AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

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

WEDNESDAY 4 DECEMBER 2019

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

Peter Robinson
Executive Manager Development Assessment

northern beaches council

Panel Members

Lesley Finn	Chair
Marcus Sainsbury	Environmental Expert
Graham Brown	Town Planner
Lloyd Graham	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

northern beaches council

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

1.0 APOLOGIES & DECLARATIONS OF INTEREST

2.0 MINUTES OF PREVIOUS MEETING

2.1 Minutes of Northern Beaches Local Planning Panel held 27 November 2019

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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 27 NOVEMBER 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 27 November 2019 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	**MOD2019/0440 - 1 QUEENS PARADE, NEWPORT - MODIFICATION OF DEVELOPMENT CONSENT 89/388 GRANTED FOR ALTERATIONS AND ADDITIONS TO A MARINA**
REPORTING OFFICER	**ANNA WILLIAMS**
TRIM FILE REF	**2019/680505**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plans

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, grants **deferred commencement approval** to Application No. Mod2019/0440 for Modification of Development Consent 89/388 granted for alterations and additions to a marina at Lot 315 DP 822344, 1 Queens Parade, Newport subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0440

Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot 315 DP 822344, 1 Queens Parade NEWPORT NSW 2106
Proposed Development:	Modification of Development Consent 89/388 granted for Alterations and additions to Marina
Zoning:	IN4 Working Waterfront W2 Recreational Waterways
Development Permissible:	Yes - Zone IN4 Working Waterfront Yes - Zone W1 Natural Waterways Yes - Zone W2 Recreational Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	NSW Government - Department of Industry - Lands Rowell Marine Group Pty Ltd Northern Beaches Council
Applicant:	Rowell Marine Group Pty Ltd

Application Lodged:	12/09/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Industrial
Notified:	08/10/2019 to 22/10/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Deferred Commencement Approval

EXECUTIVE SUMMARY

This application seeks the modification of condition no. 57 of development consent 89/388 to increase the maximum number of vessels at any one time within the hardstand area of the marina from four (4) to eight (8).

Notification of the application resulted in two (2) submissions raising objection to the proposed modification. The issues and concerns raised are addressed in this report.

An assessment of the proposal has found the application is compliant with the relevant planning controls.

The marina is located on land, part of which is Crown land and Council owned land. The subject site is zoned IN4 Working Waterfront, W1 Natural Waterways and W2 Recreational Waterways. The application is therefore referred to the Northern Beaches Local Planning Panel for approval.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks to amend Condition 57 of development consent No. 89/388 issued by the former Shire of Warringah on 21st September 1989 to increase the number of vessels on the hardstand to eight (8). The condition currently states the following:

57. A maximum number of 4 (four) vessels at any one time are to be stored on the hardstand area.

This application seek to amended condition 57 to read:

57. A maximum number of eight (8) vessels at any one time are to be stored on the hardstand area.

The application does not require any physical works on the site.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater 21 Development Control Plan - B1.4 Aboriginal Heritage Significance
Pittwater 21 Development Control Plan - C1.13 Pollution Control

SITE DESCRIPTION

Property Description:	Lot 315 DP 833344 - 1 Queens Parade NEWPORT NSW

	2106
Detailed Site Description:	The site is known as 1 Queens Parade and has a legal description which includes Lot 315 of DP 822344 (marina extending beyond the MHWM into the waters of Pittwater) , Lot 1 of DP 864721 (Council land leased), Lot 316 of DP822344 (hardstand parking to the south, Council and DPI land) and Lot 317 of DP 1173872 (DPI land managed by Council - . The site is located at the western end of Queens Parade, Newport. There is an existing operational marina on the site, which includes a building with a number of small offices and To the south of the marina is the Newport Wharf and beyond this is the Newport Arms Hotel. To the north and east of the site is a boutique hotel and function centre, the Newport Mirage.

Map:

SITE HISTORY

1963
Permissive Occupancy 1963/2004 - issued for reclamation, provision of 2 slipways, 2 jetties, 4 ramps and pontoon, 2 bowsers and 2 breakwalls.

1972
Building destroyed by fire and rebuilt.

1988 - Development Application No. 88/100
Development Application No.88/100 for alterations and additions to boatshed, new concrete hardstand and covered area, new public carpark and landscaped areas.

1989 - Development Application No. 89/388
Development Consent No. 89/388 containing 52 conditions issued on 21 September 1989 following endorsement by Sydney Water and the then State Pollution Control Commission and owners consent issued by NSW Department of Lands.

Development Application No. N0134/11
DA N0134/11 for the extension of the marina lease area to include the existing carpark (Lot 316 DP 822344), provide an additional eight (8) fixed berths, removal of eight (8) swing moorings, first floor addition, extension of roof over entrance, sewage pumpout facility and construction of a commuter pontoon with disabled access, alterations to the existing car parking on the ground floor to accommodate 3 vehicles in a stacked arrangement.

The application was approved by the Pittwater Council Development Unit on 11 August 2011.

Modification Application No N0134/11/S96/1
This modification application for deletion of condition B17, modification of conditions B14, B16 and B18, amendments to the length of the approved berthing area to create a work berth area and modification of conditions relating to relinquishment of swing moorings was lodged with Council on 19 December 2011. The modification was approved on 14 June 2012.

Development Application No. N0030/14
This development application was for the removal of a section of landscaping at the front of the existing property and construction of a disabled parking space and walkway to access the offices. The application was approved by Council on 12 August 2014.

Modification Application No. MOD2019/0440
MOD2019/0440 for the modification of condition No. 57 of development consent No. 89/388 to increase the maximum number of vessels to be accommodated on the hardstand area at any one time from five (5) to eight (8) was lodged with Council on 12 September 2019. This application is the subject of this assessment.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report and consent for DA89/388, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and

Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	**Comments**
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	**Yes** The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA89/388.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan 2014 and Pittwater 21 Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any	Pittwater 21 Development Control Plan applies to this

Section 4.15 'Matters for Consideration'	**Comments**
development control plan	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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application.This clause is not relevant to this application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to an updated noise assessment. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development).This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) **Environmental Impact** The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.

Section 4.15 'Matters for Consideration'	Comments
	(ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mrs Elvie June Boersma	2 A Princes Street NEWPORT NSW 2106
Mr Leon Nikolaidis	4 Princes Street NEWPORT NSW 2106

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

- <u>Submission from 2a Princes Street, Newport</u>
  My home resides 128m from the current work site. My bedroom window has an uninterrupted line of sight to the work area as it lies on the opposite side of Heron Cove.

  Sound waves are amplified as they travel over water. It is therefore of a concern to the residents on Halesmith Rd and Rednal St Mona Vale at 320m distance from the site. I hope they were notified of the DA.
  https://www.school-for-champions.com/science/sound_amplified_over_water.htm#.XazhNmZS-

UI

At present the work area operates 6 days a week beginning at 7am and proceeding through to after 4pm.

The work area operates regularly on Sundays (although after 9am).

The water blasters and sanding machines used are excessively loud and their operation seems to continue endlessly.

The surrounding commercial operations (The Newport and the Metro Mirage Hotel) seem to have much tighter noise restrictions and follow them accordingly. Their noise levels are much lower and are almost negligible. It is unusual and frankly outrageous that the marina is permitted to make such high levels of noise sometimes 7 days a week in a predominately residential area.

My family and i already have to put up with this constant high level of commercial noise sometimes 7 days a week from 7am. Clearly any increase in work rates will only add to the already intolerable noise levels.

I encourage council to take sound level recordings from my premises to ascertain the exact amount of noise constantly emanating from the work area.

As previously stated, there is an uninterrupted line from the site to my home. There is not even a 'curtain' in use on the site that i believe was stipulated in a past DA.

The Marina has a history of not following Council DA guidelines.eg permanently parking vessels on the northern pontoon, operating the marina outside of normal business hours with excessive noise. Excessively bright flood lighting that reflects off the water and into my bedroom windows.

I strongly object to any increase in work rates due to the above concerns.

- <u>Submission from 4 Princes Street, Newport</u>

We did not receive formal notification.

The Pittwater frontage of our property incorporates our swimming pool and entertaining area. It is approximately 200 metres to the north of the subject site and has a direct line of sight and sound to the travel lift and work area of the marina.

Our bedroom also has an uninterrupted line of sight and sound to the marina working area.

The intensity of the work and volume of noise emanating from the marina has considerably increased over the past years and is continuing to do so.

There is almost constant noise from water blasters, grinders, sanders and other power tools

starting at 7am Monday to Saturday and continuing to well after 4pm. Work is also carried out on most Sundays.

This current level of usage is well outside the permitted use. It is very intrusive and affects our quiet enjoyment of our property.

In all the circumstances, particularly having regard to the fact that the marina sits in a residential area there should be no permitted increase to the intensity or level of work permitted on the marina site.

Comment:
Notification - Notification of the modification application has been undertaken in accordance with Section A5.1 Exhibition, Advertisement and Notification of Applications of Pittwater 21DCP. Properties fronting Heron Cove to the north of the site up to approximately 170m from the site and to the properties to the south were notified of the proposed modification. The extent of notification for the modification proposed is considered satisfactory and included No. 4 and 6 Princes Street. This issue does not hold determining weight.

Hours of Operation - the hours of operation approved for the marina are identified in condition No. 33. of development consent No.89/388 which includes condition 33 which states:

33. Hours of use of mechanical equipment are restricted to 8.00am - 5.00pm Monday to Friday and 8.00am to 1.00pm Saturdays.

Any works occurring outside of the approved hours of operation should be reported to Council's Rangers and Environmental Compliance section to be investigated. The current modification does not propose any change to the approved hours of operation.

Noise - In relation to the use of a 'curtain', at the time of inspection, the marina had a curtain installed on the northern side of the hardstand area.

Photograph 1 and 2 - Existing curtain installed on the northern side of the hardstand area

Compliance matters - The issues raised in this submission relating to general non-compliance and nuisance generating activities are beyond the scope of this application and should be reported to Council's Environmental Compliance section at the time of the occurrence. This issue does not hold determining weight.

Increase in work rates - The proposed modification to enable up to eight (8) vessels to be on the hardstand at any one time does not increase the intensity of the use of the site. The increase in hardstand numbers provides greater flexibility and improved efficiencies for managing work flow sequencing for this part of the business within the existing approved operating hours.

The marina does not seek to increase the number of workers currently employed in association with the service and maintenance part of the operation. It is noted that the original consent 89/388 did not provide any numerical restriction on the number of employees working on the hardstand area. The current operation has up to 20 workers at any time within the hardstand area which includes permanent employees and specialist contractors who are not on site every day. It is a recommendation of this report that a new condition be included which limits the maximum number of employees working on that hardstand area at any one time to twenty (20) to ensure that there is no intensification of the use.

Zoning and Permissibility - The land on which the existing marina is located is zoned IN4 Working Waterfront and W2 Recreational Waterways. Marinas and Light Industries and Boat Building and Repair Facilities are permissible land uses with consent in these zones. The current marina is not within a residential zone but is located adjacent to a Local Centre, Medium Density Residential, Public Recreation and Environmental Living zoned land. The marina has been in operation since 1963 with increases to the mooring capacity since 2011.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	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 the development.

Internal Referral Body	Comments
	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.
Environmental Health (Industrial)	**Supported, subject to conditions** <u>General Comments</u> An inspection was carried out on 30 September 2019 to look at Environmental Health related issues. The proposal is essentially to double the number of boats stored/ serviced on the existing hard stand open area from 4 to 8 which has been recently occurring and has resulted in EPA and Council involvement. The industrial servicing, painting, defouling is the significant matter of interest to Environmental Health however it is noted that the business is operating a Scheduled Activity and is therefore licenced by the NSW EPA . Their licence limit of boats to be serviced has been exceeded based on Councils previous DA restrictions. The significant issue here being the management of chemical compounds as a result of boat maintenance activities. There appears to be no requirement that boats be serviced under cover or in an enclosure.The storage of boats and the activity of servicing of boats is an historically blurred line, storage and servicing can be separate activities. Significantly the whole hard stand area has been EPA compliant with the exception of boat numbers and size, hence the DA Mod application. With regard to runoff water from the uncovered area and potential environmental pollution, it was observed that a system approved by the EPA and Sydney Water was installed and is functioning as designed and is being properly managed and records updated on a daily basis. This system is not impacted by the proposal as the surface area being treated is not increasing. In summary; this system ensures that material washing from the hardstand enters a (10,000 L) tank and stored for treatment before being pumped to the sewer where there is a " first flush" type system in operation, where by any excessive rain exceeding tank capacity will be diverted (after initial pollution items are removed) then enters Pittwater as rain water run off only. No additional implications to what is currently occurring are expected as a result of the proposal.

Internal Referral Body	Comments
	The other issue considered is noise implications and wind blown material. The operations will be similar to that carried out currently and it is noted that the currently approved number of boats (4) on the hard stand is not regulated in the size (by Council) but restricted more by site availability; in other words eight smaller boats proposed may equal the work involved to 2 very large boats being worked on on site work. Visually the nearest affected dwellings are across water to the north at some distance but it is noted that sound caries effectively over water. The building on site partly screens the activities to neighbours. Work carried out on the north western hardstand area could potentially result in noise and windblown material; similar to what could occur presently. There is a curtain screen on the deck in this area for the purpose of catching wind blown material. Noise can be reduced by minimising noisy activity in this specific area or by acoustic screening should a nuisance eventuate. Environmental Health raises no objections Recommendation: APPROVAL - subject to conditions
NECC (Bushland and Biodiversity)	**Supported** Council's Natural Environment - Biodiversity section, raises no objection to the proposed storage of vessels in an existing hardstand area.
NECC (Coast and Catchments)	**Supported** The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. **Coastal Management Act 2016** The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016.* **State Environmental Planning Policy (Coastal Management) 2018** As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development. The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but has not been included on the Coastal Vulnerability Area Map under the State Environmental

Internal Referral Body	Comments
	Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this modification proposal of the approved DA 89/388. Comment: As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Doyle Consultants, Council accepts the assessment, and the application satisfies the requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. **Pittwater LEP 2014 and Pittwater 21 DCP** The subject site has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed modifications . However these controls does not apply for proposed modification developments. The proposed modification therefore satisfies the relevant requirements of P21 DCP.
NECC (Development Engineering)	**Supported** The application was referred to Council's Development Engineers. No objection or conditions were provided.
Waste Officer	**Supported** The application was referred to Council's Waste Section who raised no objection to the proposed modification.

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 industrial (marina) 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 continued industrial (marina) land use.

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 proposed modification application has been reviewed by Council's Coast and Catchments Team in terms of its consistency with the relevant clauses of SEPP (Coastal Management) 2018 and is considered satisfactory.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone IN4: Yes Zone W1 : Yes Zone W2 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone IN4: Yes Zone W1 : Yes Zone W2 : Yes

Principal Development Standards
The proposed modifications to development consent No. 89/388 do not include any building works or any change to the development standards.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
5.7 Development below mean high water mark	Yes
7.1 Acid sulfate soils	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls
There are no building works proposed as part of this modification. Accordingly, the built form controls are not applicable to this application.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.15 Waterways Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.19 Estuarine Habitat	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.10 Pollution Control	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D15.1 Character as viewed from a public place	Yes	Yes
D15.2 Scenic protection - General	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.20 Commercial waterfront development - pollution prevention	Yes	Yes

Detailed Assessment

B1.4 Aboriginal Heritage Significance

The proposed modifications seek to increase the number of vessels which can be held on the existing dry dock hardstand area at any one time to eight (8). The proposed works do not impact any areas of the site beyond the existing constructed dry dock and are not considered to have any impact on any Aboriginal Heritage in the vicinity of the site.

C1.13 Pollution Control

The current operation has strict processes in place where by all waste materials generated by the maintenance and repair of vessels are disposed of in accordance with the requirements of the Protection of the Environment Operations Act. The premises is also subject to NSW EPA Licence requirements All wastewater is and will continue to be disposed of to Sydney Water sewer infrastructure following on-site treatment.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

This modification application has been assessed in accordance with the provisions of Section 4.15 and 4.55 of the EP&A Act, 1979, the provisions of relevant EPI's, PLEP 2014 and the relevant codes and policies of Council including the relevant provisions of the Pittwater 21 DCP.

The assessment of this application has found that the proposed modification to Condition 57 of development consent 89/388 to increase the number of vessels within the hardstand area of the marina to eight (8) is acceptable.

The notification of the development resulting in two (2) submissions, which oppose the proposal. The submissions raised concern with the following:

- Hours of operation
- Noise
- Intensification of development
- Non-compliance with existing consent requirements

The issues raised in the submissions have been addressed within the 'Public Notification Section' of this report. On balance, the proposal is satisfactory in relation to the issues raised and it is recommended that the Northern Beaches Local Planning Panel, as the consent authority approve this

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

RECOMMENDATION

A. Deferred Commencement - Acoustic Assessment

Subject to a Acoustic Assessment being provided to Council which certifies that noise impacts on adjoining residents from the operation of the marina with additional vessels on the hardstand area are acceptable and in accordance with the Industrial Noise Policy limits.

Evidence required to satisfy these conditions must be submitted to Council within six (6) months of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000.

B. Modify Condition 57 to read as follows:

57. Maximum Number of Vessels on Hardstand

A maximum number of eight (8) vessels at any one time are to be stored on the hardstand area.

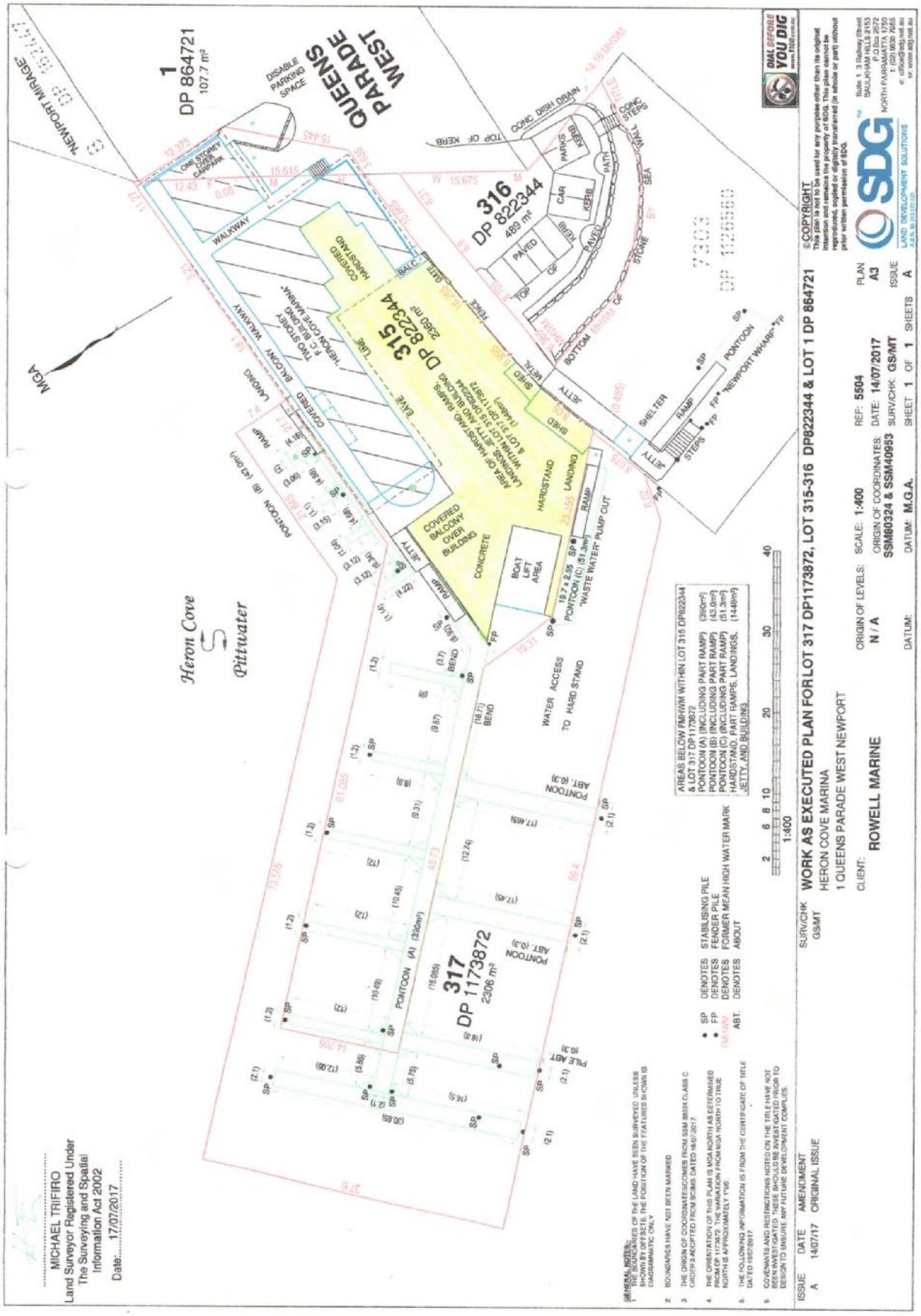
Reason: To ensure compliance with the requirements of this consent.

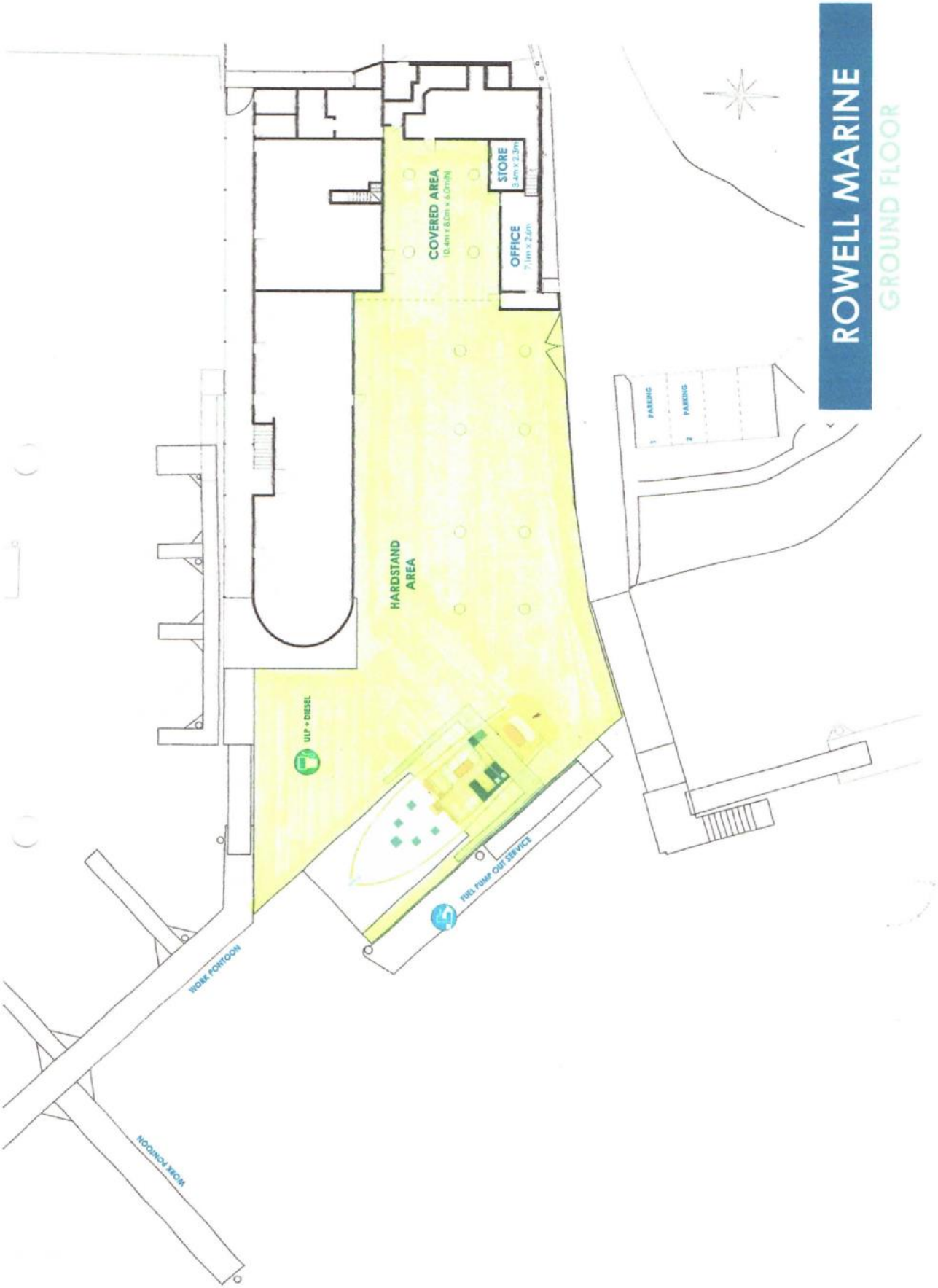
C. Add condition 64 to read as follows:

64. Maximum number of Employees for the Service and Repair Area

A maximum number of eleven (11) workers (including permanent employees and specialist contractors) shall be permitted to be working on the hardstand area of the service and repair component of the marina at any one time.

