconsistencies between the Plans and Statement of Environmental Effects in reference to the court consent of DA326/2016 have been addressed previously. The current application has been submitted independent of the previous application and the subsequent Supreme Court judicial review. The application has been lodged in accordance with the requirements of the Environmental Planning and Assessment Regulation 2000 requirements. Accordingly, Council has no legislative basis on which to reject this application. The proposal has been assessed on its merit and in the circumstances is recommended for refusal.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<b>Supported</b> No review comments or conditions.
Landscape Officer	<b>Supported</b> The landscape component of the proposal is acceptable subject to the completion of landscaping.  Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General

Internal Referral Body	Comments
	<p>Principles of Development, and section 4: Development Controls and Development Types, and specifically 3.3.1 Landscaping Design.</p> <p>A Landscape Plan is provided in accordance with DA Lodgement Requirements, and satisfies the requirements of Manly DCP2013.</p>
NECC (Coast and Catchments)	<p><b>Supported</b></p> <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The proposed development meets Clauses 12 and 15 of the Coastal Management SEPP (13 and 14 do not apply) and meets the requirements of the Sydney Harbour REP and DCP, and relevant clauses of the Manly LEP and DCP.</p> <p>The impacts on the coastal environment have been assessed as acceptable subject to conditions.</p>
NECC (Development Engineering)	<p><b>Supported subject to conditions</b></p> <p>The finished level of the carport has not been submitted, but it is the applicant responsibility to provide a smooth join between Council's Normal standard crossing profile and the finished level of the new carport.</p> <p>Development Engineering has no objection to the application subject to conditions of consent.</p>
Traffic Engineer	<p><b>Supported subject to conditions</b></p> <p>No objections to the development application in terms of its traffic implications</p>

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

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

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

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

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

##### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated.



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

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

A BASIX certificate has been submitted with the application (see Certificate No. A297695 dated 5 December 2018).

#### **SEPP (Infrastructure) 2007**

##### Ausgrid

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

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

##### Comment:

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

#### **SEPP (Coastal Management) 2018**

##### **State Environmental Planning Policy (Coastal Management) 2018**

##### ***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*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*



Comment: The proposal is unlikely to have an adverse impact on any of the 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 clause 13.4(1)(a);*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to avoid that impact;*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment: The proposal design and building siting will avoid any unnecessary adverse impacts.

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

*(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*

- (a) has considered whether the proposed development is likely to cause an adverse impact on*
  - (i) existing, safe access to and along the foreshore, beach, headland or rock platform*
  - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshore*
  - (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 clause 14.1(a)(i);*
  - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to avoid that impact;*
  - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and appearance of the proposed development.*

Comment: The proposed alterations and additions to this property to create a dual occupancy has considered the requirements of the clause and is not considered to result in any adverse impact on the surrounding coastal environment.

#### **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 development is unlikely to cause increased risk of coastal hazards on the subject site or other land.

The proposed development for alterations and additions to the existing building to create a dual occupancy has been considered by Council's Natural Environment Coastal and Catchments (NECC) section. The development is considered to adequately satisfy the requirements of the SEPP.

### 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	Existing	Proposed	% Variation	Complies
Minimum subdivision lot size:	1 unit/300sqm	Site area = 264.8m <sup>2</sup> Currently contains 3 units under one title	1/132.4m <sup>2</sup> under strata subdivision	N/A	NA for strata subdivision pursuant to Part 4.1(4) MLEP 2013
Height of Buildings:	8.5m	10m	10.2m	20%	No
Floor Space Ratio	FSR: 0.5:1	0.9:1 (236m <sup>2</sup> )	FSR: 1:1 (266.6m <sup>2</sup> )	100%	No

### Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 2 Permitted or prohibited development	Yes
2.6 Subdivision—consent requirements	Yes
Part 4 Principal development standards	No
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	No
Part 5 Miscellaneous provisions	Yes
Part 6 Additional local provisions	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

### Detailed Assessment

#### Part 2 Permitted or prohibited development

The site is zoned R1 General Residential. The proposed development is best described as 'multi

dwelling housing' which is defined within Manly LEP 2013 as:

*"Dual occupancy means a dual occupancy (attached) or a dual occupancy (detached).*

*Note. Dual occupancies are a type of residential accommodation*

*Dual occupancy (attached) means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling..*

*Note. Dual occupancies (attached) are a type of dual occupancy"*

Accordingly, the proposed development for a dual occupancy (attached) with two (2) dwellings is permissible with consent.

#### 4.3 Height of buildings

Description of non-compliance:

##### HEIGHT

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.2m
Percentage variation to requirement:	20%

##### FSR

Development standard:	Floor space ratio
Requirement:	0.5:1
Proposed:	1:1 (existing 0.87:1)
Percentage variation to requirement:	100%

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

The following assessment of the variation to Clause 4.3 – Height of Buildings and Clause 4.4 - Floor space ratio 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 and Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ



provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

**Building Height**

*On the eastern and western sides of the site, the removal of the roof form results in the existing height being reduced by the proposal. Such height reduction is considered to achieve a modest upper level addition which reduces the visual bulk and view impacts (and increases views) from certain apartments and dwellings surrounding the site.*

*The increase in height from the existing building represents a minor increase from the existing building (410mm) whilst the limited form of the addition on the upper level provides for a modest height and bulk increase when compared with the existing roof form. The minor extent of height increase provides for a 2-storey built form as viewed from the public domain along Lauderdale Avenue which is consistent with the scale of development anticipated by the 8.5m height control.*

*The proposed height is also modest when compared with the height of buildings located on the opposite side of Lauderdale Avenue. The northern side of Lauderdale Avenue includes 3-4-storey residential flat buildings and 3-storey dwelling houses sited atop a sandstone podium. The proposed height is also compatible with the height and scale of other dwellings located on the southern/same side of Lauderdale Avenue. The proposed height (2-storeys above the footpath level) will thereby sit comfortably in its context. It is also noted that the proposed height would not appear excessive from other dwellings to the east, west or south as their primary aspect is to the south towards the harbour*

*views and not towards the subject built form*

*The proposed height will not be responsible for any adverse or unreasonable shadow impacts to any residential neighbour, noting the similarity of the proposed height, bulk and scale with the existing built form. Shadows will primarily fall over the garage and roof of the neighbouring dwellings to the south, noting that their primary aspect and openings is to the south towards harbour views.*

*The proposed height is not responsible for any adverse or unreasonable privacy impacts.*

*The proposed height is not considered to be responsible for any unreasonable view impacts to the dwelling houses and residential apartments along the northern side of Lauderdale Avenue. View impacts are considered to be of a negligible nature with the majority of views being preserved whilst in some instances improved.*

Comment: While the difference in the maximum height of the proposed development to the existing roof line is measured at 730mm higher (RL35.1), the area where the height breach occurs is at RL34.78 which is 420mm higher than the existing roof form. The development seeks to improve the built form by changing the area currently taken up as roof span with a flat roof bedroom suite. While Council have requested height poles to confirm the extent of impact of these works, the applicant has failed to install any to allow an accurate view assessment.

#### **Floor Space Ratio (FSR)**

*The increase in FSR from the existing building represents a minor increase from the existing building whilst the recessed form of the addition on the upper level provides for a modest height and bulk increase when compared with the existing roof form. The minor extent of height, bulk and scale beyond that existing provides for a 2-storey built form as viewed from the public domain along Lauderdale Avenue which is consistent with the scale of development anticipated by the 8.5m height control as well as being compatible with the bulk and scale of surrounding dwellings.*

*The compact nature of the overall building, combined with the recessed form of the addition, ensure that the bulk and scale is of a modest nature. A significant proportion of the built form is concealed from the public domain being sited below the built form as viewed from the street frontage. The reduction of built form on the western side through replacement of the pitched roof form with a flat roof form is responsible for achieving a compatible streetscape outcome whilst, in some instances, achieving view improvements. The built form is now set in to be compliant with the side setback requirements, being 3m and is recessed from the existing built form from the sides*

*The proposed FSR increase provides for enhanced amenity to the upper level unit as it converts the roof form to a habitable space which offers an extensive outlook and views, thereby representing a more sustainable use of the roof space.*

Comment: The Applicant's justification for non-compliance with the FSR on this site is considered acceptable.

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

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



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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

**CLAUSE 4.3 - HEIGHT OF BUILDINGS**

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

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

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

Comment:

The proposed addition of a second floor level will replace the existing gable roof with an approximate 22 degree pitch with functional floor space instead of roof area. These new works are the predominant building elements that will be singularly visible from street level as the lower levels are below the finished street levels.

The proposed built form is considered consistent with the topographic landscape, prevailing building height and desired future character. The new second floor level is recessed so that it responds to the topography and steps back up the site.

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

Comment:

While the design of the second floor addition is modern in its architectural character, the simple design is considered to provide a consistent bulk and scale with other more modern development in the vicinity.

The presentation of the addition replacing the large tiled roof form provides a building form which is articulated and incorporates windows which reduce the bulk. The addition is

considered to sit comfortably within this streetscape.

*c) to minimise disruption to the following:*

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

Comment:

The design as indicated in the photomontage within the Statement of Environmental Effects is considered to minimise view loss. Unfortunately, the applicant did not install height poles to support the current proposal and confirm its impacts on surrounding properties. Subject to the proposal as indicated in the image below, view disruption has been minimised.





PHOTO WITH EXISTING MODEL



PHOTO WITH PROPOSED MODEL

*Photomontage of the existing roof form and proposed addition (source: Statement of Environmental Effects by ABC Planning)*

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

Comment:

The proposed development does not adversely impact on solar access to public spaces. The shadow diagrams submitted with the application indicate that there is no additional adversely overshadowing on private open space or habitable rooms in the adjoining developments.

*e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any*

*other aspect that might conflict with bushland and surrounding land uses.*

Comment:

The subject site is not located within a recreation of environmental protection zone.

**Zone objectives**

**CLAUSE 4.4 - FLOOR SPACE RATIO**

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

*a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment:

The existing streetscape character within Lauderdale Avenue contains a mixture of architectural styles and building age. The design of the proposed second floor addition is modern in its architectural character and the simple design is considered to provide a consistent bulk and scale with other more modern development in the vicinity.

The presentation of the addition replacing the large tiled roof form provides a building form which is articulated and incorporates windows which reduce the bulk. The addition is considered to sit comfortably within this streetscape.

*b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment:

The proposed development is to consolidate the floor plates within this building and reduce the number of units from three (3) to two (2). Accordingly the density of the site is reduced notwithstanding the increase to FSR which seeks to improve the internal and external amenity of the site while minimising building bulk.

*c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment:

The visual relationship of the new works is focused on the connection at street level. The new works will not appear excessive in scale and will maintain the character on the southern side of Lauderdale Avenue.

*d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment:

The additional FSR incorporated into the site is substantially located within the existing roof space footprint. The works generally appear to be setback at least 3.0m from each side boundary where the existing gable extends up to 400mm from the same side boundaries. It is noted that these setbacks are inconsistently shown on the plans submitted and notified with the application with some drawings showing this new second floor level with a 1.0m setback from the eastern boundary.

*e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment:

The proposed development is not within a business zone or local centre.

### Zone objectives

The underlying objectives of the R1 General Residential zone are:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Comment: The proposed development on balance satisfies the objectives of the R1 General Residential zone providing a dual occupancy development on this site.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential 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 and Floor space ratio Development Standard is assumed by the Local Planning Panel.

### Manly Development Control Plan

#### Built Form Controls

Built Form Controls - Site Area: 264.5m2	Requirement	Proposed	% Variation*	Complies
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4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling/ 300m <sup>2</sup>	1/132.4m <sup>2</sup>	56%	No. Existing development provides 3 units under one (1) title. Proposed development will result in two (2) units as a strata title.
	Minimum Dwelling Size: <b>Unit 01 - 107m<sup>2</sup></b> 90m <sup>2</sup> (3 beds) + 5m <sup>2</sup> (extra bathroom) + 12m <sup>2</sup> (extra bedroom) <b>Unit 02 - 95m<sup>2</sup></b> 90m <sup>2</sup> (3 beds) + 5m <sup>2</sup> (extra bathroom)	<b>Unit 01 - 150m<sup>2</sup></b> <b>Unit 02 - 116.6m<sup>2</sup></b>	N/A	Yes
4.1.2.1 Wall Height	East - 8m	7.8m	N/A	Yes
	West: 8m	9.0m	12.5%	No
4.1.4.1 Street Front Setbacks	Prevailing building line or 6m	Nil to carport 4.5m to Second floor	23%-100%	No. Existing First Floor Level 6.4m.
4.1.4.2 Side Setbacks and Secondary Street Frontages	East - 3.27m	1.0m (existing) 0.7m (proposed box window-first floor)	Up to 78.6%	No
	West - 3.6m	1.0m to existing wall 3.3m to new second floor 0.63m to window box	Up to 82.5%	No. Mostly existing setbacks. New second floor 8.3% non-compliant
4.1.4.4 Rear Setbacks	8m	Existing 2.9m 4.9m to deck@ 2nd Floor	38.75%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (145.5m <sup>2</sup> )	56% (81m <sup>2</sup> )	44%	No
	Open space above ground 40% of total open space (58.2m <sup>2</sup> )	<40% total open space	21.3% (31m <sup>2</sup> )	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (58.2m <sup>2</sup> )	27% (15.7m <sup>2</sup> )	13%	No. However no change to existing site conditions.
	1 native trees	2 trees	N/A	Yes
4.1.5.3 Private Open Space	12m <sup>2</sup> per dwelling	12.2m <sup>2</sup> (Unit 1) 21m <sup>2</sup> (Unit 2)	N/A	No



4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6m	N/A	Yes
Schedule 3 Parking and Access	2 spaces/Dwelling plus 1 visitor Total 5 spaces	5 spaces	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part 3	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	No	No
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
Part 4	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
Part 5	Yes	Yes
5.4 Environmentally Sensitive Lands	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedules	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Parking and Access	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	Yes	Yes
Schedule 4 - Trees	Yes	Yes
Schedule 4 - Part A2 – Class 2-9 Buildings	Yes	Yes

#### Detailed Assessment

#### **3.4.3 Maintenance of Views**

##### Description of non-compliance

Notification of the application resulted in submissions from seven (7) properties in relation to view loss. The applicant was requested on numerous occasions to erect height poles to enable a thorough view loss analysis to be undertaken for each property that has claimed view loss from the proposal. At the time of writing this report, no height poles had been erected to allow for a site inspection to assess view loss.

##### Merit consideration:

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

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

##### Comment:

The application fails to satisfy this objective as height poles to identify the extents of the new second floor level have not been installed on the site to inform a balanced assessment of view loss from each of the seven (7) properties concerned about this issue.

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

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

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

Comment:

The views identified of concern include water views to the south across Manly Cove to Wellings Reserve and Forty Baskets Beach, Dobroyd Head and South Head and to the west of North Harbour Reserve and beach. All of the available views include land water interfaces with Manly Cove. Most of the views which have been identified will likely lose some of the existing water views above the existing roof line.



Photograph 1 and 2 - Subject site viewed from neighbouring properties to the north and north-west .

*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:



*Figure 1 - Aerial Photo of physical location of view loss objections (source: Northern Beaches GIS)*

The image above identifies the properties that have raised view loss as a concern. In each instance, view loss occurs across the front boundaries of each site.

*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from*



*bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20 percent if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

Comment:

It appears that in most cases, the view loss on balance is considered minor. While the views from the lower ground floor level self contained flat within No. 72 Lauderdale Avenue will likely lose the land water interface of Wellings Reserve, depending on which location the second floor level is to be sited within the development, some additional water views to the east and west could be reclaimed with the removal of the existing roof form.

Notwithstanding the proposed development includes additional height which will likely impact the land water interface on the opposite side of Manly Cove with Wellings Reserve, substantial water views are maintained to the east and west of the subject site. While it is acknowledged that the view from the lower ground floor level of No. 70 Lauderdale Avenue was where the greatest concern was focused for that submission, in accordance with the planning principle guidelines for view loss, the views from the primary living area at first floor level remain mostly unaffected.



Photograph 4 - View from the first floor living area of No. 70 Lauderdale Avenue.

*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:

While it is acknowledged that the proposed development (assuming the location of the second floor addition is centred on the site) will result in non-compliance's with the building height and the floor space ratio development standards, as the works are predominantly within the area currently occupied by roof space, the overall impact is generally considered reasonable. As the plans submitted lack in providing clarity around the actual built form proposed, the reasonableness of the proposal remains questionable and cannot be definitively determined as reasonable.

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

Comment:

The non-compliance with the development standards of Building Height and Floor Space Ratio is generally considered to not result in unacceptable or unreasonable impact on views from the surrounding properties. As a result, the bulk is not considered to result in unreasonable view creep.

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

#### **4.1.1.1 Residential Density and Dwelling Size**

The site is identified with a density of 1 dwelling/300m<sup>2</sup>. The site currently contains three (3) dwellings on a 264.8m<sup>2</sup> lot under one title. The proposed development will reduce the number of units two (2) which is a density of 1/132.4m<sup>2</sup> and a 56% variation. As the proposed development reduces the number of dwellings on the site, the density as proposed is considered acceptable.

#### **4.1.3 Floor Space Ratio (FSR)**

The proposal is non-compliant with the Floor Space Ratio prescribed in Clause 4.4 of the MLEP 2013. An assessment of the proposal and its numerical non-compliance with this clause is address else where within this report (see Section 4.6 Variation to the Development Standard). The matters contained to Part 4.1.3 Floor Space Ratio (including consideration given to undersized lots) is addressed in Section 4.6 of this report.

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

Description of non-compliance

The proposed development will result in a front building line non-compliance as the design includes a

new polycarbonate carport roof structure that extends to the front boundary. This element of the proposal is questioned as it is inconsistently identified on the full set of plans lodged with this application, is not identified within the statement of environmental effects and is not included as part of the court consent issued on 11 December 2018 for DA326/20016.

Further, the development both existing and new works fail to comply with the numerical setbacks required for this site of 3.27m to the east and 3.6m to the west.

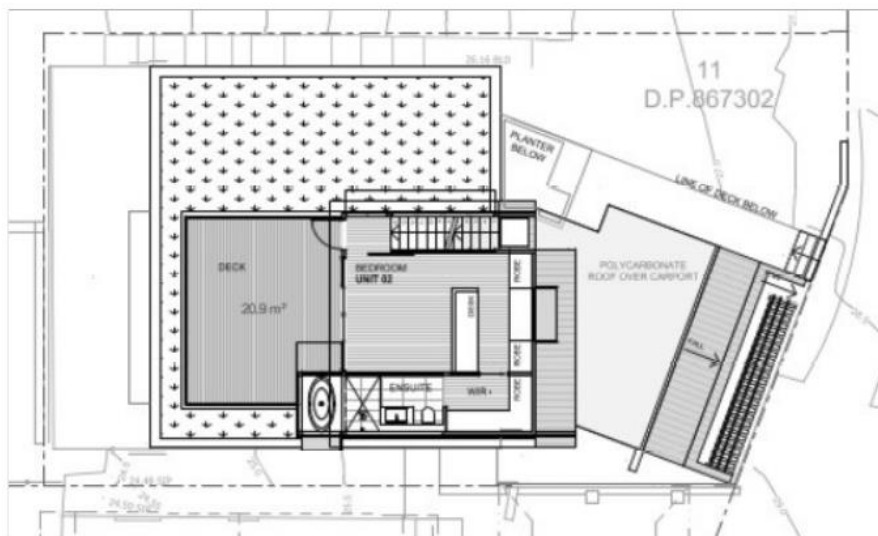
Merit consideration:

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

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

Comment:

As the details of a carport structure within the front setback of the site are not completely represented, it cannot be concluded that this aspect of the proposal maintains and enhances the streetscape. This structure is not supported.



**Figure 2** - Carport roof identified on Second Floor Landscape Plan - LP04 Issue J (Source: mm+j architects)



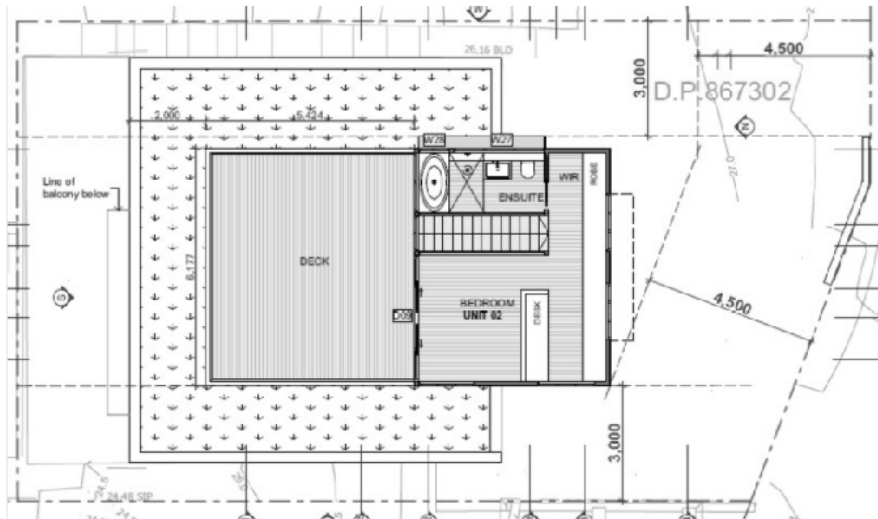


Figure 3 - Second Floor Plan - DA17 Issue L (Source: mm+j architects)

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:

Some concerns were raised by the adjoining neighbour to the east in relation to privacy impacts from the proposed new second floor level bedroom and study area and also at first floor level W19 and W20 which adjoin a bedroom and bathroom respectively. The plans submitted with the application provide conflicting detail as identifiable in Figure 2 and 3 above in terms of the location and layout of the second floor level. While the windows referred adjoin spaces which are generally considered to low traffic, low impact areas, the windows are not considered likely to cause privacy impacts. This concern could be addressed more specifically with conditions around the sill heights and glazing of the windows, however as the applicant has failed to provide consistent plans, this issue is not considered suitable to condition and forms a reason for refusal.

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

Comment:

While the siting of the new second floor level in the centre of the building has merit notwithstanding the non-compliance with the setbacks required, the inconsistencies of the location of these works across the plans is unacceptable and cannot be supported.

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 site will provide a non-compliant amount of landscaped open space due to the extent of the footprint of the existing building. While the works don't reduce the extent of existing landscaping on the site, the plans are contradictory in their placement of landscaped areas.

The Ground Floor Plan DA15 Issue L identifies the parking layout for the development with tandem parking for Unit 01 adjacent to the building and a carport for a second space for Unit 02 directly adjacent to the north, with a visitor parking space located as a tandem space behind the Unit 02 space. On the drawing, Carport - Ground Floor DA18 Issue I, the spaces for Unit 01 are conflicted by landscape elements in this location.

Accordingly, while a merit assessment of the site may support a non-compliance with the numerical landscaped open space requirements, the inconsistencies and errors with the detailing on the plans means that an accurate assessment of the proposal in relation to landscaping is not possible. The application is therefore deficient in meeting this objective.

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

Comment:

The site is not in an area affected by bush fire protection.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

#### 4.1.5 Open Space and Landscaping

Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	
	Open space
4.1.5.2 Landscaped Area	
	Landscaped Area

private open space located adjacent to living rooms, excluding bedrooms of a single area and dimension sufficient to enable it to usefully serve domestic outdoor functions for the exclusive use of the occupants of the dwelling.

### Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles

Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles requires the following parking provision for the proposed development:

*Residential Flat Buildings, Multi Dwelling Housing, Shop Top Housing, Attached Dwellings, Boarding Houses, **Dual Occupancies**, Group Homes, Hostels, Seniors Housing:*

*In LEP Residential Zones and all other Zones except LEP Business Zones  
1 resident parking space for each dwelling (irrespective of number of bedrooms), plus  
0.2 resident parking spaces for each 2 bedroom dwelling, plus  
0.5 resident parking space for each 3 (or more) bedroom dwelling, and plus  
0.25 visitor parking space for each dwelling (irrespective of number of bedrooms).*

The proposed alterations and additions are required to provide the following (4 spaces including a visitor space):

Manly DCP Requirement	Proposed Development	Spaces Required	Spaces Provided
1 resident parking space for each dwelling (irrespective of number of bedrooms), plus	2 dwellings	x 2	
0.2 resident parking spaces for each 2 bedroom dwelling, plus	N/A	N/A	
0.5 resident parking space for each 3 (or more) bedroom dwelling, and plus	Unit 1 - 4/5 bedrooms Unit 2 - 3 bedrooms	0.5 x 2 =1	
0.25 visitor parking space for each dwelling (irrespective of number of bedrooms).	0.25 x 2	1	
<b>Total Spaces Required</b>		4 spaces	4 resident + 1 visitor

The plans indicate that at Ground Floor level, there is three (3) resident parking spaces and one (1) visitor space. In addition, at First Floor level there is one (1) parking space shown.

Accordingly, the development complies with the minimum number of parking spaces required by Schedule 3 of Manly DCP.

### THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

### CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

### CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;

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

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

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

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

This development application has been assessed in accordance with the provisions of 4.15 of the EP&A Act, 1979, the provisions of relevant EPI's, MLEP 2013 and the relevant codes and policies of Council including the relevant provisions of the MDCP 2013.

The assessment of this application has found that the plans submitted fail to establish a consistent development scheme and incorporate numerous design inconsistencies and contradictions.

Further, Council has on numerous occasions requested a comprehensive set of accurate plans and the erection of survey accurate height poles to provide certainty as to the full extent of view loss likely to occur to surrounding properties.

The notification of the development resulting in twelve (12) submissions, eleven (11) of which oppose the proposal. The majority of the submissions raised concern with the following:

- View loss
- Inconsistency and inaccuracy of plans
- Height and FSR non-compliance
- Traffic and Parking

The issues raised in the submissions have been addressed within the 'Public Notification Section' of this report. On balance, the proposal is unsatisfactory in relation to the insufficient information and inconsistent details of the application and is contrary to maintaining and protecting the public interest.

As a result of the matters raised in this report in terms of insufficient information, it is recommended that the Northern Beaches Local Planning Panel, as the consent authority refuse this application for the reasons detailed within the 'Recommendation' section of this report.

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



## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0342 for the Alterations and Additions to an existing residential building to create an attached dual occupancy and strata subdivision on land at Lot 11 DP 867302, 79 A Lauderdale Avenue, FAIRLIGHT, for the reasons outlined as follows:

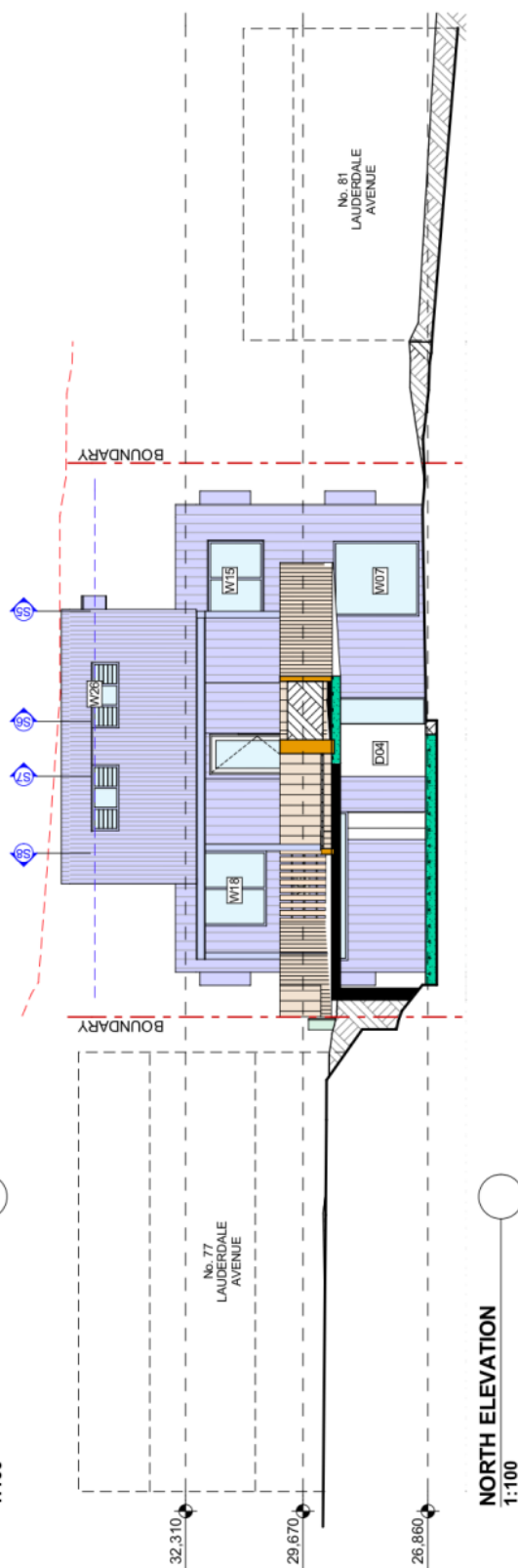
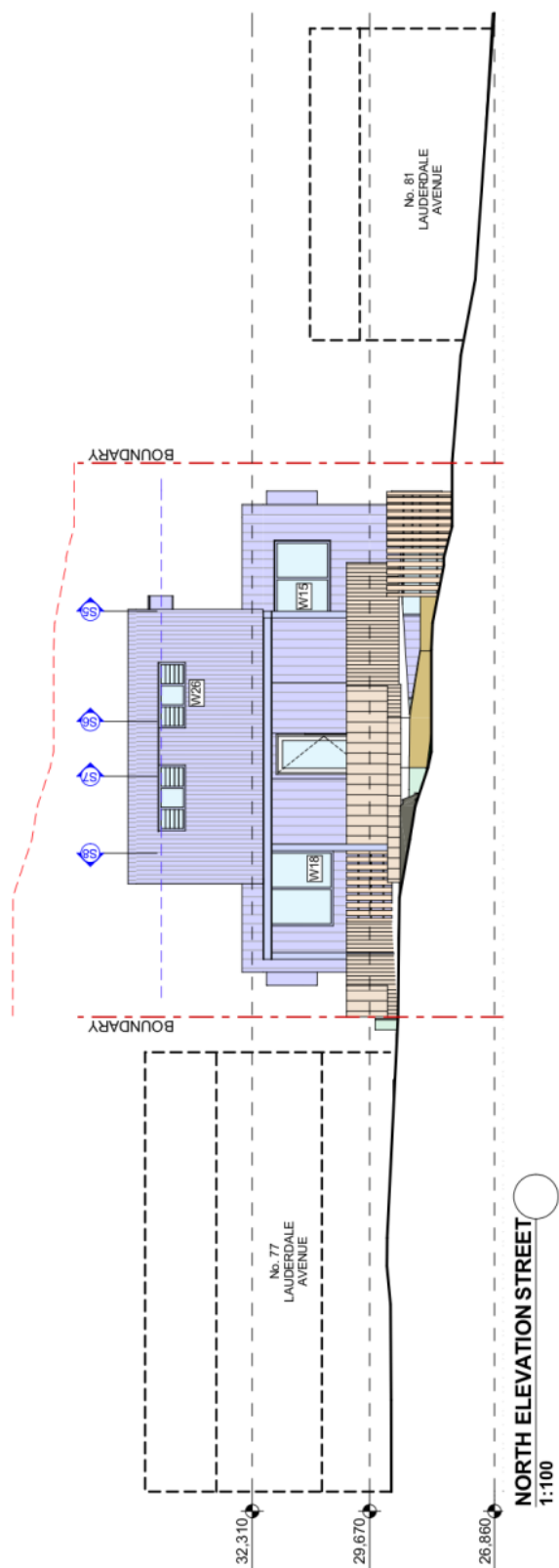
1. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, insufficient information has been submitted to enable the assessment of the application due to inconsistencies with the design.

Pursuant to Section 4.15(1)(e) and 4.6 (4)(a)(ii) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest as it is not consistent with the objectives of the building height development standard relating to views.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.3 Height of Buildings of the Manly Local Environmental Plan 2013.
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 3.4.3 Maintenance of Views of the Manly Development Control Plan.
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 4.1.5 Open Space and Landscaping of the Manly Development Control Plan.