Reason: To ensure the maximum use of the hardstand area is not intensified.


QUEENS PARADE WEST
1
DP 864721
107.7 m²
316
DP 822344
489 m²
317
DP 1173872
2306 m²
315
DP 822344
2380 m²
Heron Cove
Pittwater
WORK AS EXECUTED PLAN FOR LOT 317 DP1173872, LOT 315-316 DP822344 & LOT 1 DP 864721
HERON COVE MARINA
1 QUEENS PARADE WEST NEWPORT
CLIENT: ROWELL MARINE
SCALE: 1:400
REF: 5504
DATE: 14/07/2017
PLAN A3
ISSUE A
ORIGIN OF LEVELS: N / A
ORIGIN OF COORDINATES: SSM80324 & SSM40953
SURV/CHK: GS/MT
DATUM: M.G.A.
SHEET 1 OF 1 SHEETS
SURV/CHK GS/MT
ISSUE A
DATE 14/07/17
AMENDMENT ORIGINAL ISSUE
MICHAEL TRIFIRO
Land Surveyor Registered Under The Surveying and Spatial Information Act 2002
Date: 17/07/2017
SDG
LAND DEVELOPMENT SOLUTIONS
DIAL BEFORE YOU DIG
© COPYRIGHT


ROWELL MARINE
GROUND FLOOR
COVERED AREA
(10.4m x 8.0m x 6.0m)
STORE
3.4m x 2.3m
OFFICE
7.1m x 2.6m
HARDSTAND AREA
PARKING
PARKING
ULP + DIESEL
FUEL PUMP OUT SERVICE
WORK PONTOON
WORK PONTOON

ITEM 3.2	**MOD2019/0313 - 571-575 SYDNEY ROAD, SEAFORTH - MODIFICATION OF DEVELOPMENT CONSENT DA2016/0373 GRANTED FOR DEMOLITION AND CONSTRUCTION OF SHOP TOP HOUSING AND STRATA/STRATUM SUBDIVISION**
REPORTING OFFICER	**ANNA WILLIAMS**
TRIM FILE REF	**2019/680597**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2019/0313 for Modification of Development Consent DA2016/0373 granted for demolition and construction of shop top housing and strata/stratum subdivision at Lot 43 DP 656428, 571-575 Sydney Road, Seaforth subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0313

Responsible Officer:	Adam Croft
Land to be developed (Address):	Lot 43 DP 656428, 571 - 575 Sydney Road SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA2016/0373 granted for Demolition construction of shop top housing and strata/stratum subdivision
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Seaforth 575 Developments Pty Ltd Jufran Investments Pty Ltd CSNLM Seaforth Pty Ltd
Applicant:	Boston Blyth Fleming Pty Ltd

Application Lodged:	01/07/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	20/07/2019 to 03/08/2019
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Executive Summary

The application seeks to modify DA0373/2016 for Construction of a shop top housing and strata/stratum subdivision under the provisions of S4.55(2) of the EP&A Act.

DA0373/2016, which sought approval to the shop top housing development, was refused by the Northern Beaches Independent Assessment Panel (NBIAP) on 20 April 2017.

DA0373/2016 - Section 82A Review of Determination - was approved by NBIAP on 9 August 2017.

The current application is referred to the Northern Beaches Local Planning Panel for determination as it seeks to amend an application approved by the previous equivalent panel (NBIAP).

The proposed modification generally relates to internal reconfigurations and minor changes to the built form at the front and rear of the building. The approved development included a breach of the height of buildings development standard and no change is proposed to this approved height.

Three (3) submissions objecting to the proposal have been received. The primary issues raised in these objections are increased bulk and scale, associated amenity impacts, and the use of the ground floor commercial premises.

Council's Waste Officer has recommended refusal of the application based on the proposed new bin room location. This issue is not considered sufficient to warrant refusal of the application and is discussed further under the Waste team referral comments.

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

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification includes changes to the approved shop top housing development as follows:

- Minor reconfiguration of basement levels, commercial tenancies and residential units
- Reconfiguration of internal lift and stair access
- Changes to building facade and rear balcony/terrace layouts
- Changes to doors and windows
- Reconfiguration of access to rear communal open space area
- Relocation of bin rooms

ASSESSMENT INTRODUCTION

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

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

- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Development Control Plan - 3.1.3 Townscape (Local and Neighbourhood Centres)
Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor
Manly Development Control Plan - 4.2.7.1 Wall Height and number of Storeys
Manly Development Control Plan - 4.2.7.6 The Townscape Plan and Precincts within Seaforth Centre

SITE DESCRIPTION

Property Description:	Lot 43 DP 656428 , 571 - 575 Sydney Road SEAFORTH NSW 2092
Detailed Site Description:	The subject site consists of one allotment located on the southern side of Sydney Road. The site is irregular in shape with a frontage of 17.98m along Sydney Road and an average depth of 44m. The site has a surveyed area of 608.5m². The site is located within the B2 Local Centre zone and accommodates an existing two-storey shop top housing development with no vehicular access. The site slopes approximately 3m from north (front) to south (rear). The site contains no significant vegetation. **Detailed Description of Adjoining/Surrounding Development** Adjoining and surrounding development is characterised by a mix of commercial and residential development to the east within the Seaforth commercial centre, and generally by low density residential development to the west. The adjacent property to the east, at 567 Sydney Road, contains a five-storey shop top housing development. The adjacent properties to the west, at 577 and 581 Sydney Road, contain a two-storey commercial development and a two-storey detached dwelling, respectively. Development in this area of Sydney Road consists of commercial premises,

	shop top housing and residential development.

Map:

SITE HISTORY

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

DA0508/2001 - Alteration and/or Additions to existing Commercial Development - Approved 5 December 2001.

DA0532/2004 - Addition of basement carparking, lift & stairs & removal of tree - Refused 3 March 2005.

DA0353/2009 - Alterations to the existing shop front - Approved 5 January 2010.

DA0373/2016 - Demolition, construction of shop top housing and strata/stratum subdivision - Refused 20 April 2017.

DA0373/2016 - Part 2 - Section 82A Review of Determination of refused demolition, construction of shop top housing and strata/stratum subdivision - Approved 09 August 2017.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;

- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA0373/2016 - Part 2, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	**Comments**
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA0373/2016 - Part 2.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA0373/2016 - Part 2 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environmental Plan 2013 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (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)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This Clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mr Peter David Wylie	26 Magarra Place SEAFORTH NSW 2092
Mrs Margot Rae Flack	2 / 567 Sydney Road SEAFORTH NSW 2092
Mr Michael John Smellie	13 / 567 Sydney Road SEAFORTH NSW 2092

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

- Proximity of proposed development and impact on privacy
- Building height non-compliance
- Use of rear commercial premises
- Increased building footprint and bulk
- Air-conditioning unit location on roof
- Overshadowing of 567 Sydney Road, compass orientation
- Impact of commercial unit 2 on 567 Sydney Road
- Location of garbage room
- Traffic/pedestrian safety impacts
- Impact of modification application on DA approval
- Adequacy of DA documentation

The matters raised within the submissions are addressed as follows:

- Proximity of proposed development to 26 Magarra Place and impact on privacy
  Comment:
  The proposed modification does not materially alter the approved rear setbacks of the building. The ground floor rear terrace is extended, however sufficient physical separation and screen planting is maintained to minimise any privacy impacts.

- Building height non-compliance
  Comment:
  The modification does not include any change to the previously approved building height of RL 79.20. As no change is proposed to the approved building height, no consideration of the non-compliance is completed as part of this assessment.

- Use of rear commercial premises
  Comment:
  The approved use of the commercial tenancy associated with the rear terrace is not subject to this modification application.

- Increased building footprint and bulk
  Comment:
  The proposed modification results in negligible increase to the building footprint and envelope. The rear and side setbacks to the podium/terrace and ground floor remain unchanged from the previous approval. There are minor changes to the rear balcony layouts, however these changes to not substantially alter the bulk at the rear of the development. Extensive planting is maintained as approved along the side and rear boundaries to provide screening to the adjoining properties.

- Air-conditioning unit location on roof
  Comment:
  As indicated on DA003 Site Analysis Plan, the proposed roof overrun/services are located centrally on the roof, not on the eastern side.

- Overshadowing of No. 567 Sydney Road, compass orientation
  Comment:
  The proposed changes to the building envelope are minor and will result in negligible additional overshadowing impacts. The proposal maintains consistency with the previous assessment of sunlight access and overshadowing. The compass orientation shown on the plans is considered to be accurate as per the survey plan provided.

- Impact of commercial unit 2 on No. 567 Sydney Road

Comment:
The photomontage of the rear commercial premises is indicative only and does not form part of the application. No approval is given for a food and drink premises on the site and any such use would be subject to a further application. No change is proposed to the use of the approved rear commercial premises or any associated impacts on No. 567 Sydney Road. This modification includes an increased setback to the eastern rear path and the retention of screen planting along the eastern boundary.

- Location of garbage room
  Comment:
  The proposed change to the garbage/bin room is not supported and the approved location is to be retained. Satisfaction of the approved conditions of consent in relation to on-going waste management may be achieved either at Construction Certificate stage or via a further modification.

- Traffic/pedestrian safety impacts
  Comment:
  The proposed modification does not alter the approved traffic and pedestrian safety situation. No objection is raised by Council in relation to this matter, subject to recommended conditions that have been included in the consent.

- Impact of modification application on DA approval
  Comment:
  The subject modification does not void the approved development DA0373/2016. Assessment of this application is limited only to those parts of the development that are proposed to be modified or changed. A full assessment of the modification undertaken by Council has identified negligible additional bulk resulting from the proposed changes. The approved building height of RL 79.20 and side setbacks are retained, and there is minimal change proposed to the balcony/building rear setbacks.

- Adequacy of documentation
  Comment:
  The application is considered to provide sufficient detail to assess the extent and associated impacts of the proposed modification. Given the minimal extent of the changes proposed to the bulk/built form at the rear of the site, no additional information or details are required in relation to overshadowing and privacy impacts on the adjoining property.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. *Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.*

Internal Referral Body	Comments
Landscape Officer	The landscape component of the modification proposal is acceptable, subject to the completion of landscape works. Council's Landscape section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.
NECC (Development Engineering)	The applicant proposed some changes to the internal parking and roof setting. Development Engineering has no objection to the application. However, we would like to update these below conditions on both stormwater and driveway crossing to reflect the current Council's practice. a) Stormwater: 1) Condition 4 and 5 shall be combined and amended as below: **Stormwater Drainage Application** A Stormwater drainage application under Section 68 of the Local Government Act 1993 is to be submitted to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the on site stormwater management which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate. Reason: To ensure appropriate provision for disposal and Maintenance Stormwater management and compliance with the BASIX requirements, arising from the development. 2) Additional condition about Positive Covenant and restriction on use of land of on site detention system shall be added at below: **Positive Covenant and Restriction as to User for On-site Stormwater Detention** A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are

Internal Referral Body	Comments
	to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate. Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard. **Registration of Encumbrances for On-site Stormwater Detention** A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate. Reason: To identify encumbrances on land. **On site stormwater disposal Compliance Certification** A copy of the approved Onsite Stormwater disposal system showing Works as Executed (WAE) details must be submitted to Council for approval.The WAE must be certifed by a registered surveyor. The details information for WAE is shown in Council's "Manly Specification for On-site Stormwater Management 2003". A completion certficate of the on-site stormwater disposal system, certification from a consulting engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate. Reason: Compliance with the consent and Council standards and specifications. **Authorisation of Legal Documentation Required for On-site Stormwater Disposal System** An application for the authorisation of legal documents is to be lodged with Council and payment of the associated fee. The application is to include the original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and photographic evidence of the completed system. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate. Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard

Internal Referral Body	Comments
	b) Driveway crossing: 1) Condition 6 shall be modified as the below: **Vehicle Crossings Application** An application for Driveway levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid. Approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate. 2) Condition 21 shall be modified as the below: **Vehicle Crossings** The provision of a vehicle crossing at least 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.
Traffic Engineer	The modification is for: - a modification of the approved unit mix, exchanging a 4 bedroom unit for a 3 bedroom unit but retaining the previously approved quantum of units (5) - a decrease in the commercial tenancy area on teh ground floor from approx 188sqm to 174sqm - increasing the numbe rof offstreet carspaces from 15 to 16. traffic generation The changes will result in a slight reduction in the anticipated traffic generation from the site when compared with the existing approval. There is a projected peak hour traffic generation of 6.5 trips. This traffic generation is not opposed and it is noted that all vehicles exiting the site would need to turn left as an existing traffic island prevents right turns. parking The DCP requirement for parking for the development would be 5 residential spaces, 1 visitor space and 5 commercial spaces. The developer proposes 10 residential spaces (including 1

Internal Referral Body	Comments
	disabled space), 1 visitor space and 5 commercial spaces (including 1 disabled space) . This exceeds the DCP requirement and is not opposed although it is noted that the residential disabled space is not as per the requirements of AS2890.6. A complaint space can be conditioned. access The driveway serving the devlopment is only a single width which means that there is a chance of entering and exiting vehicles meeting each other. AS2890.1 requires the first 6m of the driveway inside the property boundary to be constructed at a minimum of 5.5m in width but allows this to be assessed on a case by case basis and does not stipulate that it must be provided if vehicle movements are less than 30 in the peak hour. For this development, as the anticipated peak hour movements are well below 30 and as a traffic light control system is proposed to manage entry and exit movements. The single width driveway is not opposed.
Waste Officer	Waste Services Referral Comments: The applicant has not complied with the Northern Beaches Council Waste Management Guidelines as follows. A redesign is required to ensure compliance. Bin room design and location The applicant is to ensure there is a bin room at street level to facilitate a wheel out and return service by Council and/or its agents. The bin room is to be able to accommodate 5 x 240L bins required for 5 dwellings. Bin room layout to show bins in single bin rows rather than double. The bin room is to be located within 6500mm of the front property boundary. The pathway and access between the Waste Storage Area and Collection Point will be: a) Solid, concrete, continuous, non-slip and clear of any obstructions and steps. b) A maximum ramp gradient of 1 in 8. c) Hazard free and not via a pathway with vehicular traffic. d) A minimum width of 1200mm. Any doors fitted on the Waste Storage Area, pathway and access will be: a) A minimum width of 1200mm. b) Able to be latched in an open position. c) Unobstructed by any locks and security devices. d) Openable in an outward direction. Planning comments: Based on the above comments the re-located bin room areas within

Internal Referral Body	Comments
	the basement levels are to be deleted and the approved location retained. Conditions of consent requiring the appropriate amendment of the approved bin room locations were included in the previous consent and remain relevant to the development. This issue is not considered sufficient to warrant refusal of the application, and may be dealt with through satisfaction of conditions at Construction Certificate stage or further modification of the consent.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 65 - Design Quality of Residential Apartment Development

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 (4) storey residential flat 'housing' development plus basement car parking for the provisions of five (5) 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 consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

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 proposed modification does not increase the previously approved non-compliant building height. The approved parapet height of RL79.20 is maintained and as such, the proposal is consistent with 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 proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

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 is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

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 proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

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 consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

Principle 7: Safety

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

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

Comment:

The proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

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 is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

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 proposal is consistent with this principle as demonstrated in the Apartment Design Guide Assessment.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	The siting of the proposed development remains generally unchanged from the previous approval.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	The proposal maintains the general appearance of the previous approval while providing increased modulation and architectural detail to the facade to contribute positively to the streetscape. The modification will result in negligible additional bulk or impact on solar access to the subject site and neighbouring properties.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	The proposed modification will result in negligible impact to the transition between the private and public domain, and the associated safety and security of the development.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	The proposed modification does not alter the previously approved communal open space area.
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: **Site area** / **Minimum dimensions** / **Deep soil zone (% of site area)**	The proposed modification results in a minor reduction to the approved deep soil zone. The proposed maintains compliance with these criteria, providing

	Less than 650m^2	-	7%	107m2 of deep soil, equating to 17.6% of the site.
	650m^2 – 1,500m^2	3m		
	Greater than 1,500m^2	6m		
	Greater than 1,500m^2 with significant existing tree cover	6m		

Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: 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 ***Note:*** *Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.* *Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.*	The proposed modification retains the approved side setbacks and visual privacy outcomes.
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	The approved building entries and pedestrian access are retained and comply with this criteria.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	The approved pedestrian and vehicular access points are separated and remain unchanged.
Bicycle and Car Parking	For development in the following locations: • On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or	Not applicable. The site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land

	• On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre 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. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	zoned B3 Commercial Core, B4 Mixed Use.
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: • 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.	All apartments receive a compliant amount of direct sunlight to living rooms and private open spaces.
	• A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	None of the apartments receive no direct sunlight.
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: • 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.	All apartments are naturally cross ventilated.
	• Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	The proposed modification maintains compliance with this criterion.
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	The approved ceiling heights comply with these criteria and remain unchanged.

	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	Apartments are required to have the following minimum internal areas: **Apartment type** / **Minimum internal area** Studio: $35m^2$ 1 bedroom: $50m^2$ 2 bedroom: $70m^2$ 3 bedroom: $90m^2$ The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by $5m^2$ each. A fourth bedroom and further additional bedrooms increase the minimum internal area by $12m^2$ each.	The proposal maintains compliance with these criteria. Each of the two-bedroom apartments contain one additional bathroom and are 90sqm in area. Each of the three-bedroom units contain one additional bathroom and are 141sqm in area. The four-bedroom unit contains two additional bathrooms and has an area of 190sqm.
	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.	Each habitable room has a window of compliant dimensions.
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Each habitable room depth is less than 2.5 x the ceiling height.
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	The open plan living/dining/kitchen areas are within 8m of a window.
	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	Bedrooms are compliant with minimum required areas.
	Bedrooms have a minimum dimension of 3.0m	Bedrooms are compliant

<table>
<tr><td></td><td>and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.</td><td>with minimum required dimensions and include built in wardrobes.</td></tr>
<tr><td></td><td>Living rooms or combined living/dining rooms have a minimum width of:

• 3.6m for studio and 1 bedroom apartments
• 4m for 2 and 3 bedroom apartments</td><td>Living rooms comply with minimum required widths.</td></tr>
<tr><td></td><td>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</td><td>Each apartment has a minimum internal width of 4m.</td></tr>
<tr><td>Private Open Space and Balconies</td><td>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>$4m^2$</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>$8m^2$</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>$10m^2$</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>$12m^2$</td><td>2.4m</td></tr></table>
The minimum balcony depth to be counted as contributing to the balcony area is 1m</td><td>The proposed development contains balconies at the following dimensions:

Unit 101 (3 bed)
Northern balcony:
16m2, depth 2.4-5.5m

Southern balcony:
22m2, depth 2.5m

Unit 102 & 202 (2 bed)
Northern balcony:
13m2, depth 1-3.9m

Unit 201 (3 bed)
Northern balcony:
16m2, depth 2.4m-5.5m

Southern balcony:
15m2, depth 1.6m-2.4m

Unit 401 (4 bed)
North-east balcony:
15m2, depth 2.3m-5.2m

North balcony:
6m, depth 1m-2.9m

North-west balcony:
8m2, depth 1m-3.7m

Southern balcony:
26m2, depth 3.5m</td></tr>
<tr><td></td><td>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of $15m^2$ and a minimum depth of 3m.</td><td>N/A</td></tr>
<tr><td>Common Circulation</td><td>The maximum number of apartments off a</td><td>The maximum number of</td></tr>
</table>

and Spaces	circulation core on a single level is eight.	apartments off the circulation core at any one level is two.
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	The proposed building is four storeys in height.
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: **Dwelling Type** / **Storage size volume** Studio apartments / 4m3 1 bedroom apartments / 6m3 2 bedroom apartments / 8m3 3+ bedroom apartments / 10m3 At least 50% of the required storage is to be located within the apartment.	The proposed modification maintains compliance with this criterion. Further storage cages are provided in basement 2.
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	The approved locations of noise sources within the development are generally retained away from bedrooms. The proposal is compliant with this criterion.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	The approved orientation of the development mitigates the impacts of external noise and pollution.
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	The proposed modification includes a mix of two- and three-bedroom units.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	The ground floor contains no apartments and is occupied only by commercial premises.
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	The proposed modification includes changes to the facade that provide increased articulation and visual interest, while maintaining the character of the local area.

<table>
<tr><td>Roof Design</td><td>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.</td><td>The proposed development retains the approved flat roof design. The roof top is not used for common open space.</td></tr>
<tr><td>Landscape Design</td><td>Was a landscape plan submitted and does it respond well to the existing site conditions and context.</td><td>The proposed development responds appropriately to the existing site conditions and context.</td></tr>
<tr><td>Planting on Structures</td><td>When planting on structures the following are recommended as minimum standards for a range of plant sizes:
<table>
<tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr>
<tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m^3</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^3</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^3</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></td><td>The proposed development is compliant with these criteria.</td></tr>
<tr><td>Universal Design</td><td>Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features</td><td>The proposed modification retains one adaptable unit as approved, equating to 20% of the total apartments. Accordingly, one accessible parking space has been provided.</td></tr>
<tr><td>Adaptable Reuse</td><td>New additions to existing buildings are</td><td>Not applicable.</td></tr>
</table>

	contemporary and complementary and enhance an area's identity and sense of place.	
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.	The proposed development is compliant with these criteria. The subject site is adequately serviced by buses. Retail/business uses are proposed to be located on the ground floor.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	The proposed modification retains the awning as approved. No signage is proposed as part of this application.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	The proposed development is compliant with this criterion.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	The proposed development is compliant with this criterion.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	The proposed development is compliant with this criterion.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	The proposed development is compliant with this criterion.

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 car parking proposed for the site exceeds the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide (as per the Guide to Traffic Generating Developments). However, this parking rate does not apply in this case, as the site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use. The parking rate within the MDCP 2013 has been applied.

The proposed internal areas for each apartment exceed the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide.