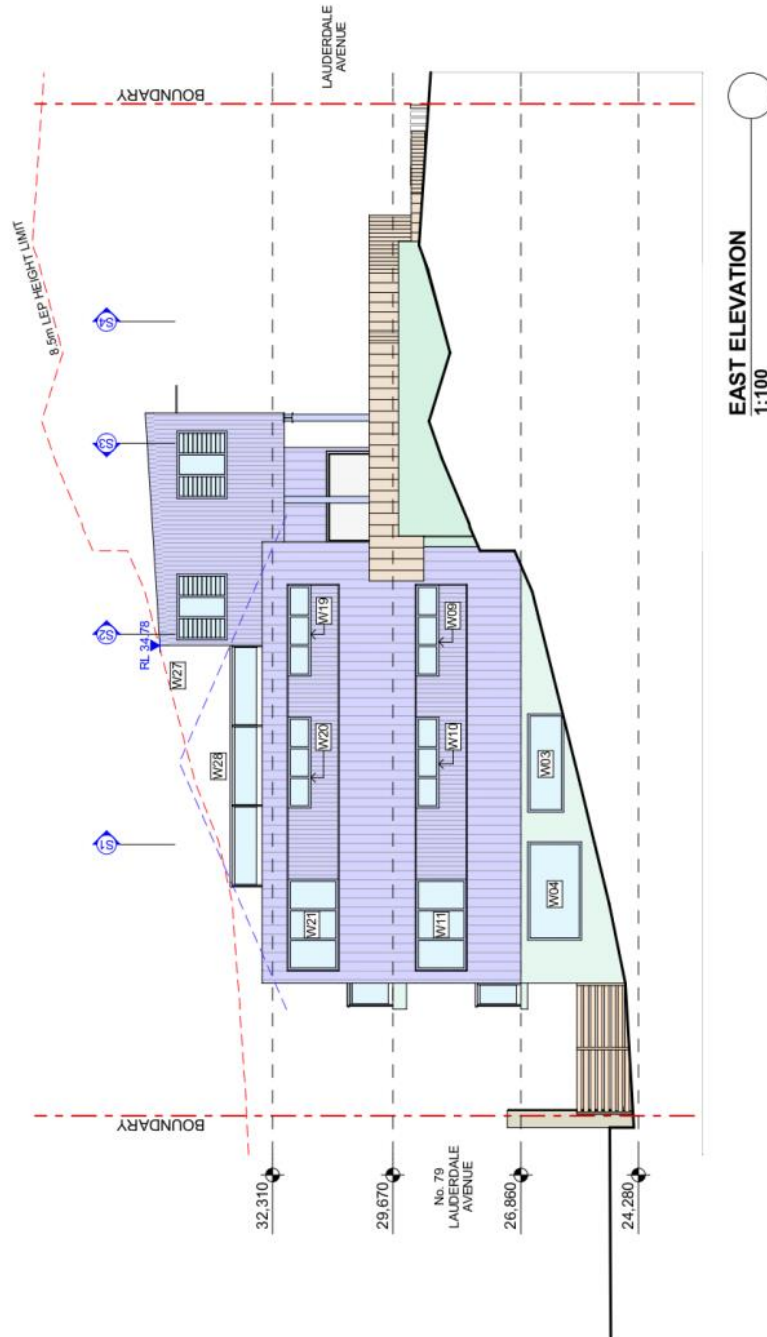







Notes	Rev	Date	Amendment		clients: <b>Stepping Stone</b> project: Additions and alterations to multi-residential building at <b>79A Lauderdale Ave Fairlight</b> file: <b>NORTH ELEVATION</b>	scale: <b>1:100</b> drawn: BEJ date: 7/12/2018 job no.: <b>1545</b>	Drawing number <b>DA25</b> sheet <b>L</b>
This drawing is and remains copyright and is the property of MM+J Architects Pty Ltd. It may not be used or copied in whole or in part without written consent.	M	03/07/18	AMENDED DEVELOPMENT APPLICATION - COUNCIL MEDIATION				
This drawing is not to be used for Construction purposes.	Q	04/07/18	AMENDED DEVELOPMENT APPLICATION - REVISED COUNCIL MEDIATION				
	J	17/07/18	AMENDED DEVELOPMENT APPLICATION - REVISED COUNCIL MEDIATION				
	J	05/12/18	AMENDED DEVELOPMENT APPLICATION - REVISED COUNCIL MEDIATION				
PROJECT / COMMENT / ADDRESS / ACTION	K	08/12/18	AMENDMENTS TO DESIGN				
	L	07/12/18	AMENDMENTS TO DESIGN				





**EAST ELEVATION**  
1:100

Notes	Rev#	Date	Amendment
	H	03.07.18	AMENDED DEVELOPMENT APPLICATION - COUNCIL MEDIATION
	G	04.07.18	AMENDED DEVELOPMENT APPLICATION - REVISED COUNCIL MEDIATION
	I	17.07.18	AMENDED DEVELOPMENT APPLICATION - REVISED COUNCIL MEDIATION
DEVELOPMENT APPLICATION	J	05.12.18	AMENDED DEVELOPMENT APPLICATION - REVISED COUNCIL MEDIATION
	K	06.12.18	AMENDMENTS TO DESIGN
	L	07.12.18	AMENDMENTS TO DESIGN



79A Lauderdale Ave Fairlight

100

clients: Stepping Stone

project: Additions and alterations to multi residential building at

79A Lauderdale Ave Fairlight

100

scale: 1:100

drawn: BEJ

date: 7/12/2018

job no: 1545

Site 1, 36-42 SYDNEY ROAD MANLY NSW 2095  
tel: 9529 1275 e: admin@mm+jarchitects.com.au

EAST ELEVATION

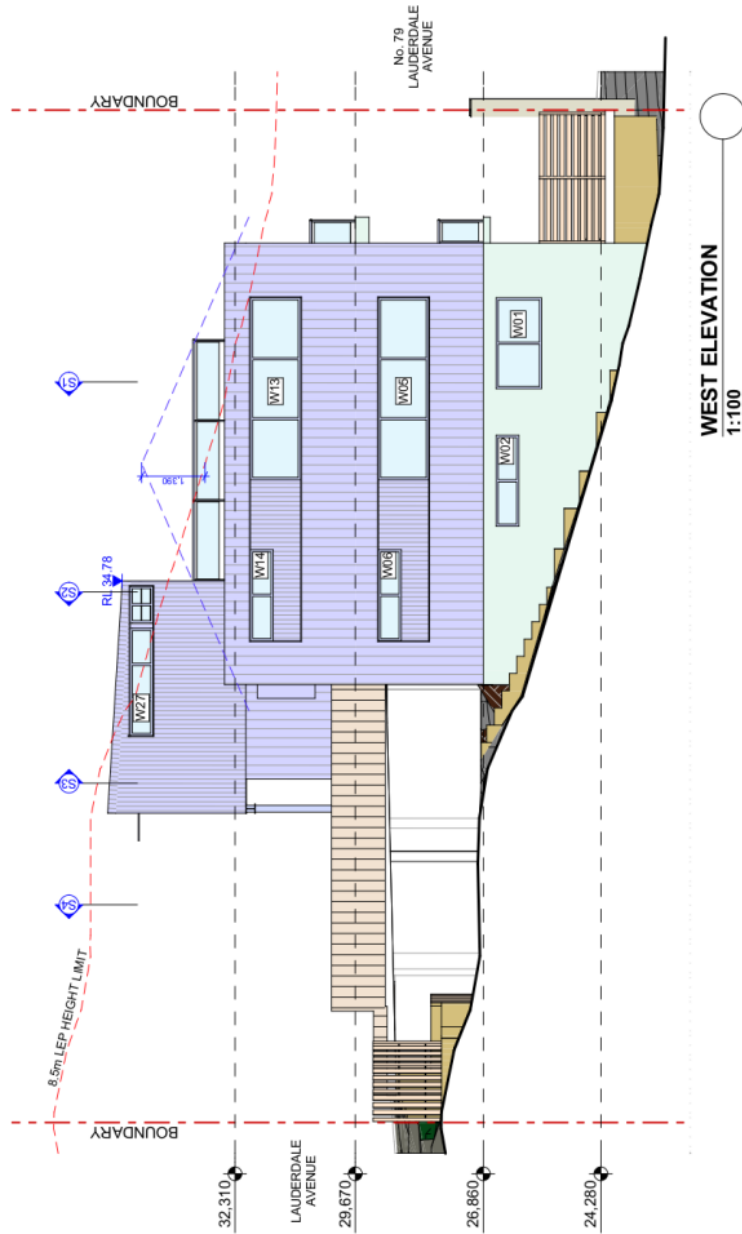
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Notes	Rev	Date	Amendment	Idents	Scale	Drawing number	DA28
This drawing is and remains copyright and is the property of MM+J Architects Pty Ltd. Any use or copying in whole or in part without written consent is prohibited. This drawing is not to be used for construction purposes. This drawing is not to be used for construction purposes.	L	07/12/18	AMENDED DEVELOPMENT APPLICATION - COUNCIL MEDIAN	Stepping Stone	1:100	BEJ	1545
DEVELOPMENT APPLICATION	L	07/12/18	AMENDED DEVELOPMENT APPLICATION - COUNCIL MEDIAN	79A Lauderdale Ave Fairlight	1:100	7/12/2018	1545
DEVELOPMENT APPLICATION	L	07/12/18	AMENDED DEVELOPMENT APPLICATION - COUNCIL MEDIAN	79A Lauderdale Ave Fairlight	1:100	7/12/2018	1545
DEVELOPMENT APPLICATION	L	07/12/18	AMENDED DEVELOPMENT APPLICATION - COUNCIL MEDIAN	79A Lauderdale Ave Fairlight	1:100	7/12/2018	1545

## **APPENDIX 1**

### **CLAUSE 4.6 TO CLAUSE 4.3 OF MANLY LEP 2013 EXCEPTIONS TO DEVELOPMENT STANDARDS – HEIGHT VARIATION**

Alterations and additions to the existing building and use as a dual occupancy with strata subdivision

79A LAUDERDALE AVENUE, FAIRLIGHT

PREPARED BY  
ABC PLANNING PTY LTD

APRIL 2019

### **MANLY LEP 2013 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS**

This Clause 4.6 submission has been prepared to accompany the development application for the alterations and additions to the existing building and use as a dual occupancy with strata subdivision at 79a Lauderdale Avenue, Fairlight.

Clause 4.6 of the Manly LEP 2013 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Initial Action Pty Ltd v Woollahra Council* [2017] NSWLEC 1734.

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

### Development Standard to be Varied

The proposal seeks a variation to the development standard contained within clause 4.3 of the *Manly LEP 2013* - maximum height of 8.5m, demonstrated on the LEP map in Figure 1 below.

The proposed maximum height of 10.2m represents a variation of 1.7m from the numerical height standard in the LEP. Such height has been calculated from the existing ground level of RL24.54 to the height of RL34.78.

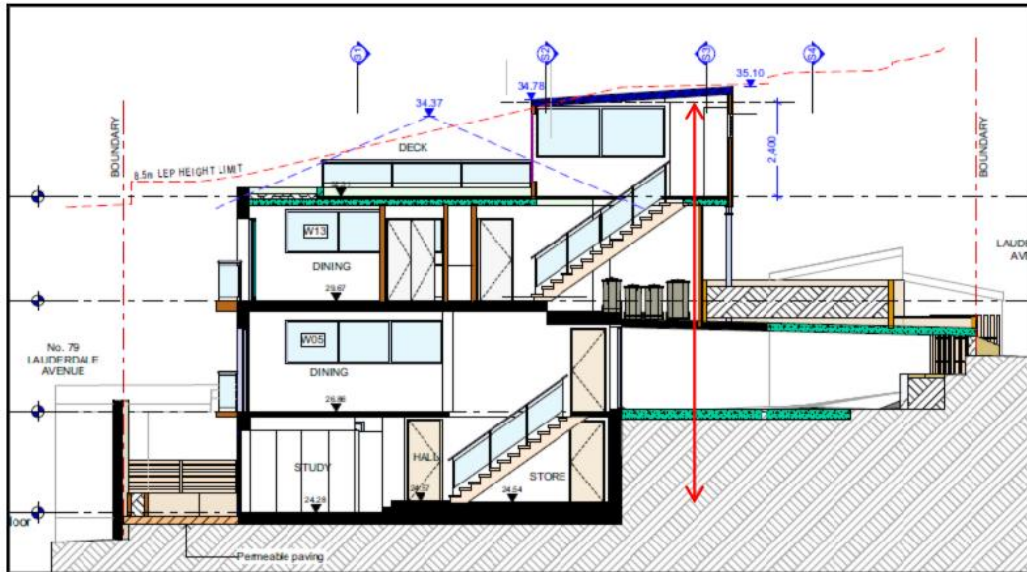


Figure 3: Section 1 excerpt which shows the maximum height variation to be 1.7m above the 8.5m height limit (i.e. a maximum height of 10.2m). The diagram also shows that the majority of the addition is below the height limit and that the variation is generated by the already excavated nature of the lowest level.



**Figure 4: LEP Height Map**



### Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

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

**Assessment:** It is considered that strict compliance with the development standard for height on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- On the eastern and western sides of the site, the removal of the roof form results in the existing height being reduced by the proposal. Such height reduction is considered to achieve a modest upper level addition which reduces the visual bulk and view impacts (and increases views) from certain apartments and dwellings surrounding the site. Such increase in views (as viewed from the lower level of 72 Lauderdale Avenue, is demonstrated below In Figure 5:



Figure 5: View analysis

- The section below shows the lowered roof height which is achieved by removing the pitched roof form from the western and eastern sides of the built form. Such improvements are evident from the view analysis which, in my opinion, demonstrates that the views gained are greater than views which are affected (which is now negligible if at all) by the slight increase above the existing ridge height.
- The increase in height from the existing building represents a minor increase from the existing building (410mm) whilst the limited form of the addition on the upper level provides for a modest height and bulk increase when compared with the existing roof form. The minor extent of height increase provides for a 2-storey built form as viewed from the public domain along Lauderdale Avenue which is consistent with the scale of development anticipated by the 8.5m height control.
- It is acknowledged that the overall height of the building will be visible from the driveway on the western side of the site, however, such vantage point is limited to a minor portion of the public domain, being in front of the 3-metre wide driveway. The extent of built form has been diminished by the reduction in bulk and scale on the western side.
- It is also noted that a significant proportion of the built form/height is concealed from the public domain being sited below the built form as viewed from the street frontage.
- The proposed height increase provides for enhanced amenity to the upper level unit as it converts the roof form to a habitable space which offers an extensive outlook and views, thereby representing a more sustainable use of the roof space.
- The height is associated with a compact upper level (5.2m x 5.9 = 30.68sqm).
- The proposed height is also modest when compared with the height of buildings located on the opposite side of Lauderdale Avenue. The northern side of Lauderdale Avenue includes 3-4-storey residential flat buildings and 3-storey dwelling houses sited atop a sandstone podium. The proposed height is also compatible with the height and scale of other dwellings located on the southern/same side of Lauderdale Avenue. The proposed height (2-storeys above the footpath level) will thereby sit comfortably in its context. It is also noted that the proposed height would not appear excessive from other dwellings to the east, west or south as their primary aspect is to the south towards the harbour views and not towards the subject built form.



**Figure 6: The dwellings on the high (left) side Lauderdale Avenue consist of 3-4 storey residential flat buildings and substantial dwelling houses (3-storeys) which are elevated and more visually prominent when compared with the built forms on the lower southern (right) side of Lauderdale Avenue.**



**Figure 7: The compact nature of the upper level and minor increase in height when compared with that existing will be compatible with the scale of development evident above the public domain along the southern side of Lauderdale Avenue**





**Figure 8: Photo of the subject and adjoining site to the east which demonstrates that the limited extent of the additional built form beyond that existing, combined with additional landscaping in the front setback would sit comfortably in the streetscape.**



**Figure 9: Flat buildings to the west which are evident from the public domain. It is acknowledged that these built forms are set further back than that proposed, however, they are considered to be more evident due to the overall height, bulk and scale**



- The proposed height is associated with significant improvements to the setting of the property due to replacement of the unsightly carport structure with a more integrated landscape/car parking solution. The proposed height is thereby associated with a positive visual impact for the property.
- Absence of environmental and amenity impacts also justifies the proposed height variation:
  - The proposed height will not be responsible for any adverse or unreasonable shadow impacts to any residential neighbour, noting the similarity of the proposed height, bulk and scale with the existing built form. Shadows will primarily fall over the garage and roof of the neighbouring dwellings to the south, noting that their primary aspect and openings is to the south towards harbour views. Such assessment is consistent with Council's assessment in its report dated 8 September 2017:  
*"The proposed top floor is setback from the lower floor and as a result has no unreasonable impact in regards to solar access. The physical separation that the driveway to the west provides and the lack of significant impact to any living room windows to 77 Lauderdale Avenue allows for sufficient provision of sunlight for neighbouring dwellings."*
  - The proposed height is not responsible for any adverse or unreasonable privacy impacts, noting the recessed nature of the upper level from the rear and side. The passive nature of the upper level and its increased setback from the southern neighbours when compared with the living room windows below confirm that the additional openings on the upper level are not unreasonable. It is also noted that the views to the south are out and over the buildings to the south and that there is also a substantial degree of mutual overlooking due to the mutual desire to achieve harbour views. Overlooking has also been minimised to limiting the deck to be on the southern side of the new bedroom with no protrusion to the west of the built form.
  - The proposed height is not considered to be responsible for any unreasonable view impacts to the dwelling houses and residential apartments along the northern side of Lauderdale Avenue. View impacts are considered to be of a negligible nature with the majority of views being preserved whilst in some instances improved. The latest version of plans is considered to provide additional views beyond that which exist which is an exceptional outcome. Direct panoramic views from the living rooms and balconies of the properties in the residential flat buildings at 76 and 78 Lauderdale Avenue are considered to be maintained, noting that only angled views are affected. View impacts are limited to a minor proportion (less than 5%) of the overall views which are available. The views from the primary living and balcony area from the dwelling opposite at 72 Lauderdale are maintained with no impact to the secondary lower ground floor area. Views are in fact enhanced by the proposed side setbacks/deletion of part of the existing roof form. The proposal is thereby considered to be in accordance with view sharing principles.
  - Inspection of the potentially affected apartments was conducted on 29 November 2018 and the following assessment is provided:
  - Unit 3- 78 Lauderdale- extensive panoramic views looking directly south to harbour views are maintained from living room, balcony and bedroom areas (standing and sitting). Only angled/diagonal views to the south-east are

affected but are compensated by the improvement of water view which is in the foreground. The sliding forward of the upper level and associated reduction in height is now likely to retain the view to north head, noting that such view is not in the direct outlook from the primary living and balcony areas. No iconic views are affected, noting that land-water interface views are maintained (see view analysis CDH01).

- Unit 4-78 Lauderdale - access to this unit was not available in November 2018. Nevertheless, reference to the previous view analysis from June 2018 demonstrates that there would be some view improvement through the removal of the roof form on the western side. In my opinion, the increase in height on the eastern side would not affect any water views whilst there would be view improvement on the western side.
- Unit 1-76 Lauderdale - as above.
- 72 Lauderdale – 3-level residence immediately to the north of the subject site. The dwelling comprises (approved TV room- utilised as a secondary dwelling) at ground floor, 1<sup>st</sup> floor living and balcony areas and 2<sup>nd</sup> floor bedroom and balcony. It was noted that the site inspection that the upper level bedroom also contained a large lounge whereby unaffected views are achieved. Views from the primary living area internal ground (middle level) floor and balcony accessed from the living area which includes outdoor seating are maintained to the harbour including land-water interface either side of the proposed built form. There will be a view gain from the proposal which confirms the reasonable nature of the proposal.

Given the latest amendments which virtually remove all impact and that views are improved, the following comments in Council's assessment report are considered to highlight the reasonable nature of the amended proposal- under Part 3.4.3 Maintenance of Views assessment in the report dated 8 September, 2017. Council considered the view impacts to be minor and included the following conclusion:

*"The proposed development is non-compliant with building height under the Manly LEP 2013. However, as a result of the impact on views being minor the non-compliance is reasonable. In addition the land-water interface being largely retained and extensive water views being maintained, a complying proposal would have no substantial improvement in the impact of views. Additionally, the design provides a situation in which extensive views can be obtained reasonably from both the proposed development and all neighbouring dwellings. As a result, both the impact on views and the provision of views sharing is reasonable"*

- Council's assessment report, dated 8 September 2018, also supported the proposed height, on the following basis:

*"Compliance with the development standard for height is unreasonable in this circumstance due to the lack of unreasonable impact to surrounding development and the reasonable visual impact that comes as a result of the alterations and additions. The topographical nature of the site, narrow allotment and physical separation provided by the battle-axe driveway to the west contribute minimising the impact of the proposed bulk. The lack of unreasonable impact along with the appropriate outcome in development provides sufficient planning grounds to justify contravening the development standard."*

- In my opinion, the proposal has virtually removed all view impact (and in some instances provided for increased views) thereby satisfying the Planning Principle for View Sharing- Tenacity Consulting v Warringah SC.
- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Consistency with the objectives of the LEP height standard and zoning in the LEP	
4.3 Height Objectives	Assessment
4.3(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,	<p><b>Complies</b> - The recessed and compact nature of the upper level addition provides for a reasonable built form which is compatible with the scale of development along the southern side of Lauderdale Avenue which includes developments of a similar height, bulk and scale.</p> <p>It is noted that the built form of the upper level sits forward of the existing building, however, given its limited footprint, virtually compliant height, compliant side setbacks which are beyond that of the existing building and increased landscaping in the front setback, the proposed height is considered to sit comfortably in the streetscape. The lightweight materials and finishes combined with the compact form are considered to achieve a satisfactory streetscape outcome. The provision of 4.5m-7m front setback for the upper level component, along with extensive (increased from existing) landscaping within the front setback and removal of the existing car port, combine to achieve a suitable streetscape outcome.</p> <p>It is also noted that there are numerous garages built to the boundary and other car ports and dwellings which are more prominent when viewed from Lauderdale Avenue. On this basis, the proposed streetscape character is considered to be contextually compatible.</p> <p>The objectives takes topography into account and it is noted that Council's assessment also concurs that the proposed height and building form is consistent with the topographic landscape, prevailing height and desired future character, in particular, the slope of the site along with the prevailing building height of development to the east provides a situation in which the proposed building would achieve the characteristics desirable for the future streetscape.</p>
4.3(b) to control the bulk and scale of buildings,	<p><b>Complies</b> – The proposed modest nature of the addition along with the recessed nature of the upper level from the western side achieves a reasonable bulk and scale which is compatible with the streetscape.</p> <p>The lightweight/clad treatment of the upper level as it will present to Lauderdale Avenue, along with the reduction in bulk from the existing roof form ensures that the bulk and scale will sit comfortably in the streetscape. .</p>
4.3(c) to minimise disruption to the following: (i) views to nearby residential development from public spaces (including the harbour and foreshores), (ii) views from nearby residential development to public spaces (including the	<p><b>Complies</b> – The height does not unreasonably impinge upon view to nearby residential development from any public space including footpaths along both sides of Lauderdale Avenue, public stairways and footpath to the north along Rosedale and Wilyama Avenues.</p> <p>The proposed height also maintains views to public spaces from nearby residential development due to the compact nature of the built form and substantial separation from surrounding</p>



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

residential development. North Harbour Reserve and Wellings Reserve as well as North Harbour will remain in view of surrounding residential properties. The proposal does not affect views between public spaces, thereby confirming that the proposed height satisfies this objective. It is also reiterated that there will be a degree of view improvement from certain vantage points.

Inspection from Wellings Reserve opposite the waterway to the south confirmed that the proposal would not generate any adverse public view impacts, as the built form (indicated by red arrow) will appear in the distance against the backdrop of taller buildings higher up the hillside to the north of the site. The latest plan sites the built form away from the south as viewed from the Reserve which thereby diminishes its perception.



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

**Complies** – The proposed height variation does not reduce solar access to any public space. Furthermore, the proposed height does not unreasonably reduce solar access to private open space and habitable rooms of adjacent dwellings, noting that the majority of primary openings are oriented south towards the harbour views. The recessed nature of the addition from the sides and rear minimises overshadowing impacts as most shadows will fall over the roof of the existing building.

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

**Not Applicable** – The subject site is not located in a recreation or environmental protection zone.



Statement of Environmental Effects

79a Lauderdale Avenue, Fairlight

land uses.	
<b>Consistency with the objectives of the R1 General Residential zone</b>	
<b>Objectives</b>	<b>Assessment</b>
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community.</li> <li>To provide for a variety of housing types and densities.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul>	<p><b>Complies</b> - The proposed height does not generate any inconsistency with the objectives of the R1 General Residential zone as it enables the provision of 2 high quality dwellings which represent a significant improvement from the amenity of the existing 3 apartments.</p> <p>The design allows for 2 x 2 storey dwellings which is appropriate for the site as it links the lower level with the ground level for the lower dwelling whilst the additional area in place of the roof form allows for a dwelling over 2 levels between the 1<sup>st</sup> floor and new part 2<sup>nd</sup> floor.</p> <p>Both dwellings will have access to 2 parking spaces, solar access, ventilation, private open space and views, unlike the existing 3 units on the site.</p>

The above assessment demonstrates that the development standard is unreasonable and unnecessary in the circumstances of this application. The height variation is associated with particular site circumstances noting the steep slope of the site, the lack of perception of the overall building height, the absence of environmental and amenity impacts, compact nature of the upper level associated with the height variation and the minimal height increase when compared with the existing building height. The improved amenity for the subject building associated with the additional height by converting a roof form to a bedroom/deck area with internal access to the level below is also confirmed which highlights the positive aspects of the variation in this instance. Furthermore, the retention of views and in some instances view improvements highlights the reasonable nature of the proposed height.

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

**Assessment:** It is considered that there are sufficient environmental planning grounds to justify varying the building height development standard.

The above assessment provides a comprehensive analysis which demonstrates that there are sufficient environmental grounds given:

- Compatible streetscape outcome with a limited/reduced extent of built form on the upper level as the removal of the roof reduces the visible bulk on the western side whilst the proposed form represents a reasonable increase from the existing roof form on the eastern side.
- Absence of shadow impacts
- No unreasonable overlooking impacts
- No unreasonable view impacts, noting that some views are improved by the proposal

The above assessment confirms that the proposed height will not be responsible for any unreasonable environmental impacts to surrounding properties in relation to overshadowing, privacy and view loss. Such assessment is consistent with Council's original assessment of the proposed height variation.

**Other Matters for Consideration**

*4(a)(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*

**Assessment:** The above assessment demonstrates that the proposed height satisfies the objectives of the height standard and the R1 General Residential zone.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the height variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the height control.

*(5) In deciding whether to grant concurrence, the Director-General must consider:  
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning*

**Assessment:** The proposed height variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The proposed height allows for achievement of a compatible building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the area. The proposed height is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional densities near transport and established services.

*(b) the public benefit of maintaining the development standard*

**Assessment:** There is no public benefit in maintaining the height standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

*(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

**Assessment:** There are not considered to be any additional matters to consider beyond those discussed above

**Conclusion**

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 79a Lauderdale Avenue, Fairlight and is requested to be looked upon favourably by the consent authority.

## APPENDIX 2

### CLAUSE 4.6 TO CLAUSE 4.4 OF MANLY LEP 2013 EXCEPTIONS TO DEVELOPMENT STANDARDS – **FSR VARIATION**

Alterations and additions to the existing building and use as a dual occupancy with strata  
subdivision

79A LAUDERDALE AVENUE, FAIRLIGHT

PREPARED BY  
ABC PLANNING PTY LTD

APRIL 2019

### **MANLY LEP 2013 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS**

This Clause 4.6 submission has been prepared to accompany the development application for the alterations and additions to the existing building and use as a dual occupancy with strata subdivision at 79a Lauderdale Avenue, Fairlight.

Clause 4.6 of the Manly LEP 2013 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Initial Action Pty Ltd v Woollahra Council* [2017] NSWLEC 1734.

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

#### **Development Standard to be Varied**

The proposal seeks a variation to the development standard contained within clause 4.4 of the *Manly LEP 2013* - maximum FSR of 0.5:1, demonstrated on the LEP map in Figure 3 below.

The proposed FSR of 1:1 represents a variation of 0.5:1 from the numerical FSR standard in the LEP, however, it is noted that the FSR represents an increase of 30.6sqm above that



existing, as shown on Plan DA12H, dated 18 July 2018. The extent of the existing breach is noted, however, it is noted that the additional FSR is not significant.

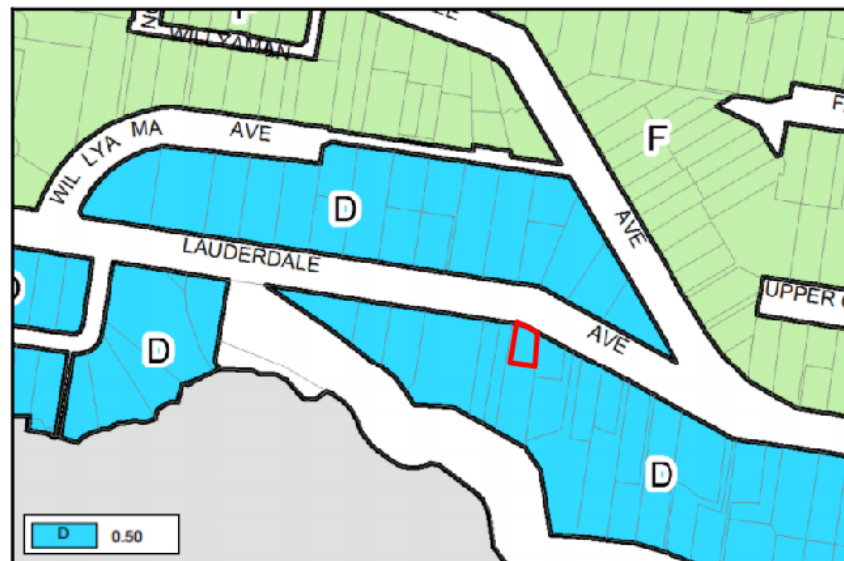


Figure 10: FSR Map

#### Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

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

**Assessment:** It is considered that strict compliance with the development standard for FSR on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- The increase in FSR from the existing building represents a minor increase from the existing building whilst the recessed form of the addition on the upper level provides for a modest height and bulk increase when compared with the existing roof form. The minor extent of height, bulk and scale beyond that existing provides for a 2-storey built form as viewed from the public domain along Lauderdale Avenue which is consistent with the scale of development anticipated by the 8.5m height control as well as being compatible with the bulk and scale of surrounding dwellings.
- The compact nature of the overall building, combined with the recessed form of the addition, ensure that the bulk and scale is of a modest nature. A significant proportion of the built form is concealed from the public domain being sited below the built form as viewed from the street frontage. The reduction of built form on the western side through replacement of the pitched roof form with a flat roof form is responsible for achieving a compatible streetscape outcome whilst, in some instances, achieving view improvements. The built form is now set in to be compliant with the side setback requirements, being 3m and is recessed from the existing built form from the sides

**and rear.** It is noted that the built form of the upper level sits forward of the existing building, however, given its limited footprint, virtually compliant height, compliant side setbacks which are beyond that of the existing building and increased landscaping in the front setback, the proposed height is considered to sit comfortably in the streetscape. The lightweight materials and finishes combined with the compact form are considered to achieve a satisfactory streetscape outcome. The provision of 4.5m-6.2m front setback for the upper level component, along with extensive (increased from existing) landscaping within the front setback and removal of the existing car port, combine to achieve a suitable streetscape outcome.

- It is also noted that there are numerous garages built to the boundary and other car ports and dwellings which are more prominent when viewed from Lauderdale Avenue. On this basis, the proposed streetscape character is considered to be contextually compatible.
- The proposed FSR increase provides for enhanced amenity to the upper level unit as it converts the roof form to a habitable space which offers an extensive outlook and views, thereby representing a more sustainable use of the roof space.
- The FSR is associated with a compact upper level.
- The combination of the limited building form above the public domain and the landscaped front setback suitably mitigate the perception of bulk and scale when viewed from the public domain and from the properties along the northern side of Lauderdale Avenue.
- The proposed bulk and scale is also modest when compared with the bulk and scale of buildings located on the opposite side of Lauderdale Avenue. The northern side of Lauderdale Avenue includes substantially scaled 3-4-storey residential flat buildings and 3-storey dwelling houses sited atop a sandstone podium. The proposed height, bulk and scale is also compatible with the height and scale of other dwellings located on the southern/same side of Lauderdale Avenue. The proposed built form (2-storeys above the footpath level) will thereby sit comfortably in its context. It is also noted that the proposed built form would not appear excessive from other dwellings to the east, west or south as their primary aspect is to the south towards the harbour views and not towards the subject built form.