The proposed ceiling heights are equal to the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide. The application is not being refused in relation to these 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 application demonstrates that adequate regard has been given to design quality principles and the objectives of the Apartment Design Guide, as it provided a Design Verification Statement with the original application, outlining the proposed works.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 782506M_03 dated 8 May 2019).
The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	30	30

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	12.5m	17.15m	No change proposed	Variation previously supported in original approval	No (as approved)
Floor Space Ratio	1.5:1 912.75m2	1.39:1 849.9m2	1.46:1 886.7m2	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	N/A
4.4 Floor space ratio	Yes
6.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes

Detailed Assessment

6.1 Acid sulfate soils

Clause 6.1 - 'Acid sulfate soils' requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map.

The proposed modification is generally consistent with the previous approval with regard to excavation. The originally submitted Geotechnical Assessment indicates that there is no known occurrence of acid sulfate soils in the site locality.

6.2 Earthworks

The proposed excavation is generally consistent with the previously approved development.

6.9 Foreshore scenic protection area

The proposed modification retains the general built form of the approved development. The proposal will result in no unreasonable impact to visual aesthetic amenity or views to and from Sydney Harbour.

Manly Development Control Plan

Built Form Controls

Seaforth Local Centre Controls	Requirement	Approved	Proposed	Complies
4.2.7.1 Wall Height	10.5m	13.83m	No change proposed (RL 79.20)	No (as approved)
4.2.7.1 Number of Storeys	3	4	4	No (as approved)
4.2.7.2 Height above wall height	Max. 2m	400mm	No change proposed	Yes
4.2.7.3 Car parking and access	Prevent conflicts with other controls and pedestrians	Conflicts reasonably managed	Conflicts reasonably managed	Yes
4.2.7.4 Facade Design and Front Setback	Awning at ground floor	Proposed awning is at ground floor	Proposed awning is at ground floor	Yes
	Main facade above	Facade is above	Facade is above	Yes

		awning	awning	
	Third floor parapet/roof element	Third floor parapet element employed	Third floor parapet element employed	Yes
4.2.7.5 Building design	Visual and acoustic privacy	Privacy is maximised	Privacy is maximised	Yes
	Cross ventilation	All apartments are cross ventilated	All apartments are cross ventilated	Yes
4.2.7.6 Front setback	0m	0m	0m	Yes
4.2.7.6 Side setback	0m to 15m 3m beyond 15m depth	West: 0m to 15.2m East: 0m to 25m	No change proposed	No (as approved)
4.2.7.6 Rear setback	8m, Plus further setback on 45 degree plane, 3m above ground level of the site, commencing at the 8m setback point	4m breach at basement 300mm breach at fourth storey	No change proposed	No (as approved)
4.2.7.6 Street level design and access	Retail/business premises occupy most of façade to minimum depth of 10m	Proposal complies	Proposal complies	Yes
4.2.7.6 Corner element	Acknowledge vistas	Responds to corner and does not disrupt vistas	Responds to corner and does not disrupt vistas	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	Yes	Yes
4.2.7.1 Wall Height and number of Storeys	No	Yes
4.2.7.2 Consideration of Height Above the Wall Height	Yes	Yes
4.2.7.3 Car Parking and Access	Yes	Yes
4.2.7.4 Façade Design and Front Setback	Yes	Yes
4.2.7.5 Building Design	Yes	Yes
4.2.7.6 The Townscape Plan and Precincts within Seaforth Centre	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.1.3 Townscape (Local and Neighbourhood Centres)

Merit consideration:

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

Townscape
Objective 1) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.

Comment:

The proposed modification retains the existing basement carpark entrance.

Objective 2) To assist in maintaining the character of the locality.

Comment:

The proposed modification retains the approved mix of retail/business and residential development, and is consistent in bulk and scale with the approved development. As such, the proposal maintains the character of the locality.

Objective 3) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.

Comment:

The proposed modification will not impact pedestrian movements or the retail centre.

Objective 4) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.

Comment:

The proposed modification generally maintains the approved bulk and appearance of the approved development, while providing additional articulation and design detail to the built form.

3.4.1 Sunlight Access and Overshadowing

Merit consideration:

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

Objective 1) To provide equitable access to light and sunshine.
Objective 2) To allow adequate sunlight to penetrate:

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

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

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

Comment:

The proposed modification is generally for internal reconfigurations and minor external changes. The overall building height is retained at RL 79.20 and the proposed external changes at the front and rear of the development will result in negligible additional bulk or overshadowing impacts.

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

3.4.2 Privacy and Security

Merit consideration:

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

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

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

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.
Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal retains the approved side and rear setbacks at the rear of the development and includes screen planting to the eastern and western boundaries. The proposed east and west facing windows are highlight windows. The proposed modification is considered to be appropriately designed for privacy and will result in no unreasonable privacy or direct viewing impacts.

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

3.4.3 Maintenance of Views

The proposed modification includes no change to the approved roof RL of 79.20 and the changes to the external building form are located below roof level.

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

The proposed modification maintains a compliant number of car parking spaces. The previous application was approved without the provision of a loading bay and this situation remains unchanged.

4.2.7.1 Wall Height and number of Storeys

The approved wall height and number of storeys is non-compliant with the requirements of this control. The approved four storeys and maximum wall height of RL 79.20 remains unchanged.

4.2.7.6 The Townscape Plan and Precincts within Seaforth Centre

Compliance with control

Front setback:
The approved 0m front setback is compliant.

Side setback:
The approved non-compliant side setback situation remains unchanged as part of this modification.

Rear Setback:
The approved rear setbacks are also generally retained, with minor exceptions. The ground floor level rear deck/terrace to the Commercial 2 tenancy has been reconfigured/extended at the previously approved RL. The proposed terrace is sufficiently set back from the side and rear boundaries and incorporates fencing and landscaping as privacy measures. The approved access and stair to the rear yard has also been reconfigured and results in an increased setback and planting to the eastern boundary. The dining rooms of units 101 and 201 are extended marginally to the rear, but maintain compliance with this control.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

submitted by the applicant and the provisions of:

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

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

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

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

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

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2019/0313 for Modification of Development Consent DA2016/0373 granted for Demolition construction of shop top housing and strata/stratum subdivision on land at Lot 43 DP 656428,571 - 575 Sydney Road, SEAFORTH, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
DA003 Site Analysis Plan	5 June 2019	PBD Architects
DA100 Basement 1 & 2 Plans	5 June 2019	PBD Architects
DA101 Ground Floor Plan	5 June 2019	PBD Architects
DA102 Level 1 & 2 Floor Plans	5 June 2019	PBD Architects
DA103 Level 3 & Roof Plans	5 June 2019	PBD Architects
DA200 North & South Elevations	5 June 2019	PBD Architects
DA201 East & West Elevations	5 June 2019	PBD Architects
DA300 Sections A & B	5 June 2019	PBD Architects
DA301 Section C	5 June 2019	PBD Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
BASIX Certificate 782506M_03	8 May 2019	AGA Consultants
Access Report	5 April 2019	Accessible Building Solutions
BCA Assessment Report	10 May 2019	Building Control Group
Traffic and Parking Assessment Report	14 May 2019	Varga Traffic Planning

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

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**

L01 Ground Floor Landscape Plan	23 April 2019	Trish Dobson Landscape Architecture
L02 Level 3 Landscape Plan	23 April 2019	Trish Dobson Landscape Architecture

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

B. Modify Condition ANS02 to read as follows:

ANS02
The nominated adaptable unit (Unit 101) and all common areas of the proposed development, including the bin storage area, are to be compliant with AS1428.1-2009 – Design for access and mobility.

Plans demonstrating compliance with this condition are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the proposed development is compliant with the relevant Australian Standards in relation to design for access and mobility.

C. Modify Condition 4 (2DS01) to read as follows:

4 - Stormwater Drainage Application
A Stormwater drainage application under Section 68 of the Local Government Act 1993 is to be submitted to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the on site stormwater management which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

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

Reason: To ensure appropriate provision for disposal and Maintenance Stormwater management and compliance with the BASIX requirements, arising from the development.

D. Delete Condition 5 (2DS02) to read as follows:

5 (2DS02)
DELETED

E. Modify Condition 6 (2FP02) to read as follows:

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

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

Reason: To facilitate suitable vehicular access to private property.

F. Add Condition 13A - Bin Rooms to read as follows:

The proposed bin room areas within the Basement 1 & 2 Levels are to be deleted and the approved location retained.

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

Reason: The proposal does not provide suitable access to and from the modified bin room locations within the basement levels.

G. Add Condition 13B - Visitor & retail spaces Located behind security shutter/door to read as follows:

The installation of any security roller shutter for parking areas shall not restrict access to any designated visitor or publicly accessible commercial car parking space. In the event that the approved visitor and commercial car parking spaces are located behind any proposed security roller shutter, an intercom system is required to be installed to enable visitor access into the basement car parking area. This requirement is to be reflected on the Construction Certificate plans and any supporting documentation for the endorsement of the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure visitor and retail car parking is accessible to visitors.

H. Add Condition 13C - Pedestrian sight distance at property boundary to read as follows:

A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas.

Reason: To maintain pedestrian safety

I. Add Condition 13D - Compliance with Standards to read as follows:

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

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

(a) AS2601.2001 - Demolition of Structures**
(b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
(c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
(d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
(e) AS 4970 - 2009 'Protection of trees on development sites'**
(f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
(g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
(h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
(i) AS 2890.5 - 1993 Parking facilities - On-street parking**
(j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
(k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
(l) AS 1428.1 – 2009* Design for access and mobility - General requirements for access – New building work**

(m) AS 1428.2 – 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website www.hreoc.gov.au/disability rights /buildings/good.htm. <www.hreoc.gov.au/disability rights /buildings/good.htm.>

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

J. Modify Condition 21 (3FP01) to read as follows:

21 - Vehicle Crossings

The provision of one vehicle crossing at least 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory “Vehicle Crossing Inspection” card issued.

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

Reason: To facilitate suitable vehicular access to private property.

K. Add Condition 34A - Implementation of Construction Traffic Management Plan to read as follows:

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

Reason: To ensure adherence of the developer/builder to the Construction Traffic Management procedures and ensure they are held liable to the conditions of consent.

L. Add Condition 37A - Basement Garage Traffic Signal System to read as follows:

To prevent conflicting vehicle flows on the internal basement garage ramp and avoid vehicles having to reverse up/ down the ramp, a traffic signal system must be installed at each ramp entry, designed to warn drivers about to enter the road of any conflicting vehicle approaching.

The signal system must;
• be clearly visible from ramp entrances,
• is to clearly indicate to an approaching driver, by way of red light or wording, that an opposing vehicle has entered the ramp,
• Incorporate linemarking to delineate traffic flow and nominate waiting bay locations to allow vehicles to overtake another.

Details of the system, including the system operation, components and placement within the development, must be specified by a practising Traffic Engineer. This engineer is to submit a compliance certificate to the Accredited Certifier that the system has been installed and operating as designed, in accordance with the requirements of this condition, prior to the issue of any Occupation Certificate issued for the development.

Reason: To ensure no vehicle conflicts within the basement carpark.

M. Add Condition 37B - Disabled Parking Spaces to read as follows:

The disabled parking spaces within the basement carpark must be diemnsioned, marked and signposted in accordance with AS2890.6:2009. A bollard is to be provided within the shared zone of each disabled parking space. Details demonstrating compliance are to be submitted to the Certifying Authority prior to issue of any occupation certificate.

Reason: To ensure compliance with Australian Standards

N. Add Condition 37C - Positive Covenant and Restriction as to User for On-site Stormwater Detention to read as follows:

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.
Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

O. Add Condition 37D - On-Site Stormwater Detention Compliance Certification to read as follows:

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

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

issue of any interim / final Occupation Certificate.

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

P. Add Condition 37E - Authorisation of Legal Documentation Required for Onsite Detention to read as follows:

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

Q. Add Condition 37F - Registration of Encumbrances for On-site Stormwater Detention to read as follows:

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

R. Add Condition 37G - Landscape Works to read as follows:

Landscaping is to be implemented in accordance with the Landscape Plan L.01 and L.02, prepared by Trish Dobson Landscape Architecture, inclusive of the following requirements:
i) all tree planting is to be installed at 75 litre container size,
ii) Cupaniopsis anacardoides tree planting shall be deleted and replaced with a non-seeding native tree selected from the following list: Syzygium leuhmannii, Elaeocarpus reticulatus, or Xanthostemon 'Fairhill Gold', or an alternative as accepted by Council,
iii) all tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight as described in the clause, or where the proposed tree locations may otherwise be positioned to minimise any significant loss of views,
iv) all Rhapiolepis shrub planting shall be deleted and replaced with a non-seeding shrub specie,
v) all on slab planters shall be constructed in accordance with the typical details 02 and 03 on the Landscape Plan L.02,
vi) street tree replacement planting is required along the frontage consisting of 1 x 75 litre Callistemon viminalis, located subject to Council approval.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved plan and inclusive of any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity and soften the built form.

S. Add Condition 37H - Fire Safety Matters to read as follows:

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule

of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

GENERAL NOTES:

- ALL WORKS TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITIES, LOCAL GOVERNMENT & RELEVANT AUSTRALIAN STANDARDS & REGULATIONS.
- DRAWINGS FOR THE PURPOSES OF BUILDING AUTHORITY APPROVAL, CONSTRUCTION CERTIFICATE, TENDERING & CONSTRUCTION WITH CONSULTANTS PLANNING & ESTATE.
- DRAWINGS TO BE READ IN CONJUNCTION WITH CONSULTANT'S DRAWINGS, SPECIFICATIONS & REPORTS.
- DRAWINGS, SPECIFICATIONS & REPORTS TO BE CHECKED BY PBD ARCHITECTS, AND AUTHORITY IS REQUIRED FOR ANY REPRODUCTION.
- DIMENSIONS, LEVELS, SERVICES, SUBSTRUCTURE, SUPERSTRUCTURE, FUTURE ALLOWANCE FOR VERTICAL SERVICE DUCTS, STRUCTURAL WALL SYSTEMS AND CONSULTANT INPUT ARE TO BE VERIFIED

KEY:

BUILDING OUTLINE OF APPROVED DA 373/2016

LEGEND:

AC	ALUMINIUM FRAMED GLAZING
AN	AWNING - STREET (TO FUTURE DETAIL)
AW	AWNING WINDOW
CL	CLOSET
FB	FIRE HYDRANT
FE	FIRE EXTINGUISHER
MV	MECHANICAL VENT (TO FUTURE DETAIL)
RG	ROLLER GRILLE (TO FUTURE DETAIL)
RL	METAL LOUVRES (TO FUTURE DETAIL)
RS	METAL SLAT SCREEN
WS	METAL FINISH (TO FUTURE SELECTION)
CT	CERAMIC TILE (TO FUTURE SELECTION)
CTC	OFF FORM CONCRETE
CW	CONCRETE WALL (TO FUTURE SELECTION)
RP	ROOF PEBBLES
RW	ROOF WATERPROOFING (SELECTED PAINT FINISH)
SC	STONE CLADDING
ST	STEPS
TS	THRESHOLD SPIRIT

ISSUE	DATE	DESCRIPTION
A	2019.06.04	ISSUE FOR S4.55(2)

CLIENT:
SEAFORTH 575 DEVELOPMENTS PTY LTD

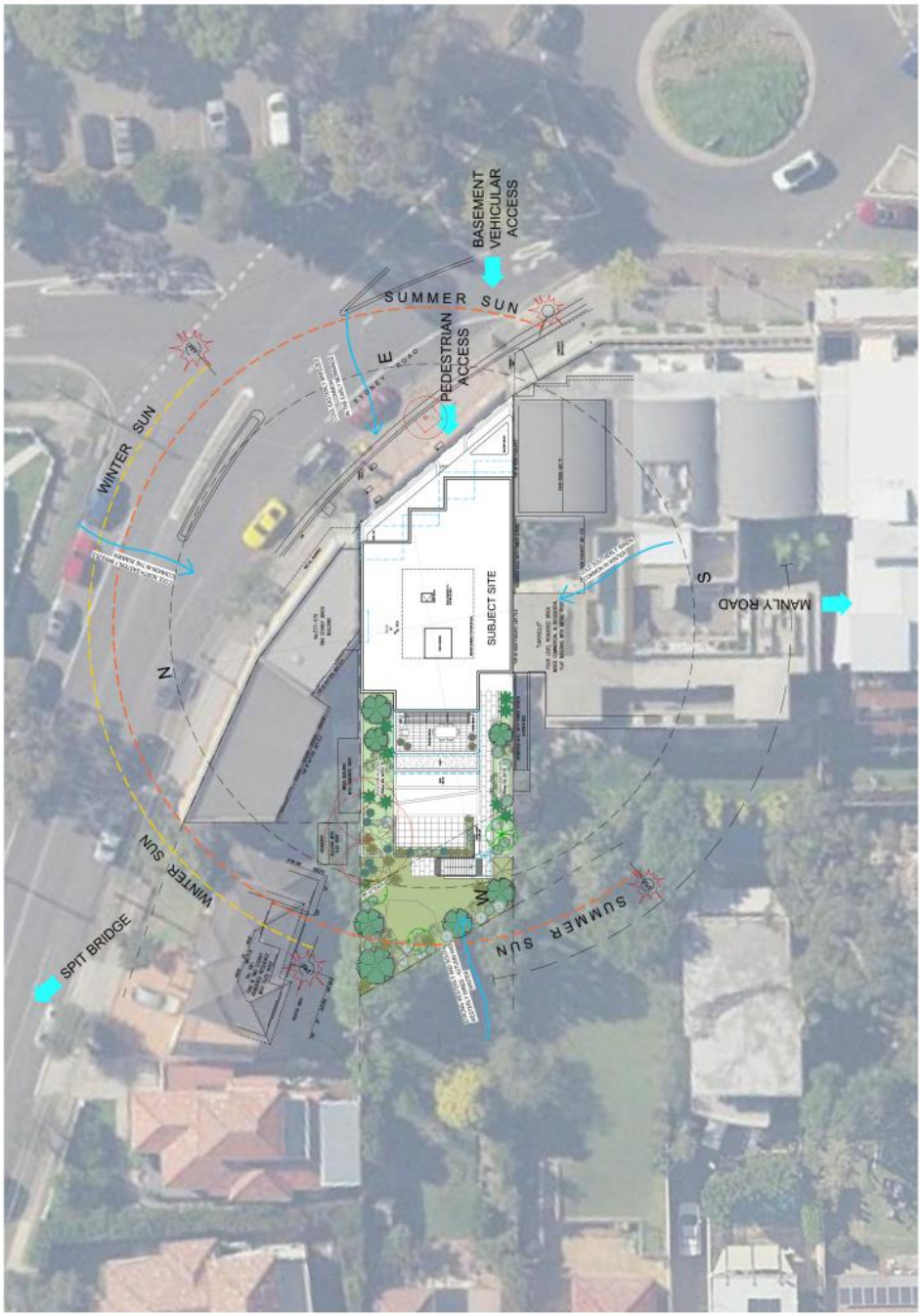
ARCHITECTS:
PBD | ARCHITECTS
ABN 14 147 020 991 P: +02 9908 8100 E: info@pbdarchitects.com.au W: www.pbdarchitects.com.au
Level 2, Suite 2.03, 55 Miller Street, North Sydney NSW 2060

PROJECT:
SECTION 4.55(2)
PROPOSED SHOP TOP HOUSING
571 - 575 SYDNEY ROAD, SEAFORTH

NOV 2018

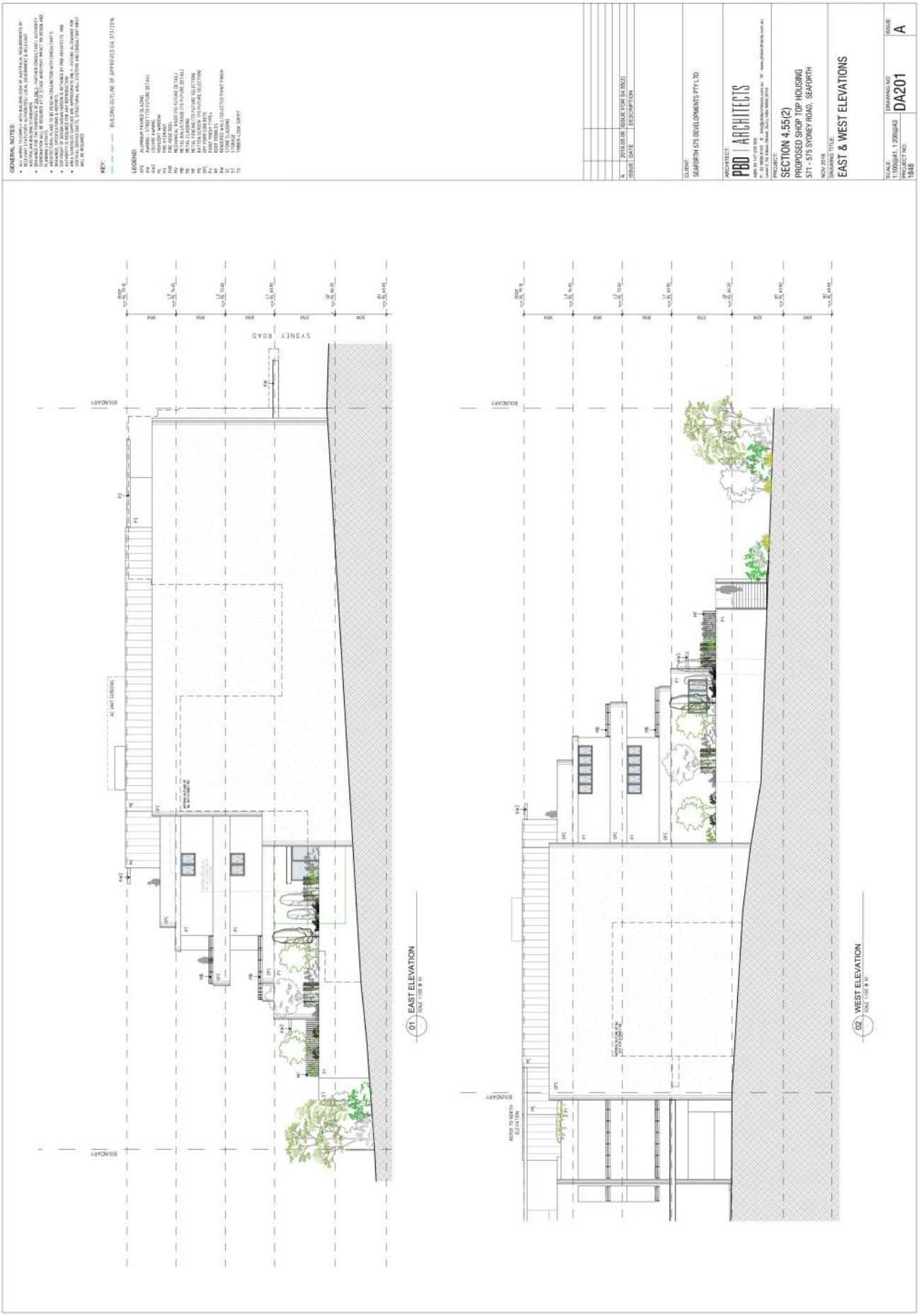
DRAWING TITLE:
SITE ANALYSIS PLAN

SCALE: 1:1000@A1, 1:2000@A3
PROJECT NO: 1848
DRAWING NO: DA003
ISSUE: A



01 SITE ANALYSIS PLAN
SCALE 1:200 @ A1

GENERAL NOTES:
KEY:
BUILDING OUTLINE OF APPROVED DA 373/2016
LEGEND:
AL1 ALUMINUM FRAMED GLAZING
AW ALUMINUM WINDOW
FH FIRE HYDRANT
FB FIRE BOOSTER
MV MECHANICAL RISER (TO FUTURE DETAIL)
MC METAL CLADDING (TO FUTURE DETAIL)
MS METAL SLAT SCREEN (TO FUTURE DETAIL)
P1 PAINT FINISH (TO FUTURE SELECTION)
P2 PAINT FINISH (TO FUTURE SELECTION)
P3 PAINT FINISH
P4 PAINT FINISH
P5 PAINT FINISH
P6 PAINT FINISH
P7 PAINT FINISH
P8 PAINT FINISH
P9 PAINT FINISH
RF ROOF FINISH
SC STONE CLADDING
ST STORAGE
TD TIMBER DOOR SOFFIT
A
2019.05.06
ISSUE FOR S4.55(2)
ISSUE DATE DESCRIPTION
CLIENT:
SEAFORTH 575 DEVELOPMENTS PTY LTD
ARCHITECT:
PBD | ARCHITECTS
PROJECT:
SECTION 4.55(2)
PROPOSED SHOP TOP HOUSING
571 - 575 SYDNEY ROAD, SEAFORTH
NOV 2018
DRAWING TITLE:
NORTH & SOUTH ELEVATIONS
SCALE:
1:100@A1 1:200@A3
PROJECT NO:
1848
DRAWING NO:
DA200
ISSUE:
A
BOUNDARY
No. 573-575 SYDNEY RD
No. 567 SYDNEY RD
NORTH ELEVATION
(SYDNEY ROAD)
SCALE 1:100 @ A1
SOUTH ELEVATION
SCALE 1:100 @ A1


GENERAL NOTES:
KEY:
BUILDING OUTLINE OF APPROVED DA 373/2016
LEGEND:
SYDNEY ROAD
BOUNDARY
AC UNIT GRILLES
01 EAST ELEVATION
SCALE 1:100 @ A1
02 WEST ELEVATION
SCALE 1:100 @ A1
A 2019.05.08 ISSUE FOR S4.55(2)
ISSUE DATE DESCRIPTION
CLIENT
SEAFORTH 575 DEVELOPMENTS PTY LTD
ARCHITECT
PBD | ARCHITECTS
PROJECT
SECTION 4.55(2)
PROPOSED SHOP TOP HOUSING
571 - 575 SYDNEY ROAD, SEAFORTH
NOV 2018
DRAWING TITLE
EAST & WEST ELEVATIONS
SCALE
1:100@A1 1:200@A3
DRAWING NO
DA201
ISSUE
A
PROJECT NO.
1848

ITEM 3.3	**MOD2019/0399 - 4 SYDNEY ROAD, MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA0167/2017 GRANTED FOR CHANGE OF USE TO A CHILDCARE CENTRE INCLUDING ALTERATIONS AND ADDITIONS TO THE EXISTING BUILDING**
REPORTING OFFICER	**MATTHEW EDMONDS**
TRIM FILE REF	**2019/680613**
ATTACHMENTS	**1 ⇩Assessment Report**
	2 ⇩Elevation Plans

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2019/0399 for Modification of Development Consent DA0167/2017 granted for change of use to a childcare centre including alterations and additions to the existing building at Lot 1 DP 628937, 4 Sydney Road, Manly subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0399

Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 1 DP 628937, 4 Sydney Road MANLY NSW 2095
Proposed Development:	Modification of Development Consent DA0167/2017 granted for Change of use to a childcare centre including alterations and additions to the existing building.
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Thousand Miles Pty Ltd
Applicant:	Guardian Early Learning Group Pty Ltd

Application Lodged:	16/08/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	24/09/2019 to 08/10/2019
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Executive Summary

This Section 4.55(1a) Application seeks consent to modify DA167/2017 for Change of Use to a Child Care Centre including alterations and additions to the existing building. The original application was approved by the Northern Beaches Independent Assessment Panel (NBIAP) on 19 December 2017. The application is referred to the NBLPP for a determination as the original application was determined by the NBIAP. The application was notified for a period of two weeks and eight (8) submissions were received.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modifications to the approved child care centre consists of:

Ground Floor

- Bike store relocation and pram parking enlarged;
- Reception adjusted;
- Meeting room deleted and piazza added;
- Staff space and amenities converted to kitchen;
- WC and shower added;
- Tenancy extended eastwards.

First Floor

- Deletion of laundry;
- New entry to stair 01;
- Nappy change and WC relocated;
- Internal partitions removed;
- Cot rooms replanned;
- Indoor area enlarged;
- Stair and fire stair 02 adjusted;
- Retention of existing window son the eastern and southern elevations.

Second Floor

- Staff room and planning room added;
- Refuge area added adjacent to fire stair 01;
- Kitchen deleted and WC added;
- Piazza space reduced and external space enlarged;
- Nappy change added;
- Laundry Added;
- Changes to fenestration on eastern and southern elevations;

Roof Level

- Removal of the approved outdoor area on roof, including removal of shade sales and greenhouse;
- Removal of staircase to roof access;
- Removal of WC from roof;
- Acoustic screen to existing plant area;
- Removal of roof sheeting between grid lines 03-GL10 and weatherproofing/bracing of trusses to provide true open space for external play area below; and
- Skylights added.

The applicant also seeks to amend condition of consent ANS01 to reduce the capacity of the child care centre from a maximum 110 children to a maximum of 100 children. This change has been requested in order to achieve compliance with the indoor and outdoor floor space requirements under the *Education and Care Service National Regulations.*

Make direct amendment to *Detailed Description of Development*

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 3.10 Safety and Security
Manly Development Control Plan - 4.2.5.4 Car Parking and Access
Manly Development Control Plan - 4.4.6 Child Care Centres

SITE DESCRIPTION

Property Description:	Lot 1 DP 628937 , 4 Sydney Road MANLY NSW 2095
Detailed Site Description:	The subject property is commonly known as 4-10 Sydney Road, Manly and legally known as Lot 1 DP 628937. The site is located on the northern side of Sydney Road. The property is irregular in shape and has a frontage of 18.9m to Sydney Road, an average depth of 36.7m and an overall site area of 695sqm. The property currently contains a three-storey commercial premises. The property is level. The adjacent property to the east, at 2 Sydney Road, is developed with a two-storey commercial development. The adjacent property to the west, at 12 Sydney Road, is developed with a three storey commercial development. Development in this area consists of commercial developments, shop top housing, residential flat buildings and pubs. **Make direct amendment to *Site description***

Map:

SITE HISTORY

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

- DA231/2010: Change of use to a temporary Police Station, associated fitout and signage. Approved under delegation 17 August 2010.

- DA123/2016: Alterations and additions to an existing commercial building including partial demolition of level two floor, construction of stairs from first floor to second floor, internal reconfiguration, replacement of shop front, and relocation of amenities – NSW Police. Approved by DAU 6 July 2016

- CDC130/2016: Alterations and additions to an existing commercial building. Approved by Private Certifier 8 September 2016.

- DA167/2017: Change of use to a child care centre including alterations and additions to the existing building. Approved by Northern Beaches Independent Assessment Panel on 22 December 2017.

Make direct amendment to *Site History*

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
The application has been assessed in accordance with the requirements of the Environmental Planning

and Assessment Act 1979 and the associated Regulations. In this regard:

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA167/2017, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	**Comments**
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	**Yes** The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA167/2017.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2011 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment
In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in

determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	**Comments**
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of	(i) **Environmental Impact**

Section 4.15 'Matters for Consideration'	Comments
the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	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. (ii) **Social Impact** The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) **Economic Impact** The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

Make direct amendment to *Environmental Planning and Assessment Act 1979 - Section 4.55 (1A)*

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 Faustino Miguel Martinez De Morentin	508 / 9 - 15 Central Avenue MANLY NSW 2095
Ms Karen Lucille Williams	PO Box 107 SEAFORTH NSW 2092
Mr Gregory Ernest Brown	8 Macquarie Road PYMBLE NSW 2073
Mr Ray Caryl Stone	704 / 9 - 15 Central Avenue MANLY NSW 2095
Mr Peter Eugene Dybac	509 / 9 - 15 Central Avenue MANLY NSW 2095

Name:	Address:
Ms Zina Dybac	
Mr Richard Roy Goodmanson	705 / 9 - 15 Central Avenue MANLY NSW 2095
Mrs Samantha Barbara Stow	505 / 9 - 15 Central Avenue MANLY NSW 2095
Margaret Irene Haynes	605 / 9 - 15 Central Avenue MANLY NSW 2095

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

- **Pedestrian Safety** - Safety concerns regarding the use of Henrietta Lane for access to the childcare centre due to the busy nature of lane, truck deliveries and the vehicles reversing out of Henrietta Lane. When the application was approved, through traffic was allowed via Henrietta Lane up until 11am when bollards were then erected. Currently, the arrangements for Henrietta Lane have changed and through traffic is not allowed after 8am when bollards are erected.
- **Health Concerns** - The childcare centre is not located in a suitable location due to the unclean nature of Henrietta Lane, the emissions from exhaust stacks from nearby restaurants and the proximity to drinking establishments.
- **Acoustic Impact** - The child care centre will have a noise impact on the Pacific Waves building and nearby residential properties. The submitted acoustic report stipulates that to achieve the maximum permissible noise level, no more than 25 children can be at the level 2 outdoor area at any one time. Given that the balance of outdoor space is far greater than indoor space in the proposal and that this facility caters for 102 children, it is submitted acoustic noise levels will always exceed the allowable maximum level of 55dB.

  Further, it is requested that the recommendations of the acoustic report including number of children within the outdoor play space included as a condition of consent.
- **Further modification application** - The application proposes to remove the roof top outdoor play area, however, there is a notation on the roof plan that reads '*PREVIOUSLY APPROVED ROOF LEVEL OPEN SPACE HATCHED TO BE RECONFIGURED VIA A SEPARATE MODIFICATION APPLICATION'*. The current 4.55 application should either be rejected or at minimum be placed of hold until the full picture of the modification(s) can be assessed not just this one submission in isolation. With this second modification due, I also ask whether these two modification submissions combined would result in a 50% change to the original submission which should mean that a new full DA application should actually be submitted and not two different modification submissions.
- **Underground Access Pathway -** When considering the original application, the applicant advised residents that parents would park in the underground Council car park below the Pacific Waves building and walk up the access tunnel to Sydney Road. What has become apparent, is that this access tunnel is not of sufficient width for two (2) prams to pass within the tunnel and is too steep of a gradient. The alternative option is to exit the carpark via a lift that opens up onto a carpark access between the Pacific Waves building and the subject site. In light of the access and safety issues, the application should be reassessed and not be supported.
- **Impact to Henrietta Lane During Construction** - Concern is raised regarding the traffic impact to Henrietta Lane during construction of the childcare centre. This includes closures, blockages and storage of construction material within the lane.

The matters raised within the submissions are addressed as follows:

- *Pedestrian Safety*
  <u>Comment:</u>
  This modification application is for changes to the internal layout and floor plan of the approved

childcare centre. The internal modifications result in a development that is substantially the same as originally approved, with no proposed changes to the access arrangements, nature of the use and site operation. Refusal of the this modification application is not warranted on the basis pedestrian access and safety, given there is no changes proposed which would directly influence the issues raised.

- *Health Concerns*
  Comment:
  The suitability of the location of the childcare centre was considered under the original application. The proposed floor plan changes proposed do not now render the development inappropriate for the site.

- *Acoustic Impact*
  Comment:
  An updated acoustic report has been submitted to address the layout which includes removal of the roof-top outdoor play space in lieu of an open roof form to the second floor. The acoustic report provides recommendations to achieve the criteria for noise emissions in accordance with the NSW Industrial Noise Policy and criteria for the AAAC Childcare Guidelines. The recommendations include acoustically treated roof trusses, roof covering with acoustic material to the second level courtyard, use of the existing northern masonry wall as an acoustic barrier and restrictions upon the number and duration of children occupying level 2.

  Conditions of consent will be updated to make reference to the acoustic report submitted with this application. The conditions require compliance with the recommendations of the acoustic report, which include limitation of the number of children in certain areas to achieve the required noise levels.

- *Further modification application*
  Comment:
  There is not currently another modification lodged with Council with respect to the subject site. Council can only consider what is currently lodged, which includes removal of the rooftop play space area. The applicant has advised there is no intention to lodge a further modification at this stage. The current modification application is not considered incomplete or deficient and the rooftop play area is clearly removed via this application.

- *Underground Access Pathway*
  Comment:
  As stated above, the access and operational arrangements of the childcare centre were considered under the original application and the proposed modifications to the floor plan do not result in a different arrangement which would require reconsideration of the issue under this modification.

- *Impact to Henrietta Lane during construction*
  Comment:
  The condition requiring the applicant to submit a construction traffic management plan (CTMP) prior to the issue of the CC is still maintained upon the original development consent. Council's traffic team have reviewed the CTMP prepared for the construction certificate and have provided feedback to the proponent regarding any temporary closures of Henrietta Lane under a separate process to this modification application.

Make direct amendment to *Submissions*

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage. **Make direct amendment to *Building Assessment - Fire and Disability upgrades***
Environmental Health (Industrial)	**General Comments** The applicant has proposed some modifications to the Approved childcare centre -reducing some of the top level functions and further internal works. Environmental Health has no objections to the proposal given the acoustic mitigation measures recommended in the Wood & Grieve Engineers report. **Recommendation** APPROVAL - subject to conditions **Make direct amendment to *Environmental Health (Industrial)***
NECC (Development Engineering)	The modification application proposed the internal changing only. Development Engineering has no objection to the application. **Make direct amendment to *NECC (Development Engineering)***
NECC (Stormwater and Floodplain Engineering – Flood risk)	The site is affected by the 1% AEP Flood level. There are no recommended changes to flood prone land conditions of consent placed on DA0167/2017. **Make direct amendment to *NECC (Stormwater and Floodplain Engineering – Flood risk)***
Strategic and Place Planning (Heritage Officer)	No concern raised regarding the proposed modifications from heritage. **Make direct amendment to *Strategic and Place Planning (Heritage Officer)***

External Referral Body	Comments

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. **Make direct amendment to *Ausgrid: (SEPP Infra.)***

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 Educational Establishments and Child Care Facilities 2017

Clause 23 of State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 stipulates that:

Before determining a development application for development for the purposes of a centre-based child-care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline, in relation to the proposed development.

As previously outlined this application is for the establishment of a centre-based child-care facility.

As per the provisions of Clause 23, the provisions of the SEPP and the *Child Care Planning Guideline* are applicable.

It is noted that the SEPP (Educational Establishments and Child Care Facilities) 2017 was not in force at the time of determining DA167/2017, however, the draft SEPP was considered as part of the application and the applicant provided satisfactory evidence of compliance with the National Quality Framework Assessment Checklist.

DESIGN QUALITY PRINCIPLES

Principle 1: Context

Good design responds and contributes to its context, including 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.

Well-designed child care facilities respond to and enhance the qualities and identity of the area

including adjacent sites, streetscapes and neighbourhood.

Well-designed child care facilities take advantage of its context by optimising nearby transport, public facilities and centres, respecting local heritage, and being responsive to the demographic, cultural and socio-economic makeup of the facility users and surrounding communities.

Comment:

The context of the childcare centre was considered under the original application. The modifications result in a development that is substantially the same as originally approved under DA167/2017.

Principle 2: Built Form

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

Good design 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. Good design also uses a variety of materials, colours and textures.

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.

Contemporary facility design can be distinctive and unique to support innovative approaches to teaching and learning, while still achieving a visual appearance that is aesthetically pleasing, complements the surrounding areas, and contributes positively to the public realm.

Comment:

The modifications result in a building that is substantially the same in regards to building height, scale and visual appearance to that originally approved. The modification involves removal of roof top play area, greenhouse and shade sails which reduces that overall visual impact.

Principle 3: Adaptive Learning Spaces

Good facility design delivers high quality learning spaces and achieves a high level of amenity for children and staff, resulting in buildings and associated infrastructure that are fit-for-purpose, enjoyable and easy to use. This is achieved through site layout, building design, and learning spaces fit-out.

Good design achieves a mix of inclusive learning spaces to cater for all students and different modes of learning. This includes appropriately designed physical spaces offering a variety of settings, technology and opportunities for interaction.

Comment:

The proposal retains a variety of indoor and outdoor learning spaces that is not inconsistent with the floor plate originally approved.

Principle 4: Sustainability

Sustainable design combines positive environmental, social and economic outcomes.

This includes use of natural cross ventilation, sunlight and passive thermal design for ventilation,

heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and re-use of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

Well-designed facilities are durable and embed resource efficiency into building and site design, resulting in less energy and water consumption, less generation of waste and air emissions and reduced operational costs.

Comment:

The proposed modifications have increased the amount of natural light to the play spaces through proposed trafficable skylights and an open roof structure for natural light to the second level.

Principle 5: Landscape

Landscape and buildings should operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Well-designed landscapes make outdoor spaces assets for learning. This includes designing for diversity in function and use, age-appropriateness and amenity.

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.

Comment:

An appropriate landscape plan has been submitted with the application. The landscape plan is not inconsistent with that originally approved.

Principle 6: Amenity

Good design positively influences internal and external amenity for children, staff and neighbours. Achieving good amenity contributes to positive learning environments and the well-being of students and staff.

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

Well-designed child care facilities provide comfortable, diverse and attractive spaces to learn, play and socialise.

Comment:

An updated acoustic report has been submitted to address the layout which includes removal of the roof-top outdoor play space in lieu of an open roof form to the second floor. The acoustic report provides recommendations to achieve the criteria for noise emissions in accordance with the NSW Industrial Noise Policy and criteria for the AAAC Childcare Guidelines. The recommendations include acoustically treated roof trusses, roof covering with acoustic material to the second level courtyard, use of the existing northern masonry wall as an acoustic barrier and restrictions upon the number and duration of children occupying level 2.

Principle 7: Safety

Well-designed child care facilities optimise the use of the built and natural environment for learning and play, while utilising equipment, vegetation and landscaping that has a low health and safety risk, and can be checked and maintained efficiently and appropriately.

Good child care facility design balances safety and security with the need to create a welcoming and accessible environment. It provides for quality public and private spaces that are inviting, clearly defined and allow controlled access for members of the community. Well-designed child care facilities incorporate passive surveillance and Crime Prevention Through Environmental Design (CPTED).

Comment:

The suitability of the site with regard to safety has been considered under DA167/2017. The proposed internal modifications to the floor plate are not considered to give rise to additional safety concerns.

The following table is an assessment against the criteria of the 'Child Care Planning Guideline' as required by State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

MATTERS FOR CONSIDERATION

Objectives	Criteria/Guidelines	Comments
3.1 Site selection and location		
C1 ***To ensure that appropriate zone considerations are assessed when selecting a site***	For proposed developments in commercial and industrial zones, consider: • potential impacts on the health, safety and wellbeing of children, staff and visitors with regard to local environmental or amenity issues such as air or noise pollution and local traffic conditions • the potential impact of the facility on the viability of existing commercial or industrial uses.	The site selection was considered under the original application.
C2 ***To ensure that the site selected for a proposed child care facility is suitable for the use***	When selecting a site, ensure that: • the location and surrounding uses are compatible with the proposed development or use • the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards • there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed • the characteristics of the site are suitable for the scale and type of development proposed having regard to: - size of street frontage, lot configuration, dimensions and overall size - number of shared boundaries with residential properties	The site selection was considered under the original application.

	- the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas • where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use • there are suitable drop off and pick up areas, and off and on street parking • the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use • it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises.	
C3 ***To ensure that sites for child care facilities are appropriately located***	A child care facility should be located: • near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship • near or within employment areas, town centres, business centres, shops • with access to public transport including rail, buses, ferries • in areas with pedestrian connectivity to the local community, businesses, shops, services and the like.	The site selection was considered under the original application.
C4 ***To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazard***	A child care facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from: • proximity to: - heavy or hazardous industry, waste transfer depots or landfill sites - LPG tanks or service stations - water cooling and water warming systems - odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses	The site selection was considered under the original application.
3.2 Local character, streetscape and the public domain		
C5 ***To ensure that the child care facility is compatible with the local character and surrounding streetscape***	The proposed development should: • contribute to the local area by being designed in character with the locality and existing streetscape • reflect the predominant form of surrounding land uses, particularly in low density	The proposal maintains the existing heritage facade.

	residential areas • recognise predominant streetscape qualities, such as building form, scale, materials and colours • include design and architectural treatments that respond to and integrate with the existing streetscape • use landscaping to positively contribute to the streetscape and neighbouring amenity • integrate car parking into the building and site landscaping design in residential areas.	
C6, C7, C8 ***To ensure clear delineation between the child care facility and public spaces***	Create a threshold with a clear transition between public and private realms, including: • fencing to ensure safety for children entering and leaving the facility • windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community • integrating existing and proposed landscaping with fencing.	The ground floor reception is maintained through the proposed modification, with play areas located on level 1 and 2.
	On sites with multiple buildings and/or entries, pedestrian entries and spaces associated with the child care facility should be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.	The entry location is unchanged from the original development application.
	Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions: • clearly defined street access, pedestrian paths and building entries • low fences and planting which delineate communal/ private open space from adjoining public open space • minimal use of blank walls and high fences.	N/A
C9, C10 ***To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.***	Front fences and walls within the front setback should be constructed of visually permeable materials and treatments. Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.	N/A
	High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen	N/A

	landscaping of a similar height between the wall and the boundary	
3.3 Building orientation, envelope and design		
C11 ***To respond to the streetscape and site, while optimising solar access and opportunities for shade***	Orient a development on a site and design the building layout to: • ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: - facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties - placing play equipment away from common boundaries with residential properties - locating outdoor play areas away from residential dwellings and other sensitive uses • optimise solar access to internal and external play areas • avoid overshadowing of adjoining residential properties • minimise cut and fill • ensure buildings along the street frontage define the street by facing it • ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions.	The proposed external building design and dimensions are unchanged through the modification application. Additional skylights and an open roof form have been introduced as part of the modification to increase solar access to internal play areas.
C12 ***To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised***	The following matters may be considered to minimise the impacts of the proposal on local character: • building height should be consistent with other buildings in the locality • building height should respond to the scale and character of the street • setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility • setbacks should provide adequate access for building maintenance • setbacks to the street should be consistent with the existing character.	The proposed external building design and dimensions are unchanged through the modification application.
C13, C14 ***To ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context***	Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use.	N/A
	On land in a residential zone, side and rear boundary setbacks should observe the	N/A

	prevailing setbacks required for a dwelling house.	
C15 ***To ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute to an area's character***	The built form of the development should contribute to the character of the local area, including how it: • respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage • contributes to the identity of the place • retains and reinforces existing built form and vegetation where significant • considers heritage within the local neighbourhood including identified heritage items and conservation areas • responds to its natural environment including local landscape setting and climate • contributes to the identity of place.	As per the original approval, the heritage facade is retained.
C16 ***To ensure that buildings are designed to create safe environments for all users***	Entry to the facility should be limited to one secure point which is: • located to allow ease of access, particularly for pedestrians • directly accessible from the street where possible • directly visible from the street frontage • easily monitored through natural or camera surveillance • not accessed through an outdoor play area. • in a mixed-use development, clearly defined and separate from entrances to other uses in the building.	The proposed building entry is not changed as a result of the modification.
C17 ***To ensure that child care facilities are designed to be accessible by all potential users***	Accessible design can be achieved by: • providing accessibility to and within the building in accordance with all relevant legislation • linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry • providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible • minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath. ***NOTE:*** *The National Construction Code, the Discrimination Disability Act 1992 and the Disability (Access to Premises – Buildings)*	An access report was provided as part of the original application. The lift location is maintained through this modification and the recommendations of the access report including compliance with AS1428.1 (2009) remain as consent conditions.