**Figure 11: The dwellings on the high (left) side Lauderdale Avenue consist of 3-4 storey residential flat buildings and substantial dwelling houses (3-storeys) which are elevated and more visually prominent when compared with the built forms on the lower southern (right) side of Lauderdale Avenue.**



**Figure 12: The compact nature of the upper level and minor increase in height when compared with that existing will be compatible with the scale of development evident above the public domain along the southern side of Lauderdale Avenue**





**Figure 13: Flat buildings to the west which are evident from the public domain. It is acknowledged that these built forms are set further back than that proposed, however, they are considered to be more evident due to the overall height, bulk and scale**

- It is also noted that the proposed bulk and scale would not appear excessive from other dwellings to the east, west or south as their primary aspect is to the south towards the harbour views and not towards the subject built form.
- Absence of environmental and amenity impacts also justifies the proposed FSR variation.
  - The proposed FSR will not be responsible for any adverse or unreasonable shadow impacts to any residential neighbour, noting the similarity of the proposed bulk and scale with the existing built form. Shadows will primarily fall over the garage and roof of the neighbouring dwellings to the south, noting that their primary aspect and openings is to the south towards harbour views. Such assessment is consistent with Council's assessment in its report dated 8 September 2017:  
*"The proposed top floor is setback from the lower floor and as a result has no unreasonable impact in regards to solar access. The physical separation that the driveway to the west provides and the lack of significant impact to any living room windows to 77 Lauderdale Avenue allows for sufficient provision of sunlight for neighbouring dwellings."*
  - The proposed FSR is not responsible for any adverse or unreasonable privacy impacts, noting the recessed nature of the upper level which converts the roof space to a habitable bedroom/deck area in a compact part additional level. The passive nature of the upper level and its increased setback from the southern neighbours when compared with the living room windows below confirm that the additional openings on the upper level are not unreasonable. It is also noted that the views to the south are out and over the buildings to



the south and that there is also a substantial degree of mutual overlooking due to the mutual desire to achieve harbour views.

- The proposed FSR/built form is not considered to be responsible for any unreasonable view impacts to the dwelling houses and residential apartments along the northern side of Lauderdale Avenue. View impacts are considered to be of a minor nature with the majority of views being preserved and in some instances, increased. This represents an exceptional outcome.
- Inspection of the potentially affected apartments was conducted on 29 November 2018 and the following assessment is provided:
- Unit 3- 78 Lauderdale- extensive panoramic views looking directly south to harbour views are maintained from living room, balcony and bedroom areas (standing and sitting). Only angled/diagonal views to the south-east are affected but are compensated by the improvement of water view which is in the foreground. The sliding forward of the upper level and associated reduction in height is now likely to retain the view to north head, noting that such view is not in the direct outlook from the primary living and balcony areas. No iconic views are affected, noting that land-water interface views are maintained (see view analysis CDH01).
- Unit 4-78 Lauderdale - access to this unit was not available in November 2018. Nevertheless, reference to the previous view analysis from June 2018 demonstrates that there would be some view improvement through the removal of the roof form on the western side. In my opinion, the increase in height on the eastern side would not affect any water views whilst there would be view improvement on the western side.
- Unit 1-76 Lauderdale - as above.
- 72 Lauderdale – 3-level residence immediately to the north of the subject site. The dwelling comprises (approved TV room- utilised as a secondary dwelling) at ground floor, 1<sup>st</sup> floor living and balcony areas and 2<sup>nd</sup> floor bedroom and balcony. It was noted that the site inspection that the upper level bedroom also contained a large lounge whereby unaffected views are achieved. Views from the primary living area internal ground (middle level) floor and balcony accessed from the living area which includes outdoor seating are maintained to the harbour including land-water interface either side of the proposed built form. There will be a view gain from the proposal which confirms the reasonable nature of the proposal, as shown below:



PHOTO WITH EXISTING MODEL



PHOTO WITH PROPOSED MODEL

- Council's assessment report, dated 8 September 2018, also supported the proposed FSR increase, on the following basis:  
*"Compliance with the development standard for floor space is unreasonable in this circumstance due to the lack of unreasonable impact to surrounding development and the reasonable visual impact that comes as a result of the alterations and additions. The topographical nature of the site, narrow allotment and physical separation provided by the battle-axe driveway to the west contribute minimising the impact of the proposed bulk. The lack of unreasonable impact along with the appropriate outcome in development provides sufficient planning grounds to justify contravening the development standard."*

- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Consistency with the objectives of the LEP FSR standard and zoning in the LEP	
4.4 FSR Objectives	Assessment
4.4(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character	<p><b>Complies</b> - The proposed bulk and scale is of a similar nature to the existing built form on the site which ensures that the proposed FSR is consistent with the existing streetscape character. The proposal is also consistent with the desired future character given that the presentation of 2-storeys to the street is consistent with the scale of development anticipated by the 8.5m height limit.</p> <p>A substantial portion of the built form/FSR is located below street level and to the rear of the site which limits the perception of the overall built form which ensures that the extent of variation would be indiscernible. Such assessment is also consistent with Council's assessment.</p>
4.4(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features	<p><b>Complies</b> - It is reiterated that the proposal reduces the number of dwellings from 3 down to 2. The proposed FSR provides for 2 high quality dwellings which will enjoy solar access, daylight, ventilation private open space, views and 2 car spaces each.</p> <p>The high internal amenity and lack of external amenity impacts demonstrates that the density is appropriate for the site area. Furthermore, the proposed building bulk does not obscure any important landscape and townscape features.</p>
4.4(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area	<p><b>Complies</b> - The modest nature of the additional floor space (and overall built form and FSR) through the recessed form of the addition from the sides and rear limits the extent of built form to a reasonable extent and in some instances, reduces the visual bulk. The marginal increase in height and bulk maintains an appropriate visual relationship between the new development and the existing character of the area. The scale of the built form is compatible with other dwellings along the southern side of Lauderdale Avenue and subservient to the elevated larger dwellings on the high/northern side of the street. The proposed FSR does not affect the landscape of the area. It is noted that the latest scheme introduces a significant extent of landscaping which will soften the visual appearance of the building and will represent a significant improvement from the existing condition which is dominated by an unsightly car port structure.</p>
4.4(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,	<p><b>Complies</b> - The proposed FSR will not be responsible for any adverse or unreasonable shadow impacts to any residential neighbour, noting the similarity of the proposed height, bulk and scale with the existing built form. Shadows will primarily fall over the garage and roof of the neighbouring dwellings to the south, noting that their primary aspect and openings is to the south towards harbour views. Such assessment is consistent with Council's assessment in its report dated 8 September 2017:</p> <p><i>"The proposed top floor is setback from the lower floor and as a result has no unreasonable impact in regards to solar access. The physical separation that the driveway to the west provides and the lack of significant impact to any living room windows to 77 Lauderdale Avenue allows for sufficient provision of sunlight for neighbouring dwellings."</i></p> <p>The proposed FSR is not responsible for any adverse or unreasonable privacy impacts, noting the recessed nature of the upper level which converts the roof space to a habitable bedroom/deck area in a part additional level. The passive nature of</p>

	<p>the upper level and its increased setback from the southern neighbours when compared with the living room windows below confirm that the additional openings on the upper level are not unreasonable. It is also noted that the views to the south are out and over the buildings to the south and that there is also a substantial degree of mutual overlooking due to the mutual desire to achieve harbour views.</p> <p>The proposed FSR/bulk and scale is not considered to be responsible for any unreasonable view impacts to the dwelling houses and residential apartments along the northern side of Lauderdale Avenue. View impacts (if any) are considered to be of a negligible nature with the majority of views being preserved and in some instances improved,</p> <p>It is therefore considered that the absence of environmental and amenity impacts, as demonstrated above, justifies the proposed FSR variation.</p>
4.4(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.	<b>Not Applicable</b> – The subject site is not located in a business zone.
<b>Consistency with the objectives of the R1 General Residential zone</b>	
<b>Objectives</b>	<b>Assessment</b>
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community.</li> <li>To provide for a variety of housing types and densities.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> </ul>	<p><b>Complies</b> – The proposed FSR does not generate any inconsistency with the objectives of the R1 General Residential zone as it enables the provision of 2 high quality dwellings which represent a significant improvement from the amenity of the existing 3 apartments.</p> <p>The design allows for 2 x 2 storey dwellings which is appropriate for the site as it links the lower level with the ground level for the lower dwelling whilst the additional area in place of the roof form allows for a dwelling over 2 levels between the 1st floor and new part 2nd floor. Both dwellings will have access to 2 parking spaces, solar access, ventilation, private open space and views, unlike the existing 3 units on the site.</p>

The above assessment demonstrates that the development standard is unreasonable and unnecessary in the circumstances of this application.

The FSR variation is associated with particular site circumstances noting the steep slope of the site, the lack of perception of the overall built form, the absence of environmental and amenity impacts, compact nature of the upper level associated with the FSR beyond that which exists and the minimal numeric FSR increase when compared with the existing built form.

The improved amenity for the subject building associated with the additional floor space by converting a roof form to a bedroom/ensuite area (in a part additional level) with internal access to the level below is also confirmed which highlights the positive aspects of the variation in this instance.



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

**Assessment:** The above assessment confirms that the proposed FSR will not be responsible for any unreasonable environmental impacts to surrounding properties in relation to overshadowing, privacy and view loss.

The above assessment provides a comprehensive analysis which demonstrates that there are sufficient environmental grounds given:

- Compatible streetscape outcome with a limited/reduced extent of built form on the upper level as the removal of the roof reduces the visible bulk on the western and eastern sides.
- Absence of shadow impacts
- No unreasonable overlooking impacts
- No unreasonable view impacts, noting that some views are improved by the proposal

Such assessment is consistent with Council's assessment of the proposed FSR variation from the original DA assessment.

#### **Other Matters for Consideration**

*4(a)(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*

**Assessment:** The above assessment demonstrates that the proposed FSR satisfies the objectives of the FSR standard and the R1 General Residential zone.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the FSR variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the FSR control.

*(5) In deciding whether to grant concurrence, the Director-General must consider:  
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning*

**Assessment:** The proposed FSR variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The proposed FSR allows for achievement of a compatible building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the area. The proposed FSR is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional densities near transport and established services.

**(b) the public benefit of maintaining the development standard**

**Assessment:** There is no public benefit in maintaining the FSR standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

**(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.**

**Assessment:** There are not considered to be any additional matters to consider beyond those discussed above

**Conclusion**

The above assessment demonstrates that the proposed FSR variation is justified on numerous grounds and that it is thereby appropriate to apply a degree of flexibility to the FSR standard.

The proposed FSR does not generate any adverse or unreasonable streetscape or amenity (internal or external) impacts and accords with the zone objectives and does not generate any inconsistency with the objectives of the FSR standard.

It is confirmed that there are circumstances particular to this application which allow for a flexible approach whilst there would be no public benefit in maintaining the FSR development standard in this instance.

ITEM 3.5	DA2019/0730 - 71 QUEENSCLIFF ROAD, QUEENSCLIFF - DEMOLITION WORKS AND CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING
REPORTING OFFICER	RODNEY PIGGOTT
TRIM FILE REF	2019/664584
ATTACHMENTS	1 <a href="#">↓</a> Assessment Report 2 <a href="#">↓</a> Site Plan and Elevations

## PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is the subject of 10 or more unique submissions by way of objection and is development to which *State Environmental Planning Policy No 65 – Design Quality of Residential. Apartment Development* applies and is 4 or more storeys in height.

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## RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2019/0730 for demolition works and construction of a Residential Flat Building at Lot 41 DP 300057 & Lot 4 DP 345419, 71 Queenscliff Road, Queenscliff for the reasons set out in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/0730
<b>Responsible Officer:</b>	Benjamin Price
<b>Land to be developed (Address):</b>	Lot 4 DP 345419, 71 A Queenscliff Road QUEENSCLIFF NSW 2096 Lot 41 DP 300057, 71 Queenscliff Road QUEENSCLIFF NSW 2096
<b>Proposed Development:</b>	Demolition Works, construction of a residential flat building and lot consolidation.
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	Yes
<b>Owner:</b>	Neridah Jeannie Wearne
<b>Applicant:</b>	Queenscliff Developments Pty Ltd
<b>Application Lodged:</b>	09/07/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New multi unit
<b>Notified:</b>	27/07/2019 to 10/08/2019
<b>Advertised:</b>	27/07/2019
<b>Submissions Received:</b>	37
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 8%
<b>Recommendation:</b>	Refusal
<b>Estimated Cost of Works:</b>	\$ 6,282,000.00

The application seeks consent for the demolition of the existing buildings and construction of a residential flat building containing 15 units with basement parking. Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is not suitable and appropriate development for the subject site. The application is reported to the NBLPP as it relates to a SEPP65 development and has received 37 submissions.

The development includes an 8% variation to the height of buildings development standard. The applicants justification of the variation to the development standard has been found to be unacceptable and does not demonstrate that the compliance with the development standard is unreasonable or



unnecessary and there are sufficient environmental planning grounds to justify the variation.

In addition to the variation of the building height development standard the application proposed significant variations to the building envelope, number of storeys, side setback and landscaped open space controls of the Warringah DCP 2011. The development has also been found to be inconsistent with State Environmental Planning Policy 65 Design Quality of Residential Apartment Development and the associated Apartment Design Guide. These variations have all been assessed and found the development to result in unreasonable impacts on the amenity of the adjoining properties and the existing and desired character of the area.

The application was advertised to the surrounding and nearby residents. In response 37 submissions were received. The main issues raised by the submissions were as follows :

- Bulk and scale impact on streetscape and character
- Amenity impacts
- Traffic Impacts

These issues have been addressed below and are considered to warrant the refusal of the application.

The application has been referred to Councils Waste, Landscape, Development Engineering and Traffic Engineering, Urban Design, Water Management and Coastal officers. Councils Waste officer and Development Engineer raised issues that have been included as reasons for refusal.

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

## PROPOSED DEVELOPMENT IN DETAIL

The development application proposes the demolition of the existing buildings, excavation for two levels of basement car parking and the construction of a four storey residential flat building containing 15 units at 71 and 71A Queenscliff Road, Queenscliff.

The two basement parking levels of the development includes:

- 27 x car parking spaces and one small parking space;
- 1 x car wash bay;
- 16 x bicycle parking;
- 3 x visitor parking spaces;
- Access stairs and lift;
- Services and bulky storage areas;

The above levels of the development include:

- 15 units with attached courtyards/balconies made up of:
- 6 x 3 bedroom, 4 x 2 bedroom, 1 x 1 bedroom dwellings;
- 1 x 3 bedroom, 2 x 2 bedroom, 1 x 1 bedroom liveable dwellings;
- Communal Cellar and Storage.

The development also includes:

- Waste bin storage area;
- retaining walls;
- new driveway; and
- associated landscaping works,
- Lot consolidation

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Development Control Plan - 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 - C3 Parking Facilities  
Warringah Development Control Plan - C4 Stormwater  
Warringah Development Control Plan - C9 Waste Management  
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

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 4 DP 345419 , 71 A Queenscliff Road QUEENSCLIFF NSW 2096 Lot 41 DP 300057 , 71 Queenscliff Road QUEENSCLIFF NSW 2096
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**Detailed Site Description:**

The site consists of two allotments and is legally described as Lot 41 in DP 300057 and Lot 4 in DP 345419. The site is located on the north eastern side of Queenscliff Road. The site has an approximate total area of 1,259.8m<sup>2</sup> and is generally rectangular in shape. The site currently accommodates two dwellings. Lot 41 includes a detached garage swimming pool, decks and an outbuilding associated with the dwelling. Lot 4 includes a single dwelling with parking below. Vehicle access for both properties is currently gained from Queenscliff Road.

The site is zoned R3 Medium Density Residential under the Warringah Local Environmental Plan 2011.

**Detailed Description of Adjoining/Surrounding Development**

Development surrounding the site consists of three storey residential flat buildings to the north-west. The two properties to the east are developed with a one storey dwelling house and a three storey dwelling house. The opposite side of Queenscliff Road are properties zoned R2 Low Density Residential which are generally developed with one and two storey dwelling houses.

Map:



**SITE HISTORY**

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

PLM2019/0042 - A pre-lodgement meeting was held on the 26 March 2019 for demolition works and construction of a residential flat building - It was advised in the meeting that the application could not be



supported for the following reasons:

- Excessive building height
- Insufficient side setbacks
- Non-compliance with building envelope
- Insufficient design for privacy
- Inappropriate scale 4th storey is unsupported

It was also advised that council had concerns with the solar access and amenity of the subterranean units, the applicant was to provide greater landscape area (40% proposed), and that a comprehensive view loss analysis was to be submitted with the application.

The application has not adequately addressed the above advice.