	Standards 2010 set out the requirements for access to buildings for people with disabilities.	
3.4 Landscaping		
C18, C19 *To provide landscape design that contributes to the streetscape and amenity*	Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space. Use the existing landscape where feasible to provide a high quality landscaped area by: • reflecting and reinforcing the local context • incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping.	N/A
	Incorporate car parking into the landscape design of the site by: • planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings • taking into account streetscape, local character and context when siting car parking areas within the front setback • using low level landscaping to soften and screen parking areas.	N/A
3.5 Visual and acoustic privacy		
C20, C21 *To protect the privacy and security of children attending the facility*	Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.	Location of play spaces are maintained as per original.
	Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through: • appropriate site and building layout • suitably locating pathways, windows and doors • permanent screening and landscape design.	Location of play spaces are maintained as per original and situated on level 1 and 2 away from direct overlooking from a public area.
C22 *To minimise impacts on privacy of adjoining properties*	Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through: • appropriate site and building layout • suitable location of pathways, windows and doors • landscape design and screening.	Location of play spaces are maintained, with direct overlooking toward residential areas not resulting from the play spaces.
C23, C24 *To minimise the impact of child care facilities on the acoustic privacy of neighbouring*	A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should:	An acoustic report has been provided which includes recommendations for a solid wall construction upon the north facade (adjacent to

residential developments	• provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence). • ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure.	residential building) and acoustic treatment to mechanical plant.
	A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters: • identify an appropriate noise level for a child care facility located in residential and other zones • determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use • determine the appropriate height of any acoustic fence to enable the noise criteria to be met.	The provided acoustic report addresses the amended floor layout and provides recommendations to achieve compliance with the AAAC 'Guidelines for Childcare Centre Acoustic Assessment' which includes an assessment regarding the adjoining residential building to the north.
3.6 Noise and air pollution		
C25, C26	Adopt design solutions to minimise the impacts of noise, such as: • creating physical separation between buildings and the noise source • orienting the facility perpendicular to the noise source and where possible buffered by other uses • using landscaping to reduce the perception of noise • limiting the number and size of openings facing noise sources • using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens) • using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits • locating cot rooms, sleeping areas and play areas away from external noise sources	The provided acoustic report includes a range of recommendations regarding solid wall construction, acoustic absorbtion finishes to roof trusses and acoustic glazed windows.
	An acoustic report should identify appropriate noise levels for sleeping areas and other non play areas and examine impacts and noise attenuation measures where a child care facility is proposed in any of the following locations: • on industrial zoned land • where the ANEF contour is between 20 and 25, consistent with AS 2021 - 2000 • along a railway or mass transit corridor, as defined by State Environmental Planning	The site is not located within any of these areas.

	Policy (Infrastructure) 2007 • on a major or busy road • other land that is impacted by substantial external noise.	
C27, C28 ***To ensure air quality is acceptable where child care facilities are proposed close to external sources of air pollution such as major roads and industrial development***	Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.	The site location was considered under the original application. The resulted changes to the floor area do not give rise to an additional impact with regard to potential air pollution. The site is not located adjacent to to a major road or within an industrial area.
	A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed child care facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines. The air quality assessment report should evaluate design considerations to minimise air pollution such as: • creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution • using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway • incorporating ventilation design into the design of the facility.	The site is not located adjacent to a major road or industrial area.
3.7 Hours of operation		
C29, C30 ***To minimise the impact of the child care facility on the amenity of neighbouring residential developments***	Hours of operation within areas where the predominant land use is residiential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.	N/A
	Within mixed use areas or predominantly commercial areas, the hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.	Hours of operation are maintained in accordance with the original consent conditions being 7:30am-6pm Monday to Friday.

3.8 Traffic, parking and pedestrian circulation		
C31, C32, C33 ***To provide parking that satisfies the needs of users and demand generated by the centre***	Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land. Where a Development Control Plan does not specify car parking rates, off street car parking should be provided at the following rates: Within 400 metres of a metropolitan train station: • 1 space per 10 children • 1 space per 2 staff. Staff parking may be stack or tandem parking with no more than 2 spaces in each tandem space. In other areas: • 1 space per 4 children. A reduction in car parking rates may be considered where: • the proposal is an adaptive re-use of a heritage item • the site is in a B8 Metropolitan Zone or other high density business or residential zone • the site is in proximity to high frequency and well connected public transport • the site is co-located or in proximity to other uses where parking is appropriately provided (for example business centres, schools, public open space, car parks) • there is sufficient on street parking available at appropriate times within proximity of the site.	The provision of parking was considered under the original application DA167/2017, whereby no additional parking was provided for the development. The proposed modification application maintains this arrangement, with a reduction in the maximum number of children from 110 to 100.
	In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high levels of vehicle movement or potential conflicts with trucks and large vehicles.	The issue of parking was considered under the original application. The modifications do not result in any further impact which would require additional consideration to parking.,
	A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that: • the amenity of the surrounding area will not	A traffic and parking study was submitted as part of the original application. The proposed modification results in a development that is substantially the same as the original approval, with the maximum number of children

	be affected • there will be no impacts on the safe operation of the surrounding road network.	reduced from 110 to 100 children, thus having less of an impact.
C34, C35 ***To provide vehicle access from the street in a safe environment that does not disrupt traffic flows***	Alternate vehicular access should be provided where child care facilities are on sites fronting: • a classified road • roads which carry freight traffic or transport dangerous goods or hazardous materials. The alternate access must have regard to: • the prevailing traffic conditions • pedestrian and vehicle safety including bicycle movements • the likely impact of the development on traffic.	N/A
	Child care facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.	The suitability of the location of the child care centre adjacent to Henrietta Lane was considered under the original application.
C36, C37, C38 ***To provide a safe and connected environment for pedestrians both on and around the site***	The following design solutions may be incorporated into a development to help provide a safe pedestrian environment: • separate pedestrian access from the car park to the facility • defined pedestrian crossings included within large car parking areas • separate pedestrian and vehicle entries from the street for parents, children and visitors • pedestrian paths that enable two prams to pass each other • delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities • in commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas • vehicles can enter and leave the site in a forward direction.	Site access is unchanged as a result the proposed modifications.
	Mixed use developments should include: • driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by trucks • drop off and pick up zones that are exclusively available for use during the facility's operating hours with spaces clearly	As above, site access is unchanged as a result of the proposed modifications.

	marked accordingly, close to the main entrance and preferably at the same floor level. Alternatively, direct access should avoid crossing driveways or maneuvering areas used by vehicles accessing other parts of the site • parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility.	
	Car parking design should: • include a child safe fence to separate car parking areas from the building entrance and play areas • provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards • include wheelchair and pram accessible parking.	N/A

APPLYING THE NATIONAL REGULATIONS TO DEVELOPMENT PROPOSALS

Regulation	Design Guidance	Comments
4.1 Indoor space requirements		
Regulation 107 ***Education and Care Services National Regulation*** Every child being educated and cared for within a facility must have a minimum of 3.25m^2 of unencumbered indoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP. Unencumbered indoor space excludes any of the following: • passageway or thoroughfare (including door swings) used for circulation • toilet and hygiene facilities • nappy changing area	***The proposed development includes at least 3.25 square metres of unencumbered indoor space for each child.*** **Verandahs as indoor space** For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space. **Storage** Storage areas including joinery units are not to be included in the calculation of indoor space. To achieve a functional unencumbered area free of clutter, storage areas must be considered when designing and calculating the spatial requirements of the facility. It is recommended that a child care facility provide: • a minimum of 0.3m^3 per child of external storage space • a minimum of 0.2m^3 per child of internal storage space. Storage does not need to be in a separate	The proposed modifications result in a total of 332sqm of indoor unencumbered space. The applicant seeks to reduce the maximum capacity of the childcare centre from 110 children, to a maximum 100 children (to be reflected in the conditions of consent). This results in 3.32sqm of unencumbered indoor space per child, compliant with the regulations. The proposed modifications do not result in less storage than originally approved.

or area for preparing bottles • area permanently set aside for the use or storage of cots • area permanently set aside for storage • area or room for staff or administration • kitchens, unless the kitchen is designed to be used predominately by the children as part of an educational program e.g. a learning kitchen • on-site laundry • other space that is not suitable for children. All unencumbered indoor spaces must be provided as a secure area for children. The design of these spaces should consider the safe supervision of children. When calculating indoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6) of the National Regulations. Applicants should also note that regulation 81 requires that the needs for sleep and rest of children at the service be met, having regard to their ages, development stages and individual needs.	room or screened, and there should be a mixture of safe shelving and storage that children can access independently. Storage of items such as prams, bikes and scooters should be located adjacent to the building entrance. Where an external laundry service is used, storage and collection points for soiled items should be in an area with separate external access, away from children. This will prevent clothes being carried through public areas and reduce danger to children during drop off and collection of laundry.		

Development applications should indicate how these needs will be accommodated. Verandahs may be included when calculating indoor space with the written approval from the regulatory authority.		
4.2 Laundry and hygiene facilities		
Regulation 106 Education and Care Services National Regulation There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children. Child care facilities must also comply with the requirements for laundry facilities that are contained in the National Construction Code.	***The proposed development includes laundry facilities or access to laundry facilities OR explain the other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage of soiled clothing, nappies and linen prior to their disposal or laundering.*** Laundry and hygiene facilities are a key consideration for education and care service premises. The type of laundry facilities provided must be appropriate to the age of children accommodated. **On site laundry** On site laundry facilities should contain: • a washer or washers capable of dealing with the heavy requirements of the facility • a dryer • laundry sinks • adequate storage for soiled items prior to cleaning • an on site laundry cannot be calculated as usable unencumbered play space for children. **External laundry service** A facility that does not contain on site laundry facilities must make external laundering arrangements. Any external laundry facility providing services to the facility needs to comply with any relevant Australian Standards.	The proposed development includes satisfactory facilities including a laundry.
4.3 Toilet and hygiene facilities		
Regulation 109 Education and Care Services National	***The proposed development includes adequate, developmentally and age appropriate toilet, washing and drying***	Bathroom facilities are provided for children.

Regulation A service must ensure that adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children. Child care facilities must comply with the requirements for sanitary facilities that are contained in the National Construction Code.	***facilities for use by children being educated and cared for by the service.*** Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants. Design considerations could include: • junior toilet pans, low level sinks and hand drying facilities for children • a sink and handwashing facilities in all bathrooms for adults • direct access from both activity rooms and outdoor play areas • windows into bathrooms and cubicles without doors to allow supervision by staff • external windows in locations that prevent observation from neighbouring properties or from side boundaries	
4.4 Ventilation and natural light		
Regulation 110 Education and Care Services National Regulation Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children. Child care facilities must comply with the light and ventilation and minimum ceiling height requirements of the *National Construction Code*. Ceiling height requirements may be affected by the capacity of the facility.	***The proposed development includes indoor spaces to be used by children that:*** ***• will be well ventilated; and*** ***• will have adequate natural light; and*** ***• can be maintained at a temperature that ensures the safety and well-being of children.*** **Ventilation** Good ventilation can be achieved through a mixture of natural cross ventilation and air conditioning. Encouraging natural ventilation is the basis of sustainable design; however, there will be circumstances where mechanical ventilation will be essential to creating ambient temperatures within a facility. To achieve adequate natural ventilation, the design of the child care facilities must address the orientation of the building, the configuration of rooms and the external building envelope, with natural air flow generally reducing the deeper a building becomes. It is recommended that child care facilities ensure natural ventilation is	Window openings on the western elevation have been removed in response to the amended internal floor plan. However, additional skylights are proposed and opening of the roof area above level 2 to provided to achieve adequate light and ventilation for the development.

	available to each indoor activity room. **Natural light** Solar and daylight access reduces reliance on artificial lighting and heating, improves energy efficiency and creates comfortable learning environments through pleasant conditions. Natural light contributes to a sense of well-being, is important to the development of children and improves service outcomes. Daylight and solar access changes with the time of day, seasons and weather conditions. When designing child care facilities consideration should be given to: • providing windows facing different orientations • using skylights as appropriate • ceiling heights. Designers should aim to minimise the need for artificial lighting during the day, especially in circumstances where room depth exceeds ceiling height by 2.5 times. It is recommended that ceiling heights be proportional to the room size, which can be achieved using raked ceilings and exposed trusses, creating a sense of space and visual interest.	
4.5 Administrative space		
Regulation 110 Education and Care Services National Regulation A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.	***The proposed development includes an adequate area or areas for the purposes of conducting the administrative functions of the service; and consulting with parents of children; and conducting private conversations.*** Design considerations could include closing doors for privacy and glass partitions to ensure supervision. When designing administrative spaces, consideration should be given to functions which can share spaces and those which cannot. Sound proofing of meeting rooms may be appropriate where they are located adjacent to public areas, or in large rooms where sound can easily travel. Administrative spaces should be designed to ensure equitable use by parents and children at the facility. A reception desk may be	An area for administration is maintained for the childcare centre on the ground level and level 2.

	designed to have a portion of it at a lower level for children or people in a wheel chair.	
4.6 Nappy change facilities		
Regulation 112 Education and Care Services National Regulations Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children. Child care facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the National Construction Code.	***(To be completed only if the proposed development is for a service that will care for children who wear nappies).*** ***The proposed development includes an adequate area for construction of appropriate hygienic facilities for nappy changing including at least one properly constructed nappy changing bench and hand cleansing facilities for adults in the immediate vicinity of the nappy change area.*** In circumstances where nappy change facilities must be provided, design considerations could include: • properly constructed nappy changing bench or benches • a bench type baby bath within one metre from the nappy change bench • the provision of hand cleansing facilities for adults in the immediate vicinity of the nappy change area • a space to store steps • positioning to enable supervision of the activity and play areas.	Nappy change facilities are provided.
4.7 Premises designed to facilitate supervision		
Regulation 115 Education and Care Services National Regulations A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity. Child care facilities must	***The proposed development (including toilets and nappy change facilities) are designed in a way that facilitates supervision of children at all times, having regard to the need to maintain the rights and dignity of the children.*** Design considerations should include: • solid walls in children's toilet cubicles (but no doors) to provide dignity whilst enabling supervision • locating windows into bathrooms or nappy change areas away from view of visitors to the facility, the public or neighbouring properties • avoiding room layouts with hidden corners where supervision is poor, or multi room activity rooms for single groups of children • avoiding multi-level rooms which compromise, or require additional staffing, to ensure proper supervision. If multilevel	The proposed floor plan will achieve appropriate supervision throughout.

also comply with any requirements regarding the ability to facilitate supervision that are contained in the National Construction Code.	spaces are proposed, consideration should be given to providing areas that can be closed off and used only under supervision for controlled activities	
4.8 Emergency and evacuation procedures		
Regulations 97 and 168 **Education and Care Services National Regulations** Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation. Regulation 97 sets out the detail for what those procedures must cover including: • instructions for what must be done in the event of an emergency • an emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit • a risk assessment to identify potential emergencies that are relevant to the service.	Facility design and features should provide for the safe and managed evacuation of children and staff from the facility in the event of a fire or other emergency. Multi-storey buildings with proposed child care facilities above ground level may consider providing additional measures to protect staff and children. For example: • independent emergency escape routes from the facility to the ground level that would separate children from other building users to address child protection concerns during evacuations • a safe haven or separate emergency area where children and staff can muster during the initial stages of a fire alert or other emergency. This would enable staff to account for all children prior to evacuation. An emergency and evaluation plan should be submitted with a DA and should consider: • the mobility of children and how this is to be accommodated during an evacuation • the location of a safe congregation/assembly point, away from the evacuated building, busy roads and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings • how children will be supervised during the evacuation and at the congregation/assembly point, relative to the capacity of the facility and governing child-to-staff ratios.	The proposed modifications retain the proposed fire safety measures and enforced via the existing conditions of consent.
4.9 Outdoor space requirements		
Regulation 108 **Education and Care Services National Regulations** An education and care service premises must provide for every child	***The proposed development includes at least 7.0 square metres of unencumbered outdoor space for each child.*** Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and	The proposed modifications result in a total of 701.4sqm of outdoor unencumbered space. The applicant seeks to reduce the maximum capacity of the childcare centre from 110 children, to a maximum 100 children (to be

being educated and cared for within the facility to have a minimum of 7.0m^2 of unencumbered outdoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP. Unencumbered outdoor space excludes any of the following: • pathway or thoroughfare, except where used by children as part of the education and care program • car parking area • storage shed or other storage area • laundry • other space that is not suitable for children. When calculating outdoor space requirements, the area required for any additional child may be waived when the child is being cared for in an emergency circumstance as set out in regulation 123(5) or the child is being educated or cared for in exceptional circumstances as set out in regulation 124(5) and (6) of the National Regulations. Applicants should also note that regulation 274 (Part 7.3 NSW Provisions) states that a centre-based service for children preschool age or under must ensure there is no swimming	not for children's play. When new equipment or storage areas are added to existing services, the potential impact on unencumbered space calculations and service approvals must be considered. **Verandahs as outdoor space** Where a covered space such as a verandah is to be included in outdoor space it should: • be open on at least one third of its perimeter • have a clear height of 2.1 metres • have a wall height of less than 1.4 metres where a wall with an opening forms the perimeter • have adequate flooring and roofing • be designed to provide adequate protection from the elements **Simulated outdoor environments** Proponents should aim to provide the requisite amount of unencumbered outdoor space in all development applications. A service approval will only be granted in exceptional circumstances when outdoor space requirements are not met. For an exemption to be granted, the preferred alternate solution is that indoor space be designed as a simulated outdoor environment. Simulated outdoor space must be provided in addition to indoor space and cannot be counted twice when calculating areas. Simulated outdoor environments are internal spaces that have all the features and experiences and qualities of an outdoor space. They should promote the same learning outcomes that are developed during outdoor play. Simulated outdoor environments should have: • more access to natural light and ventilation than required for an internal space through large windows, glass doors and panels to enable views of trees, views of the sky and clouds and movement outside the facility • skylights to give a sense of the external climate • a combination of different floor types and textures, including wooden decking, pebbles,	reflected in the conditions of consent). This results in 7sqm of unencumbered indoor space per child, compliant with the regulations. The opening of the roof upon level 2 will is aimed at achieving better outdoor space for the facility, as well as additional skylights proposed for level 1 outdoor space.

pool on the premises, unless the swimming pool existed before 6 November 1996. Where there is an existing swimming pool, a water safety policy will be required. A verandah that is included within indoor space cannot be included when calculating outdoor space and vice versa.	mounds, ridges, grass, bark and artificial grass, to mimic the uneven surfaces of an outdoor environment • sand pits and water play areas • furniture made of logs and stepping logs • dense indoor planting and green vegetated walls • climbing frames, walking and/or bike tracks • vegetable gardens and gardening tubs.	
4.10 Natural Environment		
Regulation 113 Education and Care Services National Regulations The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.	***The proposed development includes outdoor spaces that will allow children to explore and experience the natural environment.*** Creating a natural environment to meet this regulation includes the use of natural features such as trees, sand and natural vegetation within the outdoor space. Shrubs and trees selected for the play space must be safe for children. Avoid plant species that risk the health, safety and welfare of the facility's occupants, such as those which: • are known to be poisonous, produce toxins or have toxic leaves or berries • have seed pods or stone fruit, attract bees,have thorns, spikes or prickly foliage or drop branches The outdoor space should be designed to: • provide a variety of experiences that facilitate the development of cognitive and physical skills, provide opportunities for social interaction and appreciation of the natural environment • assist supervision and minimise opportunities for bullying and antisocial behaviour • enhance outdoor learning, socialisation and recreation by positioning outdoor urban furniture and play equipment in configurations that facilitate interaction.	A suitable landscape plan had been provided for the outdoor play areas.
4.11 Shade		

Regulation 114 Education and Care Services National Regulations The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.	***The proposed development includes adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.*** Providing the correct balance of sunlight and shade to play areas is important for the health and well-being of children and staff. Combining built and natural shade will often be the best option. **Solar access** Controlled exposure to daylight for limited periods is essential as sunlight provides vitamin D which promotes healthy muscles, bones and overall well-being. Outdoor play areas should be provided with controlled solar access throughout the year. Outdoor play areas should: • have year-round solar access to at least 30 per cent of the ground area, with no more than 60 per cent of the outdoor space covered. • provide shade in the form of trees or built shade structures giving protection from ultraviolet radiation to at least 30 per cent of the outdoor play area • have evenly distributed shade structures over different activity spaces. **Natural shade** Natural shade should be a major element in outdoor play areas. Trees with dense foliage and wide-spreading canopies provide the best protection. Existing stands of trees, particularly in rear setbacks, should be retained to provide shaded play areas. Species that suit local soil and climatic conditions and the character of the environment are recommended. Dense shrubs can also provide shade. They should be planted around the site perimeter so they don't obstruct supervision. Pruning shrubs on the underside may create shaded play nooks underneath. Planting for shade and solar access is enhanced by: • placing appropriately scaled trees near the eastern and western elevations • providing a balance of evergreen and deciduous trees to give shade in summer and sunlight access in winter.	The opening of the roof above level 2 allows better solar access for the outdoor play space, as well as maintaining shaded areas of outdoor play space for the development. The roof top outdoor play space is removed as part of the proposed modifications, a well as the accompanied shade sails upon the roof.

	Built shade structures Built structures providing effective shade include: • permanent structures (pergolas, sails and verandahs) • demountable shade (marquees and tents) • adjustable systems (awnings) • shade sails. Shade structures should not create safety hazards. Support systems such as upright posts should be clearly visible with rounded edges or padding. Vertical barriers at the sides of shade structures should be designed to prevent children using them for climbing. Shade structures should allow adults to view and access the children's play areas, with a recommended head clearance of 2.1 metres. The floor area underneath the structure should be of a sufficient size and shape to allow children to gather or play actively.	
4.12 Fencing		
Regulation 104 Education and Care Services National Regulations Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it. This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age. Child care facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the National	***Outdoor space that will be used by children will be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it.*** Fencing at child care facilities must provide a secure, safe environment for children and minimise access to dangerous areas. Fencing also needs to positively contribute to the visual amenity of the streetscape and surrounding area. In general, fencing around outdoor spaces should: • prevent children climbing over, under or though fences • prevent people outside the facility from gaining access by climbing over, under or through the fence • not create a sense of enclosure. Design considerations for side and rear boundary fences could include: • being made from solid prefinished metal, timber or masonry • having a minimum height of 1.8 metres • having no rails or elements for climbing higher than 150mm from the ground. Fencing and gates should be designed to ensure adequate sightlines for vehicles and	The outdoor play space upon level two will have an barrier of appropriate height resulting from the facade wall.

Construction Code	pedestrian safety in accordance with Australian Standards and Roads and Maritime Services Traffic Management Guidelines. Gates should be designed to prevent children leaving/entering unsupervised by use of childproof locking systems.	
4.13 Soil Assessment		
Regulation 25 Education and Care Services National Regulations Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval. With every service application one of the following is required: • a soil assessment for the site of the proposed education and care service premises • if a soil assessment for the site of the proposed child care facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken • a statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children	To ensure consistency between the development consent and the service approval application, a soil assessment should be undertaken as part of the development application process. Where children will have access to soil the regulatory authority requires a preliminary investigation of the soil. This includes sites with or without buildings and existing approved children's services where: • the application is to alter or extend the premises • the alteration or extension requires earthworks or deep excavations (exceeding a depth of one metre) • the works are going to take place in an area used for children's outdoor play or will be used for children's outdoor play after the work is completed • a soil assessment has not been undertaken at the children's service. Minor landscaping, creation of sand pits, movement of play equipment and so on do not qualify as earthworks and do not require a soil assessment. An assessment of soil for a children's service approval application may require three levels of investigation: • Stage 1 - Preliminary investigation (with or without soil sampling) • Stage 2 - Detailed site investigation • Stage 3 - Site specific human health risk assessment.	The site does not have any accessible soil.

Make direct amendment to *SEPP Educational Establishments and Child Care Facilities 2017*

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. The suitability of the site with regards to contamination was considered under the initial development application. This site was found to be suitable with regards to contamination and the proposed internal modifications do not result change the outcome of the assessment with regard to contamination. In this regard, 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 child care centre land use.

Make direct amendment to *SEPP 55 - Remediation of Land*

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Make direct amendment to *SEPP (Infrastructure) 2007*

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

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

Make direct amendment to *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*

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:

14 Development on land within the coastal use area

(1)

(a) has considered whether the proposed development is likely to cause an adverse impact on the following:
(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
(iv) Aboriginal cultural heritage, practices and places,
(v) cultural and built environment heritage, and

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

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

Comment:
The modifications proposed will result in a development that is substantially the same that was approved under DA167/2017 and is therefore not considered to have an additional impact to the above considerations of the SEPP.

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

Make direct amendment to *SEPP (Coastal Management) 2018*

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies

Height of Buildings:	12m	14m	14m	N/A	No - However unchanged from original approval.
Floor Space Ratio	FSR: 3:1 2,085sqm	FSR: 2.27:1 1,579.2sqm	FSR: 2.59:1 1,799	N/A	Yes
Gross floor area in Zone B2	25% Commercial GFA, maximum 1000sqm per premises	Commercial GFA: 100% No Retail Proposed	Commercial GFA: 100% No Retail Proposed	N/A	Yes

Make direct amendment to *1.2 Aims of Plan*

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.11 Active street frontages	Yes
6.16 Gross floor area in Zone B2	Yes
Schedule 5 Environmental heritage	Yes

Manly Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	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
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	Yes	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	Yes	Yes
4.4.6 Child Care Centres	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 2 - Townscape Principles	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

One new window opening is proposed upon the eastern elevation upon level two. The proposed new window opening is off-set from direct views to the Pacific Waves building (residential units) and is orientated to overlook Henrietta Lane. The new proposed window opening is not considered to give rise to unreasonable overlooking or privacy impacts for the Pacific Waves building.

Make direct amendment to *3.4.2 Privacy and Security*

3.4.3 Maintenance of Views

The original application was not considered to result in an unreasonable view impact for the surrounding properties. As part of the proposed modifications, the sunshades and rooftop greenhouse upon the roof are to be deleted, therefore reducing the overall amount of development upon the roof and resulting in no additional view impact as a result of the proposed changes.

Make direct amendment to *3.4.3 Maintenance of Views*

3.10 Safety and Security

The access arrangements to and from the site are not changed via this modification application. The proposal involves internal layout and changes that do not give rise to additional safety implications or

security issues. The site suitability for the childcare centre was considered under the initial assessment of the development application whereby consent was granted.

Make direct amendment to *3.10 Safety and Security*

4.2.5.4 Car Parking and Access

Car parking for the development was considered under the initial application for the child care centre, whereby the development was approved without additional on-site parking provided. The proposed modifications involve internal alterations to the floor plate and layout, with site access unchanged. The applicant has proposed to reduce the maximum capacity of the childcare centre from 110 children to 100 children, with the conditions of consent to be updated to reflect this. Therefore, it is considered that the proposed modifications will not result in an additional impact with regards to traffic and car parking and the modifications result in a development that is substantially the same.

Make direct amendment to *4.2.5.4 Car Parking and Access*

4.4.6 Child Care Centres

The matters pertaining to site location, car parking and access, built form and appearance have been considered under the original application. The proposed modification to the floor plan do not require further assessment of these issues due to being floor plan changes only.

With regard to the required Indoor and Outdoor Play areas, these matters have been considered under the provisions of the SEPP (Educational Establishments and Child Care Facilities) which require compliance with the minimum indoor and outdoor space requirements per child. The modified floor plan results in a minor decrease in both indoor and outdoor place space. Therefore, to achieve compliance with the SEPP, the applicant has proposed to reduce the maximum number of children from 110 to 100 children. This will be reflected in the conditions of consent.

Make direct amendment to *4.4.6 Child Care Centres*

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;

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

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

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

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

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

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2019/0399 for Modification of Development Consent DA0167/2017 granted for Change of use to a childcare centre including alterations and additions to the existing building. on land at Lot 1 DP 628937,4 Sydney Road, MANLY, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	**Dated**	**Prepared By**
AR-A-08, Issue A - General Arrangement - Ground Floor and Level 01	2/08/2019	BVN
AR-A-09, Issue A - General Arrangement - Level 02 and Roof Plan	2/08/2019	BVN
AR-C-02, Issue 1 - Elevations	22/10/2019	BVN

AR-D-01, Issue 1 - Sections	22/10/2019	BVN
AR-D-02, Issue 1 - Sections 02	22/10/2019	BVN

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	**Dated**	**Prepared By**
Acoustic Report, Project 32318, Rev 3	29/07/2019	Wood & Grieve Engineers

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

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

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

Landscape Plans		
Drawing No.	**Dated**	**Prepared By**
LS01, Issue B - Landscape Level 1	19/07/2019	BVN
LS02, Issue B - Landscape Level 2	19/07/2019	BVN

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

B. Modify Condition ANS01 to read as follows:

Maximum Number of Children

The child care centre is to accommodate no more than one hundred (100) children at any one time, without prior consent of Council.

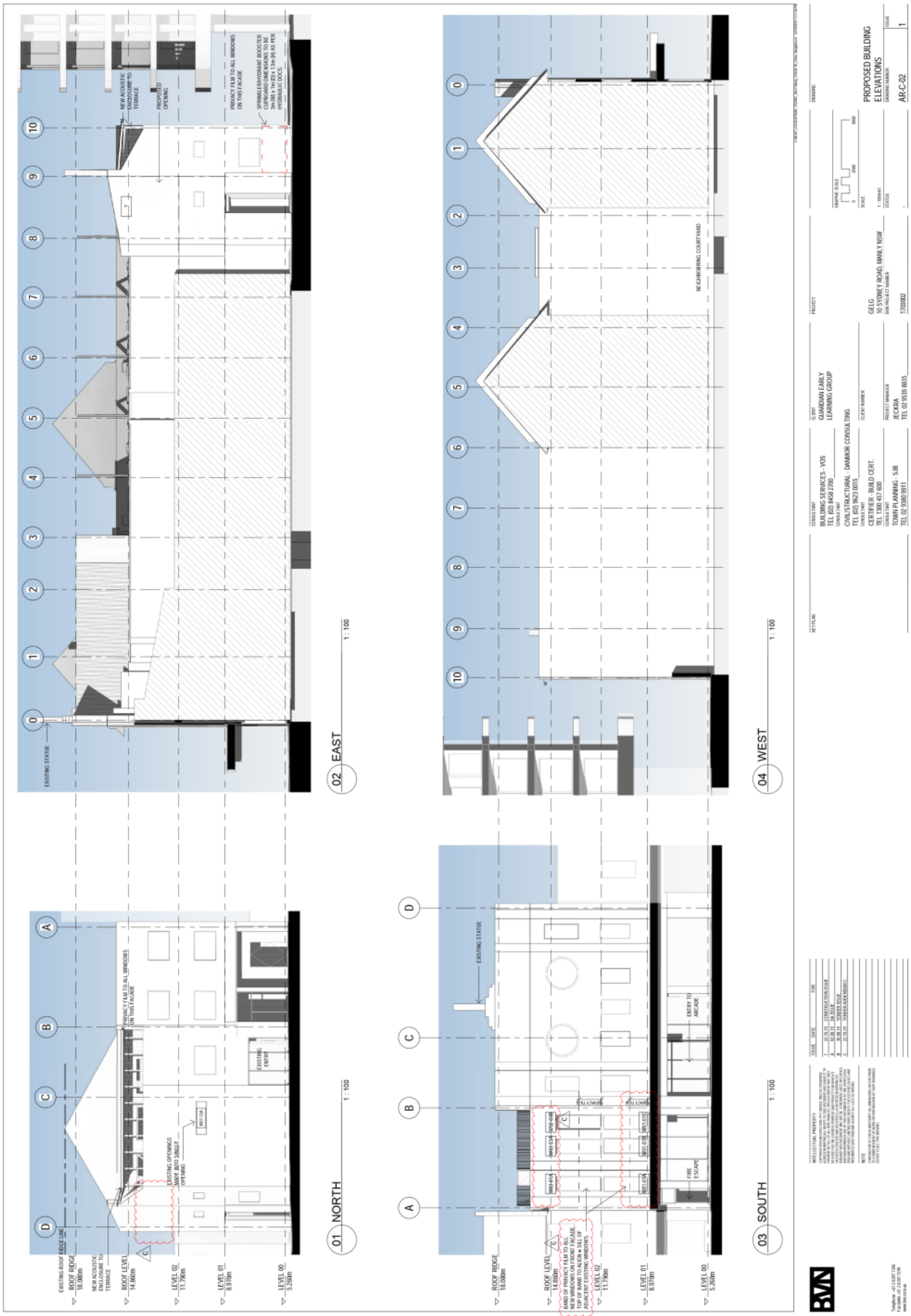
Reason: To ensure compliance with this consent.

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

Noise Mitigation Measures

Prior to an Occupational Certificate being released, the noise mitigation measures recommended in item 6.4 of the acoustic report project number 32318 prepared by Wood and Grieve Engineers are to be installed.

Reason: Comply with relevant legislation and protect residential amenity


01 NORTH 1:100
02 EAST 1:100
03 SOUTH 1:100
04 WEST 1:100
EXISTING STATUE
NEW ACOUSTIC PANELS ADJACENT TO TERRACE
PROPOSED OPENING
PRIVACY FILM TO ALL WINDOWS ON THIS FACADE
SPRINKLER/HYDRANT BOOSTER CUPBOARD DIMENSIONS TO BE 3m WD x 1m DD x 1.5m HI AS PER BCA/AS2419.2:2012
EXISTING OPENINGS MADE INTO SINGLE OPENING
EXISTING ENTRY
NEIGHBOURING COURTYARD
ENTRY TO ARCADE
FIRE ESCAPE
BAND OF PRIVACY FILM TO ALL NEW WINDOWS ON WEST FACADE TOP OF BAND TO ALIGN + SILL OF ADJACENT EXISTING WINDOWS.
EXISTING ROOF RIDGE LINE
ROOF RIDGE 18.086m
ROOF LEVEL 14.860m
LEVEL 02 11.790m
LEVEL 01 8.970m
LEVEL 00 5.260m
CONSULTANT
BUILDING SERVICES - VDS
TEL (02) 8458 2700
CIVIL/STRUCTURAL - DAMMOR CONSULTING
TEL (02) 9423 0015
CERTIFIER - BUILD CERT.
TEL 1300 457 600
TOWN PLANNING - SJB
TEL 02 8360 0911
CLIENT
GUARDIAN EARLY LEARNING GROUP
PROJECT
GEILG
10 SYDNEY ROAD, MANLY NSW
1:100
STATUS
DRAWING
PROPOSED BUILDING ELEVATIONS
DRAWING NUMBER
AR-C-02
ISSUE
1
BMN

ITEM 3.4	**DA2018/1692 - 78 WILLANDRA ROAD, NARRAWEENA - CONSTRUCTION OF A BOARDING HOUSE**
REPORTING OFFICER	**STEVE FINDLAY**
TRIM FILE REF	**2019/680664**
ATTACHMENTS	**1 ⇩Assessment Report** **2 ⇩Site Plan and Elevations**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2018/1692 for Construction of a Boarding House Development at Lot 810 DP 752038, 78 Willandra Road, Narraweena for the reasons set out in the Assessment Report.

DEVELOPMENT ASSESSMENT REPORT

Assessment Officer:	Alex Keller
Address / Property	Lot 810 DP 752038, No.74 Willandra Road, Narraweena
Description:	Construction of a boarding house
Development Application No:	DA2018/1692
Application Lodged:	15/10/2018
Plans Reference:	DA001 to DA401 dated 3/9/2018 drawn by *Vigor Master Pty Ltd*
Amended Plans:	Amended plans, dated 12/3/2019 drawn by *Vigor Master Pty Ltd* Amended Bushfire Report dated 15/3/2019 by *Travers Bushfire & Ecology*
Applicant:	Vigor Master Pty Ltd - contact Ivy Wang
Owner:	Yi Ling Jin
Locality:	B2 Oxford Falls Valley
Category:	Category 2 – Warringah Local Environmental Plan (WLEP) 2000
Variations to Controls (Cl.20/Cl.18(3)):	Yes – Building Height and Housing density (concurrence of *Department of Planning* (DoP) required)
Referred to DDP:	NO
Referred to NBLPP:	YES – 11 submissions, CIV $1.97 million
Land and Environment Court Action:	None pending.
SUMMARY	
Submissions:	11 submissions of objection
Submission Issues:	Incompatibility with SEPP Affordable Rental Housing, incompatibility with the Desired Future Character (DFC), flora and fauna impact, water quality impacts, visual impact, housing density, bushfire.
Assessment Issues:	Submission issues, DFC Category 2, height, RFB, housing density, General Principles of WLEP 2000, Judgement of *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66*
Recommendation:	Refusal
Attachments:	A4 Notification Plans

EXECUTIVE SUMMARY

The subject application seeks consent for a boarding house containing 29 bedrooms (including a manager's room), basement car parking and ancillary site works. The proposal is referred to the Northern Beaches Local Planning Panel, as the application has received 11 objections and the proposal exceeds the housing density control by more than 10%.

The site is located within an area identified as "Deferred Lands" under Clause 1.3(1A) of the Warringah Local Environmental Plan 2011 (WLEP 2011). The site is located within the B2 Oxford Falls Valley locality under Warringah Local Environmental Plan 2000 (WLEP 2000).

The critical to the proposal is the relationship of Category 2 Housing in applying the housing density control and the 'existing holding' provisions under the Desired Future Character (DFC). In this case the proposal is a 'new generation' style boarding house, but includes a shared kitchen / dining area and common room. Each bedroom is capable of being a self-contained domicile as considered in *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66.*

Additionally, the proposal is inconsistent with other key elements of the DFC Statement, including visual impact, landscaping, preservation of bushland and impacts on waterways within the Narrabeen Lagoon catchment. The proposal is also considered to be inconsistent with the General Principles of Development Control with regard to building bulk, site facilities, bushland protection, pollution control, water quality impacts, sediment control, landscaping and characteristics of 'low intensity low impact' use. Additionally, Council's Natural Environment and Climate Change (NECC) Unit do not support the proposal due to impacts on biodiversity, water quality and bushland pursuant to Warringah LEP 2000.

Council requires the concurrence of the Department of Planning for the variation to the housing density. However, under the circumstances of the proposal the variation required is not recommended for support. Accordingly the proposal is recommended for refusal.

SITE DESCRIPTION

The subject site is identified as Lot 810 in DP 752038 and is addressed as No.74 Willandra Road, Narraweena. The property is a trapezoidal shaped Lot having a splayed frontage to Willandra Road. The site has a total site area of 28,373 square metres (sqm). The site is located on the western side of Willandra Road, between Alkira Circuit and Little Willandra Road.

The site has the following boundary dimensions:

Direction	Boundary	Length
• North	Side	287.99 metres (m)
• East	Front	184.25m
• South	Side	181.98m
• West	Rear	120.7m

The property is a sloping allotment having a varying fall from the south western corner to the north eastern corner (frontage). Stormwater from the property is capable of being drained to a natural gully to the north or a small table drain which traverses the frontage of the site. The existing state of the land is predominantly natural bushland but has been

partially cleared for the construction of an approved dwelling house. Access is gained from Willandra Road.

The subject property is not heritage listed but may contain potential aboriginal relics or threatened species within the undisturbed bushland areas.

Land uses surrounding the subject site comprise of:

- Bushland, which adjoins the northern, western and southern boundaries.
- A Rural Fire Service building which adjoins the south eastern corner.
- A retirement village which is located opposite the subject site on the eastern side of Willandra Road, and
- Residential land (Narraweena suburb) supporting typically one and two storey detached style dwelling houses located to the east of Willandra Road.

LOCALITY PLAN (not to scale)

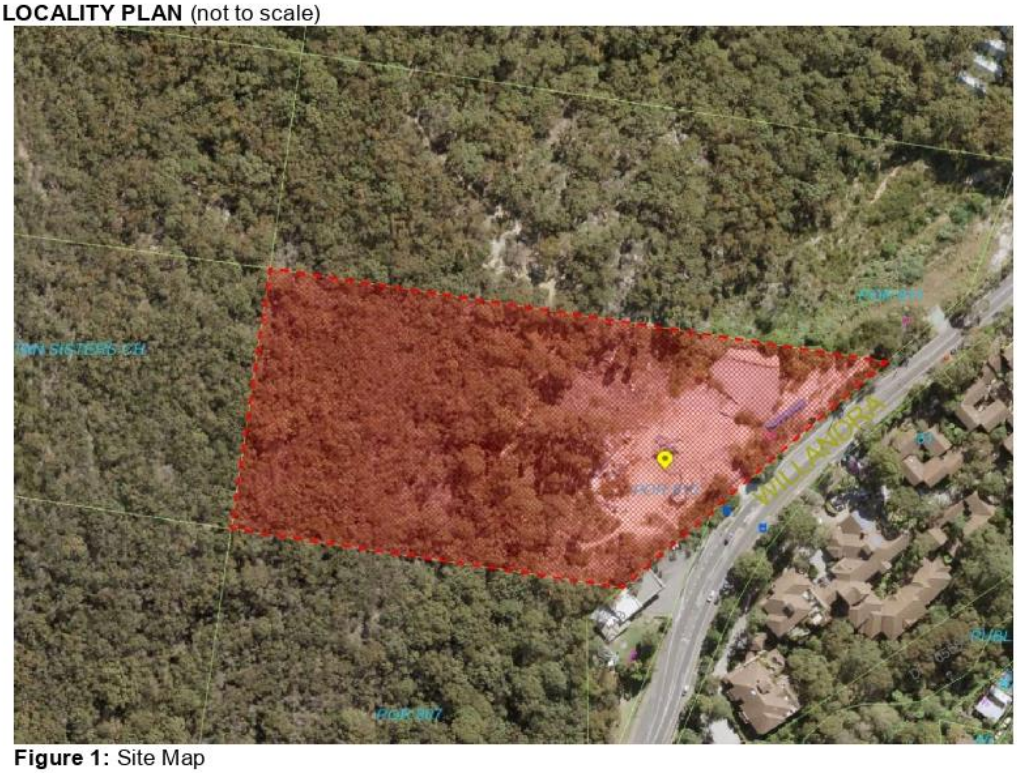


Figure 1: Site Map

RELEVANT BACKGROUND:

DA2013/0525 Development Application for the construction of a two storey dwelling house was approved by Council on 29 August 2013.

The site is currently vacant but was partly cleared and excavated for commencement works under consent No.DA2013/0525 (Refer to CC2013/0516).

DA2013/1203 Development Application for the construction of a two storey boarding house (containing 16 lodger rooms + Manager's room) was approved by way of a deferred commencement by Council on 4 July 2014. Of relevance to this approval is that it retained the building footprint, size and appearance of the dwelling house previously approved under DA2013/0525.

DA2013/1203 is now operative following a modification of consent under MOD2016/0264. No construction certificate (CC) has been issued yet.

DA2014/1164 Development Application for the construction of a two storey boarding house (containing 39 accommodation rooms) was refused by Council on 13 May 2015. In summary, the reasons for refusal included:

- Inconsistency with the DFC including housing density, visual landscape setting, low intensity low impact character, bushland protection and water quality protection.
- Inconsistency with the General Principles of Development Control including landscape open space, flora protection, building bulk, erosion control, traffic and parking, private open space and pollution control.
- Inconsistency with the objectives of the EP& A Act 1979, including the public interest.

Request for Withdrawal of DA

Concerns with the DA were raised with the applicant during discussions about the DA design and referral responses. The applicant declined to withdraw the DA and submitted amended plans without notice on 23/3/2019. This assessment has considered the amended plans and all documents received. Re-notification of the amended plans is not required or warranted pursuant to Councils notification policy.

PROPOSED DEVELOPMENT

The proposed development seeks construction of a new two storey boarding house.

Specifically the proposal will contain the following:

- Twenty-nine (29) boarding rooms, comprising 28 x lodger rooms and one (1) boarding room set-up for a live-in manager, that includes office space and a terrace;
- Fifteen (15) parking spaces (including 1 disabled persons car space) and new driveway formation;
- Six (6) motorbike spaces and six (6) bicycle spaces;
- External garbage bin holding room and truck loading bay;
- Connection to (existing) private sewer line mains;
- Landscaping, ancillary site works, including bushland clearing for bushfire safety; and
- Footpath connection along Willandra Road.

The interior floor plan is configured to include:

- **Basement Floor RL 56.00** – Basement carpark for fifteen (15) cars, six (6) motorbikes and six (6) bicycles, storage, lift and stair access.
- **Ground Floor RL 58.9** - Eleven (11) lodger bedrooms* plus one (1) manager's* bedroom (all bedrooms have an ensuite and doorway to external areas), shared lounge room, shared kitchen / dining area, terrace area, laundry, storage, lift, stairs, front entry.
- **First Floor RL61.9** – Seventeen (17) lodger bedrooms* (all bedrooms have an ensuite), shared lounge, lift, stairs.
- The height of the building is 8.9m above natural ground level.
- Note: The statement of environmental effects states that the boarding rooms will have their own kitchenette facilities. Bench space is shown on the plans, but not detailed as being fitted with a sink or stove top.

*It is not apparent that all rooms will have bench space for cooking facilities, however most boarding rooms show that such space is available to be retrofitted or accommodated.

AMENDMENTS TO THE SUBJECT APPLICATION

Amendments were made to the application on 13 March 2019 to change the roof shape and revise the submitted bushfire report.

The amended plans represent a reduced impact and did not require a further notification and advertising.

STATUTORY CONTROLS

a) Environmental Planning and Assessment Act 1979 (EPA Act 1979); and
b) Environmental Planning and Assessment Regulations 2000. (EPA Regulations)
c) State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55)
d) Warringah Local Environmental Plan 2000 (WLEP 2000)
e) Warringah Development Control Plan 2011 (Notification only)
f) Warringah Section 94A Development Contributions Plan (S94A Plan)
g) State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH)
*Note: SEPP ARH does not strictly apply by virtue of LEP 2000 not having an "equivalent zone" as detailed within the SEPP.

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the Environmental Planning and Assessment (EPA) Regulation 2000, Warringah Local Environment Plan (LEP) 2000 and Warringah Development Control Plan (DCP). As a result, the application was notified to thirty (36) adjoining properties and owner / occupiers for a period of a minimum 21 calendar days commencing on 31/10/2018 and being finalised on 24/11/2018. "Friends of Narrabeen" community group were also notified by letter. A notification sign was erected on the site for the notification period.