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

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters may be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent.</p>



Section 4.15 Matters for Consideration'	Comments
	<p>Clauses 93 and/or 94 of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for 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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the Warringah LEP 2011 and the Warringah DCP 2011 and will result in a development that is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and within the locality. In this regard, the development, as proposed, is not considered to be 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 37 submission/s from:

Name:	Address:
Rebecca Stewart	3 / 59 Queenscliff Road QUEENSCLIFF NSW 2096
Nicole Meehan	3 / 59 Queenscliff Road QUEENSCLIFF NSW 2096
Charlez Tidd	7 / 73 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Michael John Edwards	3 / 34 Crown Road QUEENSCLIFF NSW 2096
Mr Steven Walch	7 / 44 Crown Road QUEENSCLIFF NSW 2096
Ms Maria Marin	5/24-25 East Esplanade MANLY NSW 2095
Judy Christine Graham	1 / 61 Pavilion Street QUEENSCLIFF NSW 2096
Mrs Judy Graham	2 / 65 Queenscliff Road QUEENSCLIFF NSW 2096
Cal Joseph Arnesen	24 / 28 - 32 Crown Road QUEENSCLIFF NSW 2096
Peggy-Ann Denham	24 / 28 - 32 Crown Road QUEENSCLIFF NSW 2096
Mr Paul Anthony Cook	4 / 12 Bridge Road QUEENSCLIFF NSW 2096
Alison Wendy Astey	33 / 28 - 32 Crown Road QUEENSCLIFF NSW 2096
Mr Martin Joseph Hartcher	8 / 61 - 63 Queenscliff Road QUEENSCLIFF NSW 2096
Ms Donna Ann Lee	3 / 51 Crown Road QUEENSCLIFF NSW 2096
Claudia Francesca Cassar Dino Gatti	31 Crown Road QUEENSCLIFF NSW 2096
Mr David Ian Woodland Lisa Sian Woodland	6 / 75 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Samuel William Tilley	2 / 73 Queenscliff Road QUEENSCLIFF NSW 2096
Leonard James Delves	9 / 73 Queenscliff Road QUEENSCLIFF NSW 2096
Michelle Anne Winston	3/14 Dewhurst Street WALGETT NSW 2832
Mrs Verena Bridgette Rawling	11 / 63 - 67 Pavilion Street QUEENSCLIFF NSW 2096
Paul Williams	7 / 63 - 67 Pavilion Street QUEENSCLIFF NSW 2096
Mr Paul James Montague	1 / 77 Queenscliff Road QUEENSCLIFF NSW 2096
John Ketelbey	20 / 44 Crown Road QUEENSCLIFF NSW 2096
Guilherme Guaragni	2 / 48 Pavilion Street QUEENSCLIFF NSW 2096
Salvatore Paul Gullifa	6 / 73 Queenscliff Road QUEENSCLIFF NSW 2096
Watermark Planning	PO Box 501 FRENCHS FOREST NSW 1640
Mr Chris Liell-Cock	94 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Henry Alexander Harding	1 / 61 Pavilion Street QUEENSCLIFF NSW 2096
Mr Desmond Michael O'Dell	69 Pavilion Street QUEENSCLIFF NSW 2096

Name:	Address:
Mr Ian Keith Jessup	8 / 77 Queenscliff Road QUEENSCLIFF NSW 2096
Mrs Velella Maria Grazia Timmony	30 / 28 - 32 Crown Road QUEENSCLIFF NSW 2096
Mrs Clare Josephine Key	35 Hill Street BALGOWLAH NSW 2093
Miss Rebecca Josephine Mangan	7 / 22 Crown Road QUEENSCLIFF NSW 2096
Mr Bret Stephen Gambrill	74 Queenscliff Road QUEENSCLIFF NSW 2096
David Peter Steindl Mrs Jennifer Jane Steindl	72 Queenscliff Road QUEENSCLIFF NSW 2096
Jonathan Paul Downie	16 / 44 Queenscliff Road QUEENSCLIFF NSW 2096
Sybilla Galvin	11 / 73 Queenscliff Road QUEENSCLIFF NSW 2096

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

- **Height and bulk;**
- **Privacy;**
- **Solar Access;**
- **View Loss;**
- **Streetscape;**
- **Street Parking/congestion;**
- **Insufficient Parking;**
- **Non-compliances with the Warringah LEP 2011 and Warringah DCP 2011;**
- **Level of Excavation;**
- **Impact on adjoining driveway;**
- **Inadequacy of accompanying reports;**
- **Excavation/Construction impacts; and**
- **Retention of pine at rear.**

The matters raised within the submissions are addressed as follows:

- **Height and Bulk**  
Comment:  
The height and bulk of the development has been assessed in detail below with regards to the controls. The development has been found to be of an unreasonable bulk and scale for the locality and has been recommended for refusal on this basis.
- **Privacy**  
Comment:  
The development has been assessed with regards to privacy below. The assessment found to the development provides insufficient privacy to 75 and 69 Queenscliff Road. The development is adequately setback from 73 Queenscliff Road and 63-67 Pavillion Street to provide privacy.
- **Solar Access**  
Comment:  
The development has been assessed with regards to solar access below. The assessment has

found that the proposal will not result in any unreasonable overshadowing of the neighbouring properties.

- **View Loss;**

Comment:

The development has been assessed below with regards to the Views planning principle established by the NSW Land and Environment Court and the objectives of D7 Views of the Warringah DCP 2011. The assessment found that the development would result in the unreasonable loss of views from Unit 7 75 Queenscliff Road. The application is also recommended for refusal due to insufficient information regarding view loss from 73 Queenscliff Road and the rear units of 75 Queenscliff Road.

- **Streetscape;**

Comment:

The development has been assessed with regards to the impact on the street below. This assessment has found that the development does not achieve a reasonable built form within the locality and will result in an unreasonable visual impact on the street. This has been included as a reason for refusal.

- **Street Parking/congestion;**

Comment:

The proposal provides compliant parking in accordance with the Warringah DCP 2011, this will ensure no significant overflow of vehicles. The application has also been assessed by Councils Traffic Engineer and found to be acceptable. The development will not result in any unreasonable impacts on street parking or congestion.

- **Insufficient Parking;**

Comment:

The proposal provides compliant parking in accordance with the Warringah DCP 2011. The parking is satisfactory.

- **Non-compliances with the Warringah LEP 2011 and Warringah DCP 2011**

Comment:

The non-compliances have been assessed below. The non-compliances have been found to be unsatisfactory and inconsistent with the relative objectives. These have been included as reasons for refusal.

- **Level of Excavation;**

Comment:

The development has been assessed with regards to clause D9 Building Bulk of the Warringah DCP 2011. This clause requires development to step with the topography and minimise excavation. The development has been found to be inconsistent with the objectives of this control and refused on this basis.

- **Impact on adjoining driveway;**

Comment:

The development is shown to be within the lot boundaries and as such should not impact on the adjoining driveway. Should the application be approved a dilapidation report would be required via condition to ensure any impacts on adjoining properties could be documented and appropriate civil action taken, if required.

- **Inadequacy of accompanying reports;**



Comment:

The reports, with the exception of the justification of non-compliances, are adequate to support the application.

- **Excavation/Construction impacts**

Comment:

Should the application be approved a dilapidation report would be required via condition to ensure any impacts on adjoining properties could be documented and appropriate civil action taken if required. Construction management can also be resolved through conditions of consent.

- **Retention of pine at rear**

Comment:

The pine at the rear is proposed for retention. This tree adds to the landscape character of the area and deemed to be adequate for retention by Councils Landscape Officer.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objections subject to conditions to ensure compliance with the Building Code of Australia (BCA). It is noted that the proposed development does not fully comply with some requirements of the Building Code of Australia however these matters may be readily determined at Construction Certificate Stage by way of a BCA Alternate Solution Design where required.
Landscape Officer	<p>The one significant tree on site (<i>Araucaria heterophylla</i> - Norfolk Island Pine) located in the rear yard is proposed for retention. The Arborist's Report submitted with the application is noted, indicating that the tree can be retained based on the proposed design.</p> <p>One <i>Dracena cinnabari</i> - Dragon Blood tree (3m high) is proposed to be transplanted into the front of the site. This is the only tree-like plant proposed for the front setback. It is considered that the provision of an additional small tree would assist in integrating the proposal into the streetscape.</p> <p>No objections subject to conditions as recommended.</p>
NECC (Coast and Catchments)	To be assessed by Riparian Lands and Creeks referral. No coastal issues.
NECC (Development Engineering)	<p><u>General background of the proposal</u></p> <p>This DA seeks development consent for the demolition of the existing dwellings and construction of a residential flat building comprising of 15 units with basement parking within 71-71a Queenscliff Road, Queenscliff. The Site is legally described as Lot 41 DP 300057 and Lot 4 DP 345419. The Site exhibits a total area of approximately 1,259 m<sup>2</sup> and has a primary frontage of 27.43 m to Queenscliff Road.</p>

Internal Referral Body	Comments
	<p>A Pre-Lodgement Meeting was held with Northern Beaches Council on 26 March 2019 with Rodney Piggott (Manager Development Assessments), Lea Lennon (Urban Designer) and Benjamin Price (Planner).</p> <p>The front setback of 6.5 m is designed to include landscaping and service provision and a 6.0 m rear setback is proposed. Deep Soil (232.8m<sup>2</sup> &amp; 18%) provision is included in the rear setback to allow planting and retention of a prominent tree. The Site is not identified as a being affected by acid sulfate soils pursuant to the WLEP2011.</p> <p>Comments from Council officers following the Pre-Lodgement Consultation are:</p> <ul style="list-style-type: none"> <li>• Car parking dimensions, maneuvering and driveway grades are addressed in the traffic and parking report by Park Transit Parking &amp; Traffic Design Consultants. A total of 31 car parking spaces including 3 visitor parking spaces are proposed in two basement levels. The width of the proposed vehicular ramp to the basement car park is 3.7 meters suitable for one-way flow and a series of signals and/or convex mirrors were suggested from the Applicant to be implemented to manage the traffic flow. The gradient of the ramp is in accordance with the Australian Standard of Off-Street Parking Facilities – AS2890.1-2004. A comments from traffic was that the ramp appears to have no visibility and that it is unclear as to the intent of the 'One Way' description is.</li> <li>• Storm-water Management Plans prepared by Martens &amp; Associates Pty Ltd comprise part of the application and they detail provision of a storm-water tank.</li> <li>• The Site is not identified as a flood controlled lot pursuant to the WLEP2011</li> <li>• The geotechnical assessment by Martens Consulting Engineers confirms no evidence of former or current large-scale slope movement (landslip) within the Site and surrounding land. Also, outline requirements for appropriate drainage measures to be provided to divert overland flows and groundwater away from excavation to Council approved discharge points. If groundwater inflow is encountered during rock excavation Martens recommend managing via sump and pump method and recommend monitoring of groundwater ingress during the initial stages of excavation. However, if high seepage inflows during excavation is encountered Martens has recommended methods to manage the groundwater.</li> </ul> <p><u>Vehicular Access:</u></p> <p>In accordance with Council's Technical Specification, the driveway crossing fronting the property shall be located to provide a minimum of 1.0 m clearance off the layback/wing edge to the lintel. The clearance from existing power pole shall be maintained to a minimum</p>

Internal Referral Body	Comments
	<p>of 1.0 m. In order to achieve this requirements the proposed driveway crossing will be less than 3.0 m wide if positioned between existing kerb inlet and power pole. Wider driveway crossing is shown on the architectural plans and for that reason necessary relocation of the existing storm-water pit must be indicated on the civil and architectural set of plans.</p> <p>Also, insufficient information has been provided with regard to the proposed profile of access driveway. The Applicant shall provide a long-section of centreline and at both edges of the proposed access driveway to the proposed carpark and demonstrate compliance with AS2890. The long-sections shall be taken from the center line of the Queenscliff Road. The driveway shall incorporate Council's Normal Standard Vehicle Crossing Profile or to be placed on the single slope (complying with relevant standards) and with implementation of 1.5 m wide new footpath. The proposed raised garden bed adjacent to driveway shall be lowered to ground level in order to achieve minimum sight lines for pedestrians safety.</p> <p><u>Stormwater Drainage:</u></p> <p>Storm-water drainage design for the development shall be amended in line with design for driveway crossing, including levels of internal driveway in relation to OSD tank roof. Further information is required in regards to design of the proposed OSD size and collection of storm-water to rainwater tank and discharge to OSD.</p> <p><u>Assessment completed on 03.10.2019</u></p> <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> <li>• Clarity of proposed vehicular access from Queenscliff Road in accordance with Council standard requirements and AS/NZS 2890.1.</li> <li>• Storm-water drainage design shall be amended and it shall be justified with supplied Drains model to Council.</li> </ul> <p>Amended proposal for design shall clearly indicate dimensions, slope/grade change (%), ground clearance line for B85 in accordance with AS/NZS 2890.</p> <p>It is recommended that the Applicant consult further with Council's Engineers regarding any future proposed design solution.</p> <ul style="list-style-type: none"> <li>• <u>Planner Comment:</u></li> </ul> <p>This has been included as a reason for refusal under C3 Parking Facilities and C4 Stormwater of the Warrinagah DCP 2011.</p>
NECC (Riparian Lands and Creeks)	This application has been assessed against:

Internal Referral Body	Comments
	<p><b>State Environment Planning Policy (Coastal Management) 2018</b> Part 2, Division 3, Clause 13 - Development on land within the</p> <p><b>Warringah Development Control Plan 2011</b> C4 - Stormwater C5 - Erosion and Sedimentation</p> <p>The application proposes to increase impervious surfaces by more than 50m<sup>2</sup> however the applicant has provided a Stormwater Management Plan which explains stormwater improvement quality devices which will reduce any pollutants or the migration of sediment offsite. The applicant must ensure adequate sediment and erosion controls are installed and maintained throughout the life of the works.</p> <p>This proposal is unlikely to cause an adverse impact on the integrity and resilience of the biophysical, hydrological and ecological environment.</p> <p>Therefore this application is recommended for approval subject to conditions.</p>
NECC (Water Management)	<p>This application has been assessed under Warringah DCP 2011 C4 – Stormwater Warringah DCP 2011 C5 – Erosion and Sedimentation Warringah Council PL 850 Water Management Policy</p> <p>The stormwater treatment solution provided in the Stormwater Drainage Plan is satisfactory. Filtration cartridges are appropriate on this property due to the shallow depth of sandstone bedrock under the site. The proposed water quality management solution meets the pollutant removal targets. Sediment and erosion controls must be installed prior to any demolition or disturbance of soil on site and maintained until work is complete and groundcover re-established.</p>
Strategic and Place Planning (Urban Design)	<p>The development application can be supported.</p> <p>The proposed development represents a well articulated response to site and context. Setting back of upper levels to the Queenscliff Road frontage assists to reduce the perceived bulk and scale.</p> <p>The articulation carried through to the side setbacks to increase the setback in the central zone of the building is supported. The encroachment into the 4.5m setback, requested by Council, by several of the bedrooms can be supported considering the modulation of the form to reduce its overall mass and bulk. Privacy screens should provide adequate privacy to these rooms.</p> <p><u>Planning Comments</u></p> <p>It is acknowledged that the building represents a high quality architectural design. However, the significant non-compliances with the relevant built form controls, development standards, and State</p>



Internal Referral Body	Comments
	<p>Environmental Planning Policy 65 (Design Quality of Residential Apartment Development) will result in a building that has unreasonable impacts on the amenity and streetscape of the locality. Given the non-compliances result in inconsistencies with the relevant objectives and principles, the built form is not supported. For further information see the detailed assessment of the non-compliances below.</p>
Traffic Engineer	<p>The proposed development is for demolition of the existing dwellings and construction of a four storey residential flat building comprising 15 units and basement car parking accommodating 31 parking spaces and car wash bay and 16 bicycle parking spaces.</p> <p><u>Traffic impact:</u></p> <p>In accordance to the RMS guide to traffic generating developments, the proposed development is expected to generate about 9 vehicle trips per hour during weekday peak hour, which considered to have minimal impact on the road network.</p> <p><u>Parking Provision:</u></p> <p>The proposal requires the provision of 23 car spaces including 3 visitor spaces. The proposal includes an on-site parking provision of 32 car spaces including 3 visitor parking spaces and a car wash bay. The proposed parking provision is in compliance with the requirement recommended within the DCP and acceptable.</p> <p><u>Car park design:</u></p> <p>Reviewing the plans and the traffic report, the design of the proposed driveway and car park is in compliance with Australian Standards. The proposal includes the provision of a 6m wide passing bay within the first 6m of the driveway which is satisfactory.</p> <p>The width of the internal ramps within the basement car park allows for one-way flow with restricted intervisibility between vehicles exiting the ramps and vehicles approaching the ramps. To prevent conflicting vehicle flows on the internal ramps and avoid vehicles having to reverse up/ down the ramp, traffic signal system or convex mirrors must be installed at each ramp entry.</p> <p><u>Conclusion:</u></p> <p>In review of the foregoing, no objection is raised on the proposal subject to conditions.</p>
Waste Officer	<p>The bin storage area must provide for the storage of bins so that access for use by residents is convenient to each bin - and not via double banked bins as shown in the drawings. The proposed bin storage area needs to be re-designed so that bins are not double banked to prevent on going waste storage issues for residents. This may be achieved by reconfiguration of the room dimensions with</p>

Internal Referral Body	Comments
	<p>little or no increase on the floor area, (for example a longer but narrower room).</p> <p><u>Planner Comment:</u></p> <p>This has been included as a reason for refusal under C9 Waste Management of the Warringah DCP 2011.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Police - Local Command (CPTED)	Thank you for referring the planning proposals below to our Local Area Command for comment. Given the nature of the development we do not believe a Crime Risk Assessment and CPTED (Crime Prevention through Environmental Design) assessment is required.

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

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

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

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

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

##### SEPP 55 - Remediation of Land

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

##### SEPP 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 four storey residential flat 'housing' development plus basement car parking for the provisions of 15 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 proposal is of a bulk and scale that is inconsistent with the existing and desired character of the



area, see assessment under Principle 2 below. This in conjunction with the insufficient side setbacks and landscaped areas will result in a development that imposes on the neighbouring properties and is not integrated into the landscape of the site. The proposal is inconsistent with this principle.

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

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

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

#### Comment:

The existing residential flat buildings within the area are predominantly three storeys with basement parking. The proposal exceeds the 11m height limit and is four storeys with basement parking. Furthermore, the development provides insufficient side setbacks to provide for relief from the neighbouring properties. The proposal is of a scale, bulk and height that exceeds that of the existing character of the area.

The desired character of the area is guided by the controls set out within the Warringah DCP 2011 and Warringah LEP 2011. The proposal does not comply with the maximum permitted building height of the Warringah LEP 2011 and the number of storeys, boundary envelope, side setback, rear setback and the landscaped open space control of the Warringah DCP 2011. The extensive non-compliance of the proposal with controls, developed through extensive community consultation, demonstrates that the proposal is inconsistent with the desired future character of the area.

### **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 is not adequately designed to achieve a high level of amenity for the neighbouring properties or the occupants. The proposal will result in unreasonable overlooking of private open spaces and habitable rooms of the neighbouring properties at 75 and 69 Queenscliff Road. The proposal also does not achieve adequate solar access to the lower floor southern facing units and the north eastern subterranean unit. With regards to the density of the area, the site is zoned as medium density residential and can be reasonably expected to be developed with a residential flat building. Furthermore, Council's traffic engineer has assessed the development as having no unreasonable impact on the transport network of the area.

### **Principle 4: Sustainability**

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and



operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment:

The development does not achieve adequate solar access to the apartments. Concern is also raised over the effectiveness of the cross ventilation for the units below ground level constrained by retaining walls. The proposal was accompanied by an appropriate waste management plan for the disposal of construction waste.

**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 proposed landscaping is predominantly below the existing ground level and not of a sufficient dimension to mitigate the height and bulk of the proposed development. Furthermore the side boundaries are dominated by built structures such as entries and driveways that do not allow for landscaping to provide a buffer in between the neighbouring properties. The proposed landscaping is inadequate to contribute to the landscape character of the area.

**Principle 6: Amenity**

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

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

Comment:

The proposal is of an inadequate design to provide amenity to the occupants and neighbouring properties. The proposal will result in direct overlooking of private open spaces and windows to habitable rooms of the neighbouring properties. The proposal also does not achieve adequate solar access to the units.

The development will provide adequate storage, indoor and outdoor open space and is of an efficient design. Compliance with the building code of Australia will ensure reasonable acoustic amenity and the submitted acoustic report provides appropriate recommendations. The proposal also includes livable housing consistent with the requirements of the Apartment Design Guide below.

**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 development provides for clearly defined well lit entrances to the building. The proposal will also allow for good passive surveillance of the streetscape. The proposal is consistent with this principle.

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

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

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

Comment:

The proposal provides for a good mix of apartment sizes and adaptability. The development will allow for social interaction while entering and exiting the building.

**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:

While the development is inconsistent with the built form that can be reasonably expected within the area, the development provides a good balance of materials colours and textures that reflects the internal layout and structure. The building is aesthetically well-designed despite the inappropriate built form and scale.

**APARTMENT DESIGN GUIDE**

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

**Complies**

The ground floor apartments provide adequate courtyards for the amenity of the occupants and direct street access is provided where possible.

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Development Control	Criteria / Guideline	Comments
<b>Part 3 Siting the Development</b>		
<b>Site Analysis</b>	Does the development relate well to its context and is it sited appropriately?	<b>Does not comply</b> The proposal is of a bulk and scale that is inconsistent with the existing and desired character of the area. This in conjunction with the insufficient side setbacks will result in a development that imposes on the neighbouring properties. The design of the development to address the street is adequate.
<b>Orientation</b>	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	<b>Does not comply</b> The orientation of the development does not optimise solar access within the site. The proposal does not achieve the 70% requirement for solar access to the apartments.
<b>Public Domain Interface</b>	Does the development transition well between the private and public domain without compromising safety and security?  Is the amenity of the public domain retained and enhanced?	<b>Complies</b> The proposal provides well defined well lit entrances that provide a good transition from the public domain.
<b>Communal and Public Open Space</b>	Appropriate communal open space is to be provided as follows:  1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	<b>Does not comply</b> No communal open space is provided for this development. The Apartment Design Guide provides the following guidance:  <i>"Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</i> • provide communal spaces elsewhere such as a landscaped roof top terrace or a common room

		<ul style="list-style-type: none"> <li>• provide larger balconies or increased private open space for apartments</li> <li>• demonstrate good proximity to public open space and facilities and/or provide contributions to public open space"</li> </ul> <p>The site is zoned as a medium density urban area. The development provides a communal cellar that allows for communal gatherings. The provision of a roof terrace is not considered appropriate in this circumstance. The proposal also provides adequate private open space areas for each unit.</p>												
<b>Deep Soil Zones</b>	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m<sup>2</sup> – 1,500m<sup>2</sup></td><td>3m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup></td><td>6m</td></tr> <tr> <td>Greater than 1,500m<sup>2</sup> with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m <sup>2</sup>	-	7%	650m <sup>2</sup> – 1,500m <sup>2</sup>	3m	Greater than 1,500m <sup>2</sup>	6m	Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	<p><b>Complies</b></p> <p>This clause requires 88.1sqm of deep soil zones to be provided. The proposal includes 213.4sqm of deep soil zones.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m <sup>2</sup>	-	7%												
650m <sup>2</sup> – 1,500m <sup>2</sup>	3m													
Greater than 1,500m <sup>2</sup>	6m													
Greater than 1,500m <sup>2</sup> with significant existing tree cover	6m													
<b>Visual Privacy</b>	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8</td><td>9m</td><td>4.5m</td></tr> </tbody> </table>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8	9m	4.5m	<p><b>Does not comply</b></p> <p>The proposed development provides 3.5m-5m of separation from the eastern and western side boundaries to the ground level to level 3. The attic level provides 5m of separation to the eastern boundary and 5.6m to the western</p>			
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8	9m	4.5m												



	<table border="1"> <tr> <td>storeys)</td><td></td><td></td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> <p><b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	storeys)			Over 25m (9+ storeys)	12m	6m	<p>boundary.</p> <p>The proposal provides insufficient separation to the boundaries to ensure the privacy of the neighbouring properties. In particular the proposal will result in direct overlooking of the private open space of 69 Queenscliff Road and the private open space/habitable rooms of 75 Queenscliff Road.</p> <p>The proposal provides adequate separation to 73 Queenscliff Road and 63-67 Pavillion Street. The development also incorporates an adequate design to ensure no unreasonable overlooking of 69 Pavillion Street.</p>
storeys)								
Over 25m (9+ storeys)	12m	6m						
<b>Pedestrian Access and entries</b>	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p><b>Complies</b></p> <p>The pedestrian entries are easily identifiable and accessible from the public domain.</p>						
<b>Vehicle Access</b>	<p>Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?</p>	<p><b>Complies</b></p> <p>The vehicle access is located to minimise conflicts and incorporated into the design maintain a high quality streetscape.</p>						
<b>Bicycle and Car Parking</b>	<p>For development in the following locations:</p> <ul style="list-style-type: none"> <li>On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p>	<p><b>Complies</b></p> <p>The Warringah DCP 2011 requires the following parking to be provided for units:</p> <ul style="list-style-type: none"> <li>1 space per 1 bedroom dwelling (2)</li> <li>1.2 spaces per 2 bedroom dwelling (7.2)</li> <li>1.5 spaces per 3 bedroom dwelling (10.5)</li> <li>1 visitor space</li> </ul>						

	<p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p><i>per 5 units or part of dwellings (3)</i></p> <p>The Warringah DCP 2011 requires the provision of 20 residential parking spaces and three visitor parking spaces.</p> <p>The proposal provides 28 residential parking spaces and 3 visitor parking spaces. The development complies with the parking required by the Warringah DCP 2011.</p>
<b>Part 4 Designing the Building</b>		
<b>Amenity</b>		
<b>Solar and Daylight Access</b>	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> <li>Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	<p><b>Does not comply</b></p> <p>The proposal does not achieve this design criteria with seven units that do not receive 2 hours of direct sunlight between 9am and 3pm. The proposal will result in 53% of the units receiving 2 hours of solar access in accordance with this guidance. The development does not optimise solar access and does not provide for adequate amenity for the occupants.</p>
	<ul style="list-style-type: none"> <li>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.</li> </ul>	<p><b>Complies</b></p>
<b>Natural Ventilation</b>	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> <li>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</li> </ul>	<p><b>Complies</b></p> <p>The development will result in two apartments with no cross ventilation leaving 86% of apartments with cross ventilation.</p>

	<ul style="list-style-type: none"><li>Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.</li></ul>	Complies												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></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 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</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 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	Complies
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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>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>	Apartment type	Minimum internal area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	Complies		
Apartment type	Minimum internal area													
Studio	35m <sup>2</sup>													
1 bedroom	50m <sup>2</sup>													
2 bedroom	70m <sup>2</sup>													
3 bedroom	90m <sup>2</sup>													
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Complies												
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Complies												
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Complies												

	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	Complies															
	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.	Complies															
	Living rooms or combined living/dining rooms have a minimum width of:  <ul style="list-style-type: none"><li>3.6m for studio and 1 bedroom apartments</li><li>4m for 2 and 3 bedroom apartments</li></ul>	Complies															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	N/A															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m<sup>2</sup></td><td>2.4m</td></tr></table> The minimum balcony depth to be counted as contributing to the balcony area is 1m	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m <sup>2</sup>	-	1 bedroom apartments	8m <sup>2</sup>	2m	2 bedroom apartments	10m <sup>2</sup>	2m	3+ bedroom apartments	12m <sup>2</sup>	2.4m	Does not comply The units 1.03, 2.01, 2.03 and 2.04 include minor non-compliances with this design guidance due to insufficient minimum area/dimension required. All balconies provide for the opportunity for the living areas to open out onto the private open spaces. The balconies are adequately designed to provide amenity to the units.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m <sup>2</sup>	-														
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3+ bedroom apartments	12m <sup>2</sup>	2.4m															
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m.	Complies															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Complies															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m<sup>2</sup></td></tr><tr><td>1 bedroom apartments</td><td>6m<sup>2</sup></td></tr><tr><td>2 bedroom apartments</td><td>8m<sup>2</sup></td></tr><tr><td>3+ bedroom</td><td>10m<sup>2</sup></td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m <sup>2</sup>	1 bedroom apartments	6m <sup>2</sup>	2 bedroom apartments	8m <sup>2</sup>	3+ bedroom	10m <sup>2</sup>	Complies					
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	apartments	
	At least 50% of the required storage is to be located within the apartment.	
<b>Acoustic Privacy</b>	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	<b>Does not comply</b> The application was accompanied by an acoustic report that provides recommendations to ensure no unreasonable acoustic impacts.
<b>Noise and Pollution</b>	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	<b>Complies</b> The development is adequately sited to minimise impacts from external noise.
<b>Configuration</b>		
<b>Apartment Mix</b>	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	<b>Complies</b>
<b>Ground Floor Apartments</b>	Do the ground floor apartments deliver amenity and safety for their residents?	
<b>Facades</b>	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	<b>Complies</b>
<b>Roof Design</b>	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	<b>Complies</b> The roof design is adequate for the locality and incorporates skylights.
<b>Landscape Design</b>	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	<b>Does not comply</b> The proposed landscaping is predominantly below the existing ground level and not of a sufficient dimension to mitigate the height and bulk of the proposed development. Furthermore the side boundaries are dominated by built structures such as entries and driveways that do not allow for landscaping to provide a buffer in between the

		neighbouring properties.																																			
<b>Planting on Structures</b>	<p>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</p> <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>150m<sup>3</sup></td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m<sup>3</sup></td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m<sup>3</sup></td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td>Turf</td><td></td><td></td><td>200mm</td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m <sup>3</sup>	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m <sup>3</sup>	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m <sup>3</sup>	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		<b>Complies subject to conditions</b>
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
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Ground Cover			300-450mm																																		
Turf			200mm																																		
<b>Universal Design</b>	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	<b>Complies</b> The development includes 4 (26.6%) of livable dwellings.																																			
<b>Adaptable Reuse</b>	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	<b>N/A</b>																																			
<b>Mixed Use</b>	<p>Can the development be accessed through public transport and does it positively contribute to the public domain?</p> <p>Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.</p>	<b>N/A</b>																																			
<b>Awnings and Signage</b>	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development.	<b>N/A</b>																																			

	Signage must respond to the existing streetscape character and context.	
<b>Performance</b>		
<b>Energy Efficiency</b>	Have the requirements in the BASIX certificate been shown in the submitted plans?	<b>Complies</b>
<b>Water Management and Conservation</b>	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	<b>Complies</b>
<b>Waste Management</b>	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	<b>Does not comply</b> The waste storage area is of an insufficient size to allow bins to be accessed individually. This has been included as a reason for refusal.
<b>Building Maintenance</b>	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	<b>Complies</b>

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

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

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

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

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

Comment:

The application is not recommended for refusal on the above matters.

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

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

(3) To remove doubt:

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

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

Comment:

The development is inconsistent with the design quality principles and the objectives specified in the Apartment Design Guide. The application is recommended for refusal on this basis.

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

A BASIX certificate has been submitted with the application (see Certificate No. 1022005M\_02 dated 3 July 2019).

**SEPP (Infrastructure) 2007**

Ausgrid

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

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

Comment:

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

**SEPP (Coastal Management) 2018**

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

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

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



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

Comment:

Not applicable.

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

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
  - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
  - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

Not applicable.

#### **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:

Not applicable.

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

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

#### 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:

Not applicable.

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 development will not cause an increased risk of coastal hazards.

#### Warringah Local Environmental Plan 2011

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies

Height of Buildings:	11m	11.9m	8%	No
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#### Compliance Assessment

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

#### Detailed Assessment

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	11m
Proposed:	11.9m
Percentage variation to requirement:	8%

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

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

##### Clause 4.6 Exceptions to development standards:

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

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

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

##### Comment:

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

(3) Development consent must not be granted for development that contravenes a development



*standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- *The proposed development is consistent with the underlying objectives or purposes of the standards as demonstrated in Section 4.1;*
- *The proposed development would lead to a high standard of design providing a benchmark for outcome for future development surrounding the site;*
- *The proposed development would lead to a superior public domain outcome and a positive impact to the streetscape;*
- *Strict compliance with these development standards would result in a significant portion of the building being removed detracting from the potential high lift housing stock;*

The proposal does not demonstrate sufficient environmental planning grounds but provides a series of statements. In addition it has not been adequately demonstrated that the development achieves the objectives of the control.

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

**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 R3 Medium Density Residential zone. An assessment against these objectives is provided below.