An advertising notice for the proposal was made in the *Manly Daily* newspaper on the 3/11/2018.

The site was advertised / notified as integrated development pursuant to Section 91A of the *Environmental Planning and Assessment Act 1979*.

northern beaches council

A total of eleven (11) submissions were received in response to the application. All submissions have been read and considered. Submissions were received from the following:

Submission	Address
Friends of Narrabeen Lagoon	PO Box 845 Narrabeen
Rachel Clark	80 Elanora Road Elanora Heights
C Harris	Lot 2671 Morgan Road Belrose
A Sharp	77 Brighton Street Curl Curl
Ms Gopala Maurer (NBSCG*)	18 Gladys Avenue Frenchs Forest (for Northern Beaches Strategic Community Group)
Resident	Bellevue Street Fairlight
David Simpson	22 Penrith Avenue Wheeler Heights
Mr Peter Wheen	6 Sunlea Place Allambie Heights
Jodie Lee Gale	10 Lae Place Allambie Heights
Dr Devasha Gwenfrewi Scott	30 Ramsay Street Collaroy
J Harris	313 Weemala Road Duffy Forest

Collectively, the following issues were raised in the submissions and in summary each has been addressed below:

1. ***Issue :*** *The boarding house is inconsistent with the housing density control of WLEP 2000 and exceeds the housing density*

Comment:
The proposal exceeds the housing density control by more than 10% and this issue has been addressed in detail under the heading "Clause 20 – Housing Density"" within this report including issues relating to housing and land use categories. Since the proposal breaches the housing density by more than 10% Council cannot grant consent without the concurrence of the NSW Director of Planning.

The non-compliance with the housing density is not supported in this instance. This issue has determining weight and is recommended as a reason for refusal.

2. **Issue:** *The boarding house is incompatible with State Environmental Planning Policy (Affordable Rental Housing) 2009."*

Comment:
The application is lodged under LEP 2000 which is the applicable Environmental Planning Instrument (EPI) in this locality (B2 Oxford Falls Valley). The following issues have been raised in relation to *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH).

Department of Planning's 'Supporting new generation boarding houses' Fact Sheet dated May 2011 states boarding houses are only permitted in equivalent zones to R1 General Residential, R2 Medium Density Residential, R3 High Density Residential, B1 Neighbourhood Centre, B2 Local Centre and B4 Mixed Use. Current zoning, B2 Oxford Falls Valley Locality (non-urban/rural) is not an equivalent zone.

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The "Revised Standards for Boarding Houses" state that Boarding Houses need to be compatible with the design character of the area in which they are located. The application has not been lodged pursuant to SEPP ARH. Since there is no equivalent zone, the SEPP is not applicable. Instead the design character is addressed under the relevant WLEP 2000 General Principles and DFC as detailed within this report. Additionally, the proposal is "Category 2" development is required to demonstrate "consistency" with the provisions of the WLEP 2000 General Principles and DFC for B2 Oxford Falls Valley.

In summary the SEPP ARH is not applicable to the land and therefore the SEPP does not have determining weight.

3. **Issue:** *The boarding house has inadequate communal facilities to cater for 29 accommodation rooms (including the manager) with a potential occupancy of 58 persons.*

Comment:
The communal facility of only one ground floor kitchen area would create difficulty for all lodgers in the boarding house living environment with the daily use of one area at meal times for such a high occupancy. This situation would therefore create pressure for persons to seek alternative arrangements such as the use of plug in appliances in private rooms or request later fit-out for private kitchenette style facilities.

Therefore, the boarding house is of an inadequate design in terms of site facilities to adequately cater for necessities of communal kitchen / dining areas within the building. No details have been provided that would prevent plumbing or power connections being installed in the bench top areas of each of the lodger rooms making them capable of being used as separate domiciles.

The proposal has not adequately addressed this issue and warrants refusal of the application.

4. **Issue:** *The boarding house is not 'low intensity low impact' and the density of occupation is an accumulation of 'dwellings' within one building*

Comment:
Following the decision of Preston J under *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC* 66 it is established that non-traditional boarding houses (termed "new generation" style) will trigger elements under WLEP 2000 with respect to the housing density controls due to modern design inclusions for self-contained style rooms. The detailed configuration of the boarding rooms does not negate the DFC test of low intensity / low impact and if all rooms are occupied the proposal would conceivably accommodate at least 29 persons, or up to 58 persons (given each bedroom contains a double bed). This density of occupation is very high given the DFC emphasis on limitations for housing. The substantial variation is required is addressed in further detail under the DFC discussion within this report, and is also subject to the concurrence of the NSW Department of Planning.

In summary, the variation is not justified as the proposal is inconsistent with the DFC and it is not supported that the concurrence of the Department of Planning be sought under the circumstances. The high intensity use and impacts of the proposal will detract from maintaining the integrity of the 'existing holding' provisions under the Warringah LEP 2000

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and the rural character of the B2 Oxford Falls Valley Locality. Without the concurrence of the Department of Planning the proposal cannot be approved.

5. Issue: *The proposal is an overdevelopment of the site for "micro-apartments" which should not be permitted in rural areas under the SEPP (Affordable Rental Housing) 2009, and there should be a moratorium on boarding house development.*

Comment:
The proposal is made under WLEP 2000, since the SEPP ARH is not applicable to the B2 Oxford Falls Valley Locality.

There is no moratorium on boarding house development in the rural land areas of WLEP 2000 and the implementation of a moratorium is not appropriate to target a specific development application.

In summary, this issue has been addressed in detail within this report under the heading 'SEPP (ARH) 2009'.

6. Issue: *The proposal will trigger further environmental impacts on the site due to associated works for the sewer line connection and will encourage urbanisation of the rural fringe.*

Comment:
The sewer line connection has been approved under a separate application and is subject to *Sydney Water* requirements. Connection to the sewer will abate the need for on-site effluent disposal and reduce the risk of water pollution from any reliance on an aerated waste water treatment system (AWTS).

The site is within an area that permits the use of the land for various development ("Category 2" and "Category 3"), subject to approval. Therefore, the potential for future urbanisation of the site is restricted by the applicable planning instrument.

This issue has been considered and does not warrant refusal of the application.

7. Issue: *The proposal will adversely impact on flora and fauna of the site including threatened species habitat by land clearing.*

Comment:
Some bushland clearing has already been carried out following the approval of the construction of a dwelling house on the land (including the subsequent DA to superimpose a boarding house within the approved dwelling footprint). While the site has been partly cleared due to previous development approvals the proposed new boarding house brings a higher intensity and potential increased impacts on surrounding flora and fauna habitat, including riparian land. Council's Natural Environment & Climate Change Unit (NEU) is not satisfied with the expected environmental impacts or management provided whereby the higher intensity of use will require additional clearing for bushfire protection.

Details are provided under the NEU referral comments. Therefore, this issue warrants refusal of the application.

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8. **Issue:** *The proposal will require additional bushland APZ clearing for bushfire protection and therefore increase create erosion and sediment problems.*

Comment:
The proposal has been submitted with a Flora and Fauna Assessment (Ref. 186573, dated 25/9/2018), a Waterways Impact Statement (dated 22/3/2017) and Bushfire Protection Assessment (Ref. A17048B, dated 11/9/2017). The application has been assessed by Council's NEU (Biodiversity) Section with respect to potential environmental impacts on bushland, biodiversity, water quality and sediment controls.

Council's NEU does not support approval of the boarding house and has raised objection with respect to APZ clearing, water quality risks, ecological impacts and erosion risks, as detailed in the referral response within this report.

Therefore, this matter warrants refusal of the application.

9. **Issue: "***The site will cause pollution of stormwater and affect water quality of the Narrabeen Lagoon catchment which will impact on Garigal Landcare work within the lower catchment area".*

Comment:
The site drains into Wheeler Creek and eventually the Narrabeen Lagoon. Areas of the catchment in the vicinity of the site are of a "Category A", high conservation significance. This issue is addressed in detail under the referral response by Council's NEU (Biodiversity) within this report.

It is considered that the high intensity of the use will exacerbate adverse impacts on the natural environment and therefore this matter warrants refusal of the application.

10. **Issue:** "*The proposal is incompatible with the potential draft future zone inclusion for WLEP 2011".*

Comment: The inclusion of the "Deferred matter" lands to within a future zone and Warringah LEP 2011 as a draft has not been confirmed. No draft LEP has been gazetted and therefore no weight can be given to the possible future zone. The proposal must be considered under the LEP 2000 – B2 Oxford Falls Valley Locality DFC statement and built form controls.

It is considered that this issue is not a matter for refusal as the future zone is unconfirmed for exhibition at this stage.

11. **Issue:** *"The boarding house does not protect the desired future character of the locality to restrict development as the proposal is an even larger reiteration of previous a previous development approval on the site".*

Comment:
This issue has been addressed under the heading 'Desired Future Character' assessment made within this report. In summary the concentrated intensity of use and associated impacts of scale, visual impact, building bulk, water quality, landscape clearing and inconsistencies against the General Principles of WLEP 2000 demonstrate the proposal is not compatible with the DFC statement.

This issue warrants refusal of the application.

MEDIATION

No requests for mediation were received.

LAND AND ENVIRONMENT COURT ACTION

There is no current Land and Environment Court action relating to the subject application.

REFERRALS

External Referrals	Referral Response / Comments
NSW Rural Fire Service *(NSW RFS)*	The site is identified as bushfire prone land. In accordance with Section 100B of the *Rural Fires Act, 1979* the application was referred to the NSW Rural Fire Service (NSW RFS). In their response on 3 May 2019, the NSW RFS issued their Bushfire Safety Authority and General Terms of Approval which are to be included in any consent should the application be worthy of approval.
Ausgrid	The application was referred to Ausgrid service provider under clause 45(2) of *State Environmental Planning Policy (Infrastructure) 2007*. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no special service provider conditions are recommended.

Water NSW	In accordance with Section 91A of the *Environmental Planning and Assessment Act 1979* the proposal was referred to Water NSW for General Terms of Approval (GTA) under Section 92 of the *Water Management Act 2000*. Water NSW provided GTA's on 18 January 2019 in relation to potential ground water impact relating to proposed excavation works.
Aboriginal Heritage Office	The site is identified as being in close proximity to, or having high potential for, aboriginal heritage relics on the land, and was therefore referred to the *Aboriginal Heritage Office* (AHO) supporting Northern Beaches Council. The AHO has provided a referral response on the 6/11/2018. The AHO raise no objection to approval subject to *"any areas of in situ rock outcrops that are more than 1m high x 2m across be inspected by a qualified AHO professional prior to excavation works"*.
NSW Department of Planning	Council cannot approve applications under Warringah LEP 2000 that seek a variation of greater than 10% to the housing density controls without the concurrence of the *NSW Department of Planning*. Detailed comments regarding concurrence requirements are provided later in this report under the heading "Other Matters for Consideration".
Internal Referrals	**Referral Response / Comments**
Strategic and Place Planning (Urban Design)	*"The proposal in its current form cannot be supported for the following reasons:"* ***WLEP 2000*** ***Cl 66 Building bulk*** <u>*Referral Response Comments:*</u> *"The area is characterised by low density residential detached dwellings. The bulk and scale of the proposed development with its flat large continuous wall planes of the elevation treatment could be further articulated and improved upon in the detailed resolution of architectural design. There is little detail in the articulation of the elevations and the building represents a mediocre outcome in terms of enhanced improvement to the character of the detached residential area."* **Schedule 8 Site analysis** <u>*Referral Response Comments:*</u> ***Site and Context:*** *"The extent of contextual analysis provided populates one A3 page (see Drawing DA002 Site Analysis). Several items in the Site Analysis checklist are relevant for discussion with the proposed design.* *The building is 'in the round' and in the front central aspect of the site frontage to the south east. The drawings currently demonstrate no contextual relationship to the greater landscape context of the building at a fine grain level.* *The objective of any site analysis is to inform the development and design of the building in sympathy with the context resulting in a development that optimises the site constraints and provides for optimum user/occupant amenity.* *It is clear in the proposed development, and in consideration of the number of occupants that will be residing in the building, that the barest minimum of basic design principles that address visual and acoustic*

	amenity, solar access, cross ventilation and circulation, including for DDA, site or contextual relationship have been addressed. *And whilst there may not be any breaches of numerical controls, the proposed design is rudimentary in its planning and architectural response to the context."* *<u>RECOMMENDATIONS</u>* *"The following recommendations are provided to encourage the applicant to revisit the design to address basic design improvements to the development.* ***Site Planning and Building Typology*** *The applicant is encouraged to explore with a bit more rigour building typologies that address a greater level of amenity for occupants. The courtyard typology building would lend itself to the optimisation of the topography and northern aspect of the great landscape of the site.* *Alternatively, a pavilion style development of modules interconnected with pathways and landscape planting that provides a cluster approach, would sit more contextually with the site and gentle topography of the land.* *Planning of the internal areas of the proposed design provides a long shotgun type corridor that goes from the front entrance directly to the rear of the building with no articulation in the corridor.* *The width of the corridor is also questionable in terms of DDA, such that the width should accommodate two wheelchairs passing in the corridor. The applicant is advised to consult the Australian Standard suite of documents AS1428.1-2009 to ensure adequate circulation and amenity is provided for people with disabilities.* *The general design of the corridor should be widened and articulated to provide relief to the unarticulated length.* ***Building Bulk*** *Exploration of the abovementioned typologies with provide a much more sympathetic response to the landscape across the site with open space courtyards between blocks to provide improved open space, amenity and privacy.* *Alternatively addressing the roof form and building bulk by breaking the form into two buildings could also be explored to assist to achieve some of the amenity issues with the current design. And provide an integrated approach to the site and greater landscape.* ***Roof Form*** *The proposed design's roof form is a tiled hip roof [amended]. Opportunities to address solar gain with the addition of a full length skylight along the length of the building or alternatively raising the roof and providing highlight clerestory windows with operable louvres would provide for passive ventilation and stack effect to assist with the current cross ventilation issues.* *Additionally this option would allow for light and solar gain to the central corridor. With this option the central corridor could be widened and opened up to provide a void to the lower level with the circulation stairs*

	through and around this providing access to the apartments. This would also provide for a great internal planting zone. ***Solar and Cross Ventilation Amenity*** *The current design is a double loaded corridor with rooms either side replicated at the upper level. It is an efficient, economic and austere design that shows no acknowledgement of design that is fit for purpose or responds to the specific site and context.* *The amenity and condition of these spaces will provide no comfort or cool in the summer months. With each room to be air conditioned the unsightly application of 28 external condenser units to the building will have additional visual built form impacts.* ***Visual Privacy and Amenity*** *Whilst the planning is efficient and will represent significant cost savings in its rudimentary design the basic amenity of individual privacy from the rooms could be addressed by offsetting the door on opposite sides of the corridor so occupants don't open the door directly into the line of sight of the open door on the opposite side of the corridor. Doors should be offset to provide some privacy and amenity for the residents.* ***Site Context*** *The site context places the property in a more exposed and prominent visual catchment of the neighbourhood and thus requires a response that is of design merit, contemporary, of its place and time and represents quality urban design. The current design fails to achieve this and as such is unsupportable.* ***Solar Energy*** *Opportunities for Solar Energy are encouraged with the proposed development.* *The proposed design fails to achieve the basic design principles for sustainability, amenity and design excellence and as such cannot be supported."* <u>Planning Officer Comment</u> The reasons for refusal detailed within the Urban Design Referral assessment are concurred with and included within the recommendation of this report pursuant to LEP 2000 and the relevant General Principles and Desired Future Character.
Natural Environment Unit – Bushland and Biodiversity	*"The Development Application DA2018/1692 - Construction of a Boarding House - Lot 810 Willandra Road, Narraweena is not supported for the following reasons.* • ***Unnecessary Impact on Native Vegetation*** *"There is an unnecessary impact on canopy trees, native vegetation, fauna habitat and the previously identified Biodiversity Conservation Area from the proposed development including the Bushfire Asset Protection Zone (APZ) indicated on the plans. Modifying the design to re-orientate the building 90 degrees and re-locating the building to the south-west will significantly reduce this impact on native vegetation. There is scope for a similar development footprint to be identified on site that will not require clearing additional native vegetation beyond that consented to previously."*

	• Insufficient setbacks from Bushfire Hazard *"The NSW RFS have requested additional information regarding the potential radiant heat exposure on the northern elevation based upon the Court imposed re-vegetation requirement of the adjoining site to the north, Lot 811 DP752038, No.76 Willandra Road Narraweena. Modifying the design to re-orientate the building and re-positioning the location to the south-west to occur entirely within the previously approved cleared land will increase the separation distance from the re-vegetation area on Lot 811."* ***• Potential trigger of the Biodiversity Offset Scheme under the NSW Biodiversity Conservation Act 2016*** *"The Flora & Fauna Assessment Report (Envirotech 25/09/18) has not supplied evidence relating to the triggers for the Biodiversity Offsets Scheme Threshold with respect to the development application submitted. While the impacts to native vegetation do not occur on an area identified on the Biodiversity Values map, the Biodiversity Conservation Regulation 2017 sets out the area threshold level for when the Biodiversity Offsets Scheme will be triggered. For the subject site, the area clearing threshold trigger of ≥0.5 hectare applies. If clearing and other impacts exceeds this area trigger, the Biodiversity Offset Scheme applies to the proposed development, including biodiversity impacts prescribed by clause 6.1 of the BC Regulation 2017.* *The area of impact to native vegetation needs to be calculated in relation to the whole development. This includes buildings, landscaping, access roads, bushfire asset protection zones, fencing and any associated infrastructure such as sewer, stormwater and footpath construction.* *Section 60B of the Local Land Services Act 2013 provides the definition of native vegetation which means any trees, understorey, groundcover or wetland plants native to New South Wales (established in New South Wales before European settlement). The Plans indicate an enlarged APZ that will have a direct impact to native vegetation on the site. In addition, there are currently areas of native vegetation within the previously cleared areas, including the Biodiversity Conservation Area, that need to be included within any area threshold calculation.* *The APZ Plan provided in Appendix 1 of the Envirotech report, prepared by Vigor Master Pty Ltd (Drawing No. DA007 dated 03/09/2018), is incorrect. The Plan incorrectly shows the extent of native vegetation on the site, and this implies that the full range of direct and indirect impacts have not been assessed by Envirotech.* *The site supports high quality fauna habitat suitable to a range of threatened flora and fauna species, and the potential impact of the development has not been adequately addressed. Previous surveys and assessments should be reviewed to inform the current study, and assessments of significance conducted for a full range of threatened species that may occupy the site and that may be potentially impacted.* *In general, the Report does not address the new legislation with respect to the purpose of the Act, the assessment pathway and processes, is not specific to the application submitted, does not consider the full range of impacts to native vegetation, threatened species and their habitats, and as stated above conclude whether or not the application triggers the Biodiversity Offsets Scheme.*

	A proponent needs to supply evidence relating to the triggers for the Biodiversity Offsets Scheme Threshold and the test of significance when submitting their application to the consent authority." ***Warringah LEP 2000*** *"The Statement of Environmental Effects states that the proposed development is consistent with the Desired Future Character of the B2 Locality as it seeks to retain and protect the site's existing remnant vegetation. It states that:-* *• "The proposal seeks to retain and enhance a dense vegetative buffer adjacent to the frontage of the site.* *• The proposal will be located in a previously cleared area of the site and seeks to retain and protect the remnant vegetation of the site.* *• The proposal will be sited to enhance the existing vegetation buffer to the frontage of the site, therefore the boarding house will be well screened from the street, given the 20 metre front building setback proposed."* *The SEE also states that the proposed development does not require any tree removal beyond that which has been previously undertaken on the site. These statements are not correct, and the full range of impacts to the natural environment have not been addressed, as the building will not be located in an area that will minimise disturbance of vegetation and landforms. The environmental mitigation measures, including the proposed Landscape Plan, do not meet the desired future character of enhance the natural landscape.* *The application has been assessed against the following controls within the LEP."* ***• Clause 56 – Retaining distinctive environmental features on sites*** *"The SEE incorrectly states that the proposed boarding house is located in the similar position as the previously approved dwelling house and boarding house that does not result in any direct or unreasonable impact to the existing environmental features. This statement is incorrect, and the design is not sympathetic to distinctive environmental features such as native bushland, rock outcrops and water courses on site and on adjoining land as:-* *• Location of dwelling footprint requires additional native vegetation, including trees, to be removed for bush fire Asset Protection Zone (APZ). Moving the dwelling to the north-east to already cleared land will reduce impacts of APZ.* *• Regrowth of native vegetation is occurring on-site that is located within the building footprint and APZ. Although this area was within the previously approved footprint, the new application will require clearing of native vegetation.* *• No protection measures have been proposed for trees outside the Biodiversity Conservation areas. Trees along Willandra Road require planned protection to be implemented, and a detailed Landscape Plan provided.* *• The proposal impacts the area previously identified as Biodiversity Conservation.* ***• Clause 58 - Protection of existing flora*** *As outlined above, the development has not been sited and designed to*

	minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native groundcover species. The development must be designed and sited to avoid any additional environmental impacts and is therefore not supported. *In summary, while the application submitted is not supported for the above reasons by incorporation the design changes proposed. Combined with an increase in the environmental protection and mitigation measures, impacts to the natural environment can potentially be reduced to acceptable levels."* Planning Officer Comment: The reasons for refusal detailed within the NEU (Biodiversity) assessment are concurred with and included within the recommendation of this report pursuant to LEP 2000 and the relevant General Principles and Desired Future Character.
Natural Environment Unit - Coast and Catchments	*"The proposed development is supported without condition and has been assessed to comply with SEPP Coastal Management. It is not likely to alter coastal processes to the detriment of the environment or other land and is not likely to reduce public amenity or existing access to and use of the foreshore."*
Natural Environment Unit - Stormwater and Floodplain Engineering (Flood risk)	*The proposed DA is outside the 1% AEP extent and as such meets the flood requirements of the LEP and DCP.*

Natural Environment Unit - Water Management	*"The proposed development is recommended for refusal on the basis that development application has not addressed the Stormwater Quality requirements of Council's Water Management Policy.* *The applicant is advised to provide the following documentation:* *Water Sensitive Urban Design (WSUD) Strategy* *A WSUD Strategy must be prepared in accordance with Council's WSUD Technical Guidelines (attached) to demonstrate compliance with Council's Water Management Policy.* *The Strategy shall contain the following information:* • *Proposed development – Describe the proposed development at the site, including site boundaries, proposed land uses.* • *Catchment analysis plan – clearly showing the surface type (roof, road, landscape, forest etc.) and the total areas. This must be consistent with the land use nodes within the MUSIC Model.* • *Water conservation – Demonstrate how the potable water conservation targets in section 7.1 of the Water Management Policy. For residential developments this maybe in the form of a BASIX Certificate. Rainwater reuse should be incorporated into the development which will also have a positive impact on water quality and reduce off site discharge.* • *Stormwater quality – Demonstrate how the General Stormwater Quality Requirements in Table 4, Section 8.1 of the Water Management Policy will be met, including the location, size and configuration of stormwater treatment measures proposed for the development. Council's preference is for the use of natural systems (raingardens, bioretention etc.) as they promote infiltration, provide amenity and environmental services rather than proprietary devices.* • *MUSIC model - prepared in accordance with Council's WSUD Technical Guidelines unless alternative modelling parameters are justified on the basis of local studies. Details of the modelling of those elements, parameters and assumptions used. All MUSIC data files must be provided to Council.* • *Integration with the urban design – Identify how the treatment measures will integrate with the development layout and the surrounding area such as the use of bioretention within the carpark areas etc."* <u>Planning Officer Comment:</u> The comments detailed within the Water Management comments and assessment are concurred with and are included as reasons for refusal within the recommendation of this report. Further details are also provided under the heading Clause 76 Management of stormwater within this report.