### Objectives of development standard

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

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

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

Comment:

The surrounding and nearby development is predominantly characterised by three storeys of residential development with basement parking beneath. The proposed development is four storeys with basement parking beneath. The non-compliance is a result of the fourth storey. While the applicant argues this storey is recessed to ensure a three storey frontage, it is considered that this recession is insufficient to reduce the visibility of the additional storey from the street. This is demonstrated by the perspectives submitted in support of the application, see image below. This area directly results in the non-compliance with the building height development standard, number of storeys control and is inconsistent with the height and scale of surrounding and nearby development. The proposal is inconsistent with this objective.



71-71A Queenscliff Road Perspective - Source: Drawing DA410 Photomontage - 01 PBD Architects

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

Comment:

As discussed above the development is of a height and scale that is inconsistent with the surrounding and nearby properties. In addition to this the development provides insufficient side setbacks and landscaping to provide visual relief to the neighbouring properties. The view loss as a result of the development has been discussed in detail below. In summary the view loss is directly caused by the non-compliance with the height of buildings development standard of the Warringah LEP 2011 and the building envelope and number of storeys controls of the Warringah DCP 2011. As such the view loss was found to be unacceptable. The development is also of an inadequate design to provide privacy to the neighbouring properties. The proposal will not result in any unreasonable loss of solar access due to the non-compliance with the height of buildings development standard.

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

Comment:

The proposals inconsistency with the existing and desired built form and scale will have an unreasonable impact on the streetscape of the locality. However, this is unlikely to have any unreasonable impact on Warringahs coastal and bush environments.

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

Comment:

The proposal as viewed from the street is inconsistent with the existing and desired character of the locality and will have a significant visual impact.

## Zone objectives

The underlying objectives of the R3 Medium Density Residential zone are:

The underlying objectives of the R3 Medium Density Residential zone:

- *To provide for the housing needs of the community within a medium density residential environment.*

Comment:

The development will provide additional housing to the area.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The proposal provides a variety of housing types including one, two and three bedroom units with four units meeting the silver level of the Liveable Housing Guidelines.

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

Comment:



Not applicable.

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

Comment:

The development provides insufficient landscape areas including landscaping along the side boundaries to ensure it is characterised by a landscaped setting. The proposal is inconsistent with this objective.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Comment:

As discussed above, the proposal is of a bulk and scale that is inconsistent with the medium density environment.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the R3 Medium Density Residential zone.

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

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

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

**Warringah Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	3	4	33%	No
B3 Side Boundary Envelope	East 5m	Outside Envelope	N/A	No
	West 5m	Outside envelope	N/A	No
B5 Side Boundary Setbacks	East 4.5m	Basement: 1.2m-2m Ground to Level 2: 3m-5m Level 3: 5.2m	73%	No

		Level 4 5.1m		
	West 4.5m	Basement: 1.5m-2m Ground to Level 2: 3m-5m Level 3: 5m Level 4 5.6m	66%	No
B7 Front Boundary Setbacks	6.5m	6.5m	N/A	Yes
B9 Rear Boundary Setbacks	6m	Basement 1&2: 4.8m Ground to Level 3: 6m Level 4: 9m	20%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	50% (629.15sqm)	28% (365.9sqm)	41.8%	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	No	No
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	No
C2 Traffic, Access and Safety	Yes	Yes
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	No	No
D1 Landscaped Open Space and Bushland Setting	No	No
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	Yes
D7 Views	No	No
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
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	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **B2 Number of Storeys**

##### Description of non-compliance

The Warringah DCP 2011 permits a maximum of three storey in this area. The proposal will result in a four storey development.

##### Merit consideration:

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

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

##### Comment:

The proposal is a storey above the neighbouring property and will result in a visually dominant building as viewed from the street and surrounding properties. Furthermore, the proposal does not comply with the side setback and building envelope controls resulting in a development that is of an unreasonable bulk and scale imposing on the neighbouring properties

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

##### Comment:

The proposal will not minimise the visual impact of the development and will result in an imposing bulk and scale as viewed from the street and adjoining properties.

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

##### Comment:

The proposal will result in the loss of views from the private open space and living rooms of 7/75 Queenscliff Road Queenscliff as a direct result of the non-compliance with the number of storeys control. The proposal will not provide for the equitable sharing of views to and from public and private properties.

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

Comment:

As discussed above, the proposal does not ensure a reasonable level of amenity to the adjoining properties with particular regard to privacy and views.

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

Comment:

The development provides an innovative roof design that will add to the variety within the locality.

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

Comment:

The development does not comply with the height of buildings control in the LEP. The assessment under clause 4.6 of the LEP found there to be insufficient justification to warrant the variation of the development standard.

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

### **B3 Side Boundary Envelope**

Description of non-compliance

The development includes a significant non-compliance with the side boundary envelope control on the western side due to level four and level three on the southern extent of the building. The proposal also includes a minor non-compliance with the envelope control due to level 2 on the western elevation and level four on the eastern elevation.

Merit consideration

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

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

Comment:



The proposal is of a height and bulk that is inconsistent with the character of the area and will result in a development that is visually dominant. The proposal is inconsistent with this objective.

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

Comment:

The proposed non-compliance will not result in any unreasonable impact on light or solar access. Privacy has been assessed above with regards to SEPP 65 and the Apartment Design Guide.

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

Comment:

The proposal does not adequately respond to the topography of the site. The development does not adequately step back with the slope of the site. This is demonstrated by the non-compliance with this control, the building height development standard and the number of storeys control. Furthermore, the proposal includes extensive excavation to provide apartments below the ground level.

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

## **B5 Side Boundary Setbacks**

### Description of non-compliance

The Warringah DCP 2011 requires buildings be setback 4.5m from the side boundary. The proposal includes basement areas setback 1.5m-2m, ground floor entrance areas setback 1.2m-1.6m and the ground floor, level 1 and level 2 setback 3.5m-5m. The Warringah DCP 2011 requires side boundary setbacks to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences.

The Warringah DCP 2011 provides a variation to this control to allow basements to extend up to 2m from the side boundary for existing narrow width allotments. The proposal includes the consolidation of two lots and is therefore not an existing narrow width allotment nor will it result in a narrow width allotment.

### Merit consideration

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

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

Comment:

The proposal provides adequate deep soil landscaped areas in accordance with the Apartment Design Guide.

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

Comment:

The proposed development will be visually dominant and in contrast to the surrounding development. Furthermore, the proposed excavated entries will provide the impression of the building extending within 2m of the side boundary.

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

Comment:

The proposal includes insufficient side setbacks to minimise the bulk and scale of the building.

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

Comment:

The proposal will result in overlooking from windows within the proposed setback area. The proposal provides inadequate separation to maintain a reasonable level of privacy within the locality.

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

Comment:

The proposed non-compliance with the side setback control will not result in the unreasonable disruption of views.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **B9 Rear Boundary Setbacks**

### Description of non-compliance

The Warrinagh DCP 2011 requires above and below ground structures to be setback a minimum of 6m from the rear boundary. The proposal includes basement areas within 4.8m of the rear boundary and includes excavation and retaining walls up to 2.5m in height to provide private open space areas for the subterranean units within 1.5m of the rear boundary.

### Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying

Objectives of the Control as follows:

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

Comment:

The development provides adequate deep soil landscape areas in accordance with the Apartment Design Guide.

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

Comment:

The proposal will create private open space areas enclosed by retaining walls up to 2.5m in height and is likely to include a boundary fence above this. The proposal will not create a sense of openness in rear yards.

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

Comment:

The rear of the proposed development will face the parking area of the property to the rear. The proposal will not result in any unreasonable privacy impacts on this area.

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

Comment:

The adjoining properties do not create a pattern of rear setbacks/landscape elements. The proposed rear setback will not disrupt any visual continuity within the locality.

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

Comment:

The proposed rear setback will not result in any unreasonable impact on the privacy of the properties to the rear.

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

### **C3 Parking Facilities**

Merit consideration

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

- *To provide adequate off street carparking.*

Comment:

Councils development engineer has requested amendments with regards to the driveway access as detailed above. The proposal does not ensure adequate vehicular access to the off street carparking.

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

Comment:

The proposal parking facilities are adequately incorporated into the building to minimise the visual impact.

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

Comment:

The proposed parking will not dominate the street frontage.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

#### **C4 Stormwater**

Merit consideration

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

- *To ensure the appropriate management of stormwater.*

Comment:

The assessment by Councils development engineer above has found there is insufficient information to support the stormwater design of the proposed development. The proposal does not ensure appropriate management of stormwater.

- *To minimise the quantity of stormwater run-off.*

Comment:

The proposal provides insufficient information to support the design of the stormwater management system. The proposal is inconsistent with this objective.

- *To incorporate Water Sensitive Urban Design techniques and On-Site Stormwater Detention (OSD) Technical Specification into all new developments.*



Comment:

The proposal incorporates adequate Water Sensitive Urban Design techniques. Insufficient information has been provided to justify the stormwater detention.

- *To ensure the peak discharge rate of stormwater flow from new development is no greater than the Permitted Site Discharge (PSD).*

Comment:

See above, insufficient details have been provided of the stormwater design.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **C9 Waste Management**

### Merit consideration

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

- *To facilitate sustainable waste management in a manner consistent with the principles of Ecologically Sustainable Development (ESD).*
- *To achieve waste avoidance, source separation and recycling of household and industrial/commercial waste.*
- *To design and locate waste storage and collection facilities which are convenient and easily accessible: safe; hygienic; of an adequate size, and with minimal adverse impacts on residents, surrounding neighbours, and pedestrian and vehicle movements.*
- *To ensure waste storage and collection facilities complement waste collection and management services, offered by Council and the private service providers and support on-going control for such standards and services.*
- *To minimise risks to health and safety associated with handling and disposal of waste and recycled material, and ensure optimum hygiene.*
- *To minimise any adverse environmental impacts associated with the storage and collection of waste.*
- *To discourage illegal dumping.*

Comment:

Council's Waste Officer has assessed the application above and found the proposal to be inconsistent with the Northern Beaches Council's Waste Management Guidelines and therefore inconsistent with requirements of this clause. The stacked arrangement of the bins is not of a design that is convenient

and easily accessible to the residents and the collection staff. The application is inconsistent with the objectives of the control and recommended for refusal on this basis.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## D1 Landscaped Open Space and Bushland Setting

### Description of non-compliance

The Warringah DCP 2011 requires 50% of the site area to be provided as landscaped area. The proposal includes 28% of the site area as landscaped areas.

### Merit consideration

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

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

#### Comment:

The proposal provides inadequate landscaped areas to ensure the development is consistent with the streetscape of the locality. In particular the landscaped areas between the building and the side boundaries are inadequate to soften the built form and provide a buffer to adjoining development.

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

#### Comment:

The proposal does not include the removal of any significant vegetation. The proposal is not designed to respect the topography of the locality. However, it does not require the removal of any significant topographical features.

- *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 development is of a height, bulk and scale that is inconsistent with the planning controls and is not adequately screened by landscaping.

- *To enhance privacy between buildings.*

#### Comment:

The proposal does not provide sufficient landscaped areas to screen the building from view.

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

Comment:

The occupants of the building will have access to adequate private open space areas.

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

Comment:

The development includes adequate space for service functions.

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

Comment:

The proposal includes on-site stormwater detention to facilitate water management.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## **D6 Access to Sunlight**

### Description of Non-compliance

The Warringah DCP 2011 requires development to retain 3 hours of solar access to be retained to 50% of the required private open space areas of the adjoining dwellings. The proposal will result in only 2 hours of solar access to the private open space areas of 69 Queenscliff Road Queenscliff.

### Merit consideration

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

- *To ensure that reasonable access to sunlight is maintained.*

Comment:

The overshadowing of 69 Queenscliff Road results from the area of development that is compliant with the built form controls. This property will also retain two hours of solar access to the private open space area. The access to sunlight is reasonable in this circumstance.

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

Comment:

The proposed overshadowing is of a reasonable design to maintain adequate solar access.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

Comment:

The proposal will maintain adequate solar access to the adjoining properties.

- *To promote passive solar design and the use of solar energy.*

Comment:

The proposal was accompanied by a BASIX certificate to ensure sustainable development.

- *To minimise the need for artificial lighting.*

Comment:

The proposal will not result in an increased need for artificial lighting.

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

## D7 Views

### Merit consideration

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

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

Comment:

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

#### **1. Nature of the views affected**

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

Comment to Principle 1:

The proposal will result in the loss of water views including the land water interface from Unit 5 and Unit 7 75 Queenscliff Road Queenscliff.

No view loss perspectives have been provided from 73 Queenscliff Road or the rear units of 75 Queenscliff Road. Insufficient information has been provided to determine the application.



## 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 affected from the living areas and private open spaces of both properties the submitted drawings DA700-DA704 demonstrate the extent of the loss of views.

## 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:

The extent of impact for unit 5 is minor as this property will retain the majority of the existing views from the front private open space.

The extent of impact to unit 7 is moderate as it will lose the views from the principal private open space and living areas. This property will retain views from southern most are of balcony.

## 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:

#### Unit 5

This unit will retain the majority of its views from the private open space areas. The proposal will not have an unreasonable impact on the views of this property.

#### Unit 7

The development includes a large list of non-compliance due to level 4 including the building height development standard, building envelope and number of storeys controls. These non-compliances result in the loss of views from the main living areas and private open space areas of Unit 7. As the view loss is a direct result of non-compliance the view impact is considered

unreasonable.

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

Comment:

The proposal is not of a suitable design to maintain appropriate view sharing.

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

Comment:

The proposal will maintain the existing canopy tree.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

#### **D8 Privacy**

See assessment under SEPP 65 and the Apartment Design Guide. The proposal incorporates an inadequate design to maintain the privacy of the neighbouring properties. The proposal is inconsistent with the objectives of the control and is recommended for refusal on this basis.

#### **D9 Building Bulk**

Description of Non-compliance

The Warringah DCP 2011 requires the following:

*"3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:*

*The amount of fill is not to exceed one metre in depth.*

*Fill is not to spread beyond the footprint of the building.*

*Excavation of the landform is to be minimised.*

*4. Building height and scale needs to relate to topography and site conditions."*

The development includes extensive excavation of the land to provide additional units below the ground level. The development does not step down the slope and is inconsistent with this clause.

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The proposal will result in a built form that dominates the adjoining properties and is incompatible with the streetscape of the locality. The proposal is not of a good design that will improve the urban environment.

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

Comment:

The proposal will present to the street as a four and five storey building within a predominantly three storey area. Furthermore the proposal will result in a bulk and scale that imposes on the private open spaces and living areas of the neighbouring properties. The proposal will result in an unreasonable visual impact when viewed from the adjoining properties and streets.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

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

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

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

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

#### **CONCLUSION**

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

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

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

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

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

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

- Variation to the height of buildings development standard - The proposed variation to the development standard was found to be unsatisfactory and the applicants justification insufficient to demonstrate that compliance with the development standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to support the variation.
- The application has been assessed in accordance with SEPP 65 and the Apartment Design Guide and has been found to be inconsistent with the design principles and design guidance.
- The application has been assessed in accordance with the objectives of the Warringah Development Control Plan and found to result in an unreasonable impact on the amenity of the adjoining properties and the existing and desired character of the area.

The development has been found to be inconsistent with relevant legislation and design guidance. On this basis the application is recommended for refusal.

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



**RECOMMENDATION**

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0730 for the Demolition Works, construction of a residential flat building and lot consolidation, on land at Lot 4 DP 345419, 71 A Queenscliff Road, QUEENSCLIFF, Lot 41 DP 300057, 71 Queenscliff Road, QUEENSCLIFF, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest as the extent of non-compliance will result in a development that is inconsistent with the scale and intensity of development that the community can reasonably expect to be provided on this site and within the locality.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone R3 Medium Density Residential of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 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 B2 Number of Storeys of the Warringah Development Control Plan.
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 B3 Side Boundary Envelope of the Warringah Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause B5 Side Boundary Setbacks of the Warringah Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed driveway access is inconsistent with the provisions of Clause C3 Parking Facilities of the Warringah Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4 Stormwater of the Warringah Development Control Plan.
10. 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 C9 Waste Management of the Warringah Development Control Plan.
11. 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.

12. 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 due to the unreasonable loss of views from Unit 7 75 Queenscliff Road Queenscliff. Insufficient information has been submitted to determine the extent of the loss of views from 73 Queenscliff Road and the rear units of 75 Queenscliff Road.
13. 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 D8 Privacy of the Warringah Development Control Plan.
14. 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.