Landscape Officer	*Concern is raised with regard to impacts on the landscape of the proposed works.* *The location and design of the building requires additional excavation and impact in to the bushland areas of the north western side of the site* *Excavation and incursion into the land is required for building footprint, retaining walls, outdoor common area and rainwater tank.* *It is recommended that the building be redesigned to avoid further impacts on the natural features of the site and that works be restricted to those areas already disturbed.* *Landscape Plans are to be prepared by a suitable qualified landscape designer or landscape architect and provide for reinstatement of the bushland character of the locality with the use of local native species only.* *At this stage, the proposal is not supported with regard to landscape issues."* <u>Planning Officer Comment:</u> The reasons for refusal detailed within the Landscape referral comments and assessment are concurred with and included within the recommendation of this report. Further details are also provided under the heading clause 63 Landscaped Open Space within this report.
Development Engineering	*"No objection to approval, subject to conditions as recommended."* <u>Planning Officer Comment:</u> Conditions of consent may be applied to address engineering issues.
Traffic Engineer	*"Due to the narrow width of the road way along the frontage of the site, it is envisaged that there will not be suitable clearance for vehicles to pass a waste vehicle whilst servicing the site. With the number of bins to be serviced, this will relate to wait times that may lead to critical queuing along this section of road. The applicant should demonstrate how safe servicing of the site will occur without impacting on road users. The following should be considered:* *o A waste vehicle should not service the site from a bus zone.* *o A minimum clear width of 3m around the waste vehicle is required to allow vehicles to pass.* *o A vehicle must not cross a double centre line when passing the service vehicle.* *Based on the lack of information relating to servicing of the site, Council's Traffic Team cannot support the application in its current form."* <u>Planning Assessment Comment</u> The applicant submitted amended the plans on 25/3/2019 to address traffic issues by relocating the bin room and providing a truck servicing bay within the front setback, which would require trucks to enter the site and turnaround to leave. The location of the bin room has not been designed to minimise impacts on the streetscape and is therefore included as a reason for refusal.

Waste Officer	No comments and no objection to approval has been raised. Conditions are required to address bin service and waste minimisation. Planning Officer Comments: In terms of the site layout and streetscape impact the bin room is a substantial structure in the front setback area with minimal landscape screening. This issue is further addressed under the DFC considered within this report.
Building Assessment – Fire and Disability	*Building Assessments raise no objections subject to conditions to ensure compliance with the Building Code of Australia.*
Environmental Health (Contaminated Lands)	*Contamination is not likely with the exception of asbestos fragments from fill and the site is not designated as contaminated. No objection to approval subject to conditions.*
Environmental Health (Industrial)	*"No objection to approval subject to conditions."*
Environmental Health (Unsewered Lands)	*"This site is unsewered. The applicant "intends" to get approval from Sydney Water to be able to connect. This is absolutely critical as on site disposal of waste water appears to be unlikely. The application could be refused/deferred commencement until this is achieved or conditioned to allow matters to be resolved"* Planning Officer Comment: The site has already been approved for connection to a sewer main by *Sydney Water* and works are in progress in accordance with Sydney Water case number 168552, dated 10 July 2018, including plans 168552WW, stamped by MGP and dated 11/7/2018. Details of the contract to undertake works in accordance with *Sydney Water* requirements and specifications.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "SEPP 55", "SEPP ARH" and "Warringah LEP 2000" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	No Draft Environmental Planning Instruments apply.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 (1.7 notification) applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	The EPA Regulations 2000 requires the consent authority to consider the provisions of the *Building Code of Australia*. This matter has been address via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the "General Principles of

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Section 4.15 'Matters for Consideration'	Comments
the natural and built environment and social and economic impacts in the locality	Development Control" in this report. The environmental concerns associated proposal relating to DFC, density, building bulk, wastewater, flora and fauna and streetscape are unsatisfactory for the B2 Oxford Falls Valley Locality, and warrants refusal of the proposal. (ii) While the development will contribute to the available stock of affordable rental housing in the locality the development does not ensure a satisfactory living environment for the demographic of the community that it is intended to cater to. In terms of the provision of housing, the proposed development will therefore contribute to a detrimental social impact on the locality and occupants. (iii) The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site has physical constraints which create difficulties for ground & surface water, fire protection, minimising impacts on flora and fauna, and addressing the DFC due to the proposal being of an unsuitable scale and intensity of development on site. The building, as configured, also cannot meet the housing density for the locality making the proposal unsuitable. In addition, the site is part of an "existing parcel" and which has implications for future development given that DA2013/0525 has taken up the shared dwelling entitlement of the 'existing parcel'. This applies to all "housing" on the site with the exception of "Senior's housing".
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regulations	The public submissions received in response to the proposed development are addressed under 'Notification & Submissions Received' within this report.
Section 4.15 (1) (e) – the public interest	For the reasons stated in this report, it is apparent that the proposal is not in the public interest due the likely impacts on the B2 Oxford Fall Locality. The proposal does not satisfy the DFC including the requirement for "low intensity low impact" development and is not supported for concurrence for variation to the housing density. It is considered that approval of the proposal will create an unfavourable housing density precedent of regional significance to the Northern Beaches within the "deferred lands" area. Accordingly, the assessment has found that the proposal is not justified for approval in the public interest.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policies (SEPPs)

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 vacant land for a significant period of time with no substantial prior development having been undertaken. In this regard, it is considered that the site poses no risk of contamination, subject to the recommendations detailed within the Stage 1 Environmental Site Assessment (Ref.EBG-02323.Stage 1.ESA) dated 13 September 2013, prepared by *EBG Environmental Geoscience.*

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 with no unresolvable contamination issues. Therefore, suitable conditions may be included subject to any recommendation for approval. It is noted the report was prepared for a boarding house use previously made by the applicant for land. The report does not rely on a specific building position but assesses the state of the land as a whole residential use.

The recommendations within the report remain appropriate and the application has been considered by Council's Environmental Health section.

State Environmental Planning Policy - BASIX

As the proposed development is classified as a "Class 3 Building" in accordance with the Building Code of Australia (BCA), an "alternative assessment" applies for large boarding houses of more than 12 persons or larger than 300sqm. The proposed form of development is also subject to the energy efficiency related provisions contained within Section J - Energy Efficiency of Volume One of the BCA. Conditions requiring compliance with the BCA to address sustainable energy use (as per the BCA report, prepared by *"Thermal Performance"* dated 12.10.2018), may be included subject to any recommendation for approval.

State Environmental Planning Policy - Infrastructure

Clause 45 of SEPP Infrastructure 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 5m of an overhead power line
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line

The proposal is not within or immediately adjacent to any of the above electricity infrastructure and does not include a proposal for a swimming pool; as such the development application is not required to be referred to the electricity supply authority. In this regard, the subject application is considered to satisfy the provisions of Clause 45 SEPP Infrastructure.

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

Clause 101 of *SEPP Infrastructure* requires the Consent Authority to consider any development application for development with frontage to a classified road. Willandra Road is not listed as a classified road for the purposes of the SEPP.

SEPP (Affordable Rental Housing) 2009

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	**Inconsistent** The site is located within the (rural) B2 Oxford Falls Valley Locality of Warringah LEP 2000 and as such, is not located within an 'equivalent zone' to those listed.

The proposal is not permissible under SEPP (ARH), since it does not fall into an "*equivalent zone".* Therefore the proposal has been lodged under WLEP 2000 under which a boarding house is permissible as a Category 2 land use.

Local Environment Plans (LEPs)

Warringah Local Environmental Plan 2011 (WLEP 2011)

The WLEP 2000, B2 Oxford Falls Valley and C8 Belrose North Localities (which cover the land subject to this application) were proposed to be zoned E3 Environmental Management in the draft 2009 version of Warringah's standard instrument. This was based on a detailed translation methodology that was applied to all land within the former Warringah LGA.

In December 2011, the Minister for Planning and Infrastructure deferred land in the Oxford Falls Valley and Belrose North areas from WLEP 2011 in response to stakeholder concern regarding the adequacy of consultation during the preparation of WLEP 2011.

Accordingly, WLEP 2011 and the current Warringah Development Control Plan 2011 do not apply to this application.

Warringah Local Environment Plan 2000 (WLEP 2000)

WLEP 2000 applies to the subject land and the development application is made pursuant to this instrument. Under WLEP 2000, the subject site is within the B2 Oxford Falls Valley Locality.

The DFC statement for the B2 locality states:

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The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.

Definition and Category of Development

Boarding house development is identified as a Category 2 use in this locality as it is a form of housing development which is not prohibited or listed in Category 1 or 3. In addition to being a form of housing, a "boarding house" is also a specifically described use under the WLEP 2000 - *Dictionary*.

A boarding house falls under the collective category of "housing" being a type of development for permanent residential accommodation. This is different to "other uses" that include tourist accommodation such as backpacker lodges, B&B or motel rooms.

A boarding house fits within the collective land use category of "housing" of which ***housing*** means development involving the creation of one or more dwellings whether or not used as a group home.

The category of "Other buildings, places or land uses" is for development other than "housing" that is not prohibited or Category 3. Since a boarding house is a form of housing development it is appropriate to be subject to the housing density controls.

A boarding house does not escape the housing density controls since the WLEP 2000 makes it clear that, by similarity a "group home" (which is also separately defined and is so configured with bedrooms and shared spaces in a building), is distinguished as "a dwelling". Likewise a boarding house contains spaces that make it a building that has "*a room or a suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile."*

Therefore, a boarding house will by default contain a dwelling or many dwellings (conventionally being attached) and any or a number of rooms that will also be "***capable** of being occupied or used as a separate domicile*". This is particularly the case if the boarding rooms have their own external access to enter / leave the property and lodger rooms have bathrooms and bench space for cooking appliances / food preparation.

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The legal context of "dwellings" within boarding houses was considered by Preston J under *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66* – see paragraphs 62-27 of Preston J decision, dated 2 May 2018. In this instance, and following this recent legal judgement, it is not appropriate for the application to disregard the housing density control as a use that is not housing and at least one or more than one dwellings.

Consideration of the development against the Desired Future Character (DFC) statement

Before granting consent, Clause 12(3)(b) of WLEP 2000 requires that the consent authority must consider the DFC described in the locality statement and the proposal being Category 2, must demonstrate consistency with the DFC statement. As such, the following provides consideration of the development against the various parts of the above DFC statement:

- ***The present character of Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.***

  Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses."

Comment:
While the western half of the land is mostly undisturbed bushland, a lot of land near Willandra Road has been cleared of vegetation for site works, associated with the construction certificate for DA2013/0525 being consent for an approved detached dwelling house. Therefore, the circumstance of change to use the site for housing has commenced.

However, while a variation to the housing density for DA2013/0525 was granted on 13/8/2013 the proposal for a boarding house increases the intensity of the land use by a much higher occupancy due to the capability and configuration of boarding house accommodation. Circumstances of change to intensify the use of the site were progressed by DA2013/1203 for a 17 bedroom boarding house that utilised a similar footprint and external building appearance as the approved house for DA2013/0525.

The differences between DA2013/0525 (house) and DA2013/1203 (boarding house) required minimal change to accommodate the boarding house; by utilising the established building footprint, physical appearance, Asset Protection Zone, driveway area. This ensured the dominant impacts remained consistent. The Director of the *NSW Department of Planning* considered the circumstances of the variation to the housing density and granted concurrence to permit the approval of the 17 bedroom boarding house.

The current proposal is of a substantially higher intensity (70.5% increase in accommodation rooms) and thereby increases the development impacts on the surrounding environment. The boarding house covers a much larger building footprint of 700 sqm (plus terraces/courtyards) with minimal articulation for walls and roofing and is setback to the minimum frontage for Willandra Road. The two storey scale, single mass of the building does not demonstrate "*detached style"* required for housing.

The close proximity to the road is inconsistent with the General Principle applying to the Locality that "*buildings are to have a visual bulk and an architectural scale consistent with*

structures on adjoining or nearby land and are not to visually dominate the street or surrounding spaces, unless the applicable Locality Statement provides otherwise."

In summary, increased impacts include bushfire clearing, environmental site management, water runoff, building bulk, streetscape impacts and landscape appearance for the rural Locality.

The proposal will vary the housing density standard by more than 10% and such variation requires the written concurrence of the Director of the *NSW Department of Planning* before consent may be granted.

As the proposed development is not a conventional single detached dwelling house, the development is required to conform as a "low intensity, low impact" use as described in the Land and Environment judgement "*Vigor Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128"*. The following definition was provided in the judgement:

- ***Intensity*** *- is commonly used to identify the nature of the proposal in terms of its size and scale and the extent of the activities associated with the proposal. Therefore "low intensity" would constitute a development which has a low level of activities associated with it.*

- ***Impact*** *- is commonly used in planning assessment to identify the likely future consequences of proposed development in terms of its surroundings and can relate to visual, noise, traffic, vegetation, streetscape privacy, solar access etc. Therefore 'low impact' would constitute a magnitude of impacts such that was minimal, minor or negligible level and unlikely to significantly change the amenity of the locality.*

Low Intensity assessment

Occupation Intensity: The proposed boarding house, as submitted, does not identify the resident occupancy for up to 29 individual rooms, and only specifies rooms not be "*occupied by more than 2 people at a time"*. This creates ambiguity of the intensity of occupancy range between 29 to a potential 58 persons.

The building form is substantially higher in intensity of use to the consent issued for a (previous) dwelling house DA2013/0525 and the smaller scale boarding house (DA2013/1203) approved for the site. A plan of management (PoM) is provided to address administrative matters, facilities, parking, maintenance, waste, safety, health, security, complaints and review of the PoM.

Traffic Intensity: The Applicant has provided a Traffic and Parking Assessment Report prepared by *Varga Traffic Planning,* dated 8/10/2018 which provides a land use comparison with a 'motel' for traffic generation. Council previously supported a smaller boarding house on the site based on a lower expected traffic intensity potential vehicle trips per hour (6.4) during commuter peak periods. By comparison a single dwelling produces 0.85 vehicle peak commuter trips per hour, or 9 daily vehicle trips (based on the RMS Traffic Guide).

The increase in traffic movements now proposed is 11.2 vehicle trips per hour during the commuter period. While this may not adversely impact traffic along Willandra Road or the local road network performance it results in an increased intensity of use by 4.8 vehicle trips per hour. It is noted there is an operating boarding house at Bundaleer Avenue Belrose

(WLEP 2000) that has not be used to provide a more appropriate comparison of traffic generation, rather than a motel.

In summary, it is not concurred that the use satisfies the test of low intensity (as opposed to "impact") for traffic as the boarding house will generate more traffic than the existing development within the site and an appropriate comparison of a like-for-like land use has not been made.

Density: In terms of density, the requirement for the B2 Oxford Falls Valley Locality is 1 dwelling per 20 hectares (ha). The site has a total area of 2.92 ha (Lot 810 only). The proposed development is not a conventional dwelling, and is of substantial proportions for housing uses in the rural Locality. The visible aspects such as the window fenestration, wall mass, large roofscape, large bin room, car access and entry areas, and the like, reveal the high intensity of occupation. The physical size of the building itself is not considered consistent with the density control. The concentrated occupancy of the boarding house is essentially a new building form that is of high intensity and inconsistent with maintaining the lower intensity and lower impact uses previously approved for the site. The site is subject to existing holding provision intended to protect the DFC density controls.

Accordingly, the proposal is fails to satisfy 'low intensity' use and consistency test for Category 2 development against the DFC.

Low Impact assessment

The relevant potential impacts of the proposed development are addressed as follows:

Built Form Impact: The physical impacts of the building form on the natural landscape is substantially larger than the boarding house footprint approved under DA2013/1203. The likely external impacts are therefore more intense due to a greater occupancy which increases vegetation clearing, excavation, traffic frequency, noise, garbage management and other ancillary aspects of the land use.

Overall, the development will present as a single building entity (35m x 20m). The development falls under the group / collective land use of "Housing" category under LEP 2000 which captures a number of separately defined styles of housing. The proposal is therefore a generic alternative housing style within an 'existing holding'. Therefore, in considering the built form impact the proposal cannot be established as being only *"one dwelling*" by reference to the DFC since the building does not resemble a conventional dwelling house for the rural landscape. The building clearly surpasses the threshold for any building form that is commensurate with visual appearance of a dwelling house. Internally the proposal has potential to be 29 self-contained rooms with each boarding room capable of fit-out for kitchenette facilities.

As the site is currently vacant, the proposed development will create a substantial visual impact due to the two storey scale and singular mass of the building with minimal landscape screening proposed due to the APZ requirements. The proposal is not of a detached style representative of a single rural dwelling scale (as was approved under DA2013/1203). The bin holding structure is an 8.5m long building across the site frontage, creating a high visual impact to the roadside which unscreened due to a vehicle bay in front of the bin room. This is inconsistent with the DFC to *minimise impacts* on the rural landscape of the Oxford Falls Valley Locality.

Noise Impact: The boarding house will operate seven (7) days a week, and balconies and a boarding house operational Plan of Management (PoM) includes restrictions relating to visitor hours and the use of external private open space. An Environmental Noise Assessment prepared by *PKA Acoustic Consulting* dated 5/4/2017 was submitted with the Development Application. The report concludes that the proposed development can meet the noise criterion for residential development as per section 6 and section 7 of the report.

Traffic Impact: The submitted Traffic and Parking Impact Assessment prepared by *Varga Traffic Planning Pty Ltd* dated 8.10.2018 states that the anticipated traffic movements for the development would not adversely impact on the performance of the surrounding road network. The assessment concludes that car parking for 15 cars is satisfactory and the increase traffic generation will be statistically low, as concurred by Council's traffic Engineer.

- ***There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.***

Comment:
It is noted that the majority of existing native vegetation toward the rear of the site is to be retained as part of the proposed development. However, on the lower slopes and land in proximity to Willandra Road tree clearing is required to meet bushfire protection which exposes the building to full view from the public domain. The site is not visible from Narrabeen Lagoon or Wakehurst Parkway.

- ***The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.***

Comment:
Vegetation and Landform*:* As mentioned above, the proposal seeks any further vegetation removal to that already approved on site. The Asset Protection Zone (APZ) must be expanded for bushfire protection purposes approved by the NSW Rural Fire Service. The site will retain vegetation located in the western half of the site, but further clearing is required of the lower slope west of the building. The density of new landscape planting on the site is not consistent with the desired landscape character of the area to protect, enhance and minimise disturbance of vegetation. As a Category 2 development the proposal has not demonstrated consistency with the DFC or general principles.

The site provides core habitat for many native species of fauna, including threatened fauna and in its natural condition supports a dense and diverse habitat. This includes a ground layer of vegetation that comprises shrubs, trees and other understorey vegetation. In summary, apart from the disturbed (cleared) areas, vegetation communities on the site comprises *Sandstone Heath*, *Bloodwood Scribbly Gum Woodland*, *Coastal Upland Swamp (Sydney Basin),* with *Peppermint Angophora Forest* adjacent.

The subject site was included in the Warringah Biodiversity Conservation Study (September 2011) and assigns the following Conservation Values to the area in which the site is located:

- Conservation Significance – Creek: Category A (Wheeler Creek Catchment).
- Conservation Significance – Connectivity: Regional Core
- Conservation Significance - Rating: Very High

The boarding house and APZ would be located in regional core habitat within the Wheeler Creek Catchment and the previous protections ensured under DA2013/1203 for a small scale boarding house on the site have been foregone. The up-scaled proposal for a 29 room boarding house will broaden impacts on the remnant habitat depleting edge buffers to core bushland. A biodiversity management plan are considered necessary to restrict future clearing and prevent fragmentation of the 'existing holding'. However, the proposal has not addressed this issue and some irregularities in clearing have already occurred on site. The proposed development will require further tree removal beyond that which has been previously approved and increase potential risk / impacts on local water quality, which is contrary to the DFC.

Rural Amenity: The proposed development results in a significant increase in intensity of use relating to impacts of higher occupancy activity and intrusion of a substantial and large single massed building form for the rural landscape. The site is in a fringe location but the urban zone adjacent is not part of the Locality Statement (or LEP 2000). Therefore, the influence of development opposite the site is not considered to carry determinative weight such that the proposed higher occupancy building is consistent with the low intensity / low impact emphasis of the DFC in maintaining the rural character of the Oxford Falls Valley Locality.

Visual Materials: The proposed boarding house presents as a large two storey building of a bulk and scale similar as a single mass 35m x 20m. The chosen colours and materials are shown on the elevation plans as referenced on plan DA401 – Schedule of external materials.

- ***A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.***

The site does not front Forest Way or Wakehurst Parkway, therefore specific issues relating to these road corridors as Main Roads (MR) do not apply the site.

The proposed landscaping along the site frontage includes a row of trees/ shrubs to benefit the local streetscape. However, RFS Referral Response and Bushfire Report contradict the landscape plan in so far as fire protection would allow no tree planting along the frontage of the building being "*IPA to the property boundary*". It should be noted that the frontage also contains power lines close to the boundary and it is undesirable to have planting near power lines on fire prone land. Therefore, due to the size, scale and intensity of the proposal and wide APZ buffers needed the proposal cannot achieve the landscaping proposed. This creates a high visual impact of the proposal on the streetscape.

- ***Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.***

Comment:

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The site is already subject to erosion control issues and the proposal will risk further erosion and sedimentation impacts on waterways and riparian land, including drainage to Narrabeen Lagoon.

Conclusion on the DFC

Based upon the above considerations, the development is considered to be inconsistent with the DFC statement for the B2 Oxford Falls Valley locality.

Built Form Controls for Locality B2 Oxford Falls Valley

The following table outlines compliance with the Built Form Controls of the above locality statement:

Built Form Control	Required	Proposed Development	Compliance
Housing Density	1 dwelling per 20ha ***dwelling*** means a room or a suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile. ***housing*** means development involving the creation of one or more dwellings whether or not used as a group home.	2.837 Hectares – Lot 810 NOTE: The "existing holding" is one parcel that includes Lot 807 & Lot 810 with a collective area of 5.45 hectares. The holding became a split ownership after 2012. The proposal is for boarding house is capable of higher occupancy than a normal dwelling. There is one dwelling entitlement within the existing holding of Lot 807 and Lot 810. The site will have competing development approvals between DA2013/0525 and this proposal. The previous approval for a boarding house on the site has not been issued a construction certificate yet. The Locality Statement states, *"Development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses"*. As such the assessment of the proposal against "low impact, low intensity" is considered the pertinent test and is addressed previously in this report.	**No*** – subject to concurrence of DoP. For 29 self-contained boarding rooms (capable of being used as a "dwelling" in the form of a habitable "domicile"). **1 dwelling per 1,879 sqm** (0.187ha) across the whole of the "existing holding". Variation is 28 fold (or 96.5% change) on the existing holding entitlement of 1 dwelling**.
Building Height (NGL to Ridge RL66.59)	8.5m	8.9m	No*
	7.2m	7.2m	Yes
Front Building Setback	20m	Willandra Road 7.8m to bin storage	Yes

Built Form Control	Required	Proposed Development	Compliance
		20.0m to building and basement carpark	
Rear Building Setback	10m	172.6m	Yes
Side Setback	10m	37.2m (north) 45.4m (south)	Yes Yes
Landscape Open Space	30% of site to be landscaped (0.85 Ha)	98% (27,847 sqm) Note: The above calculation includes all landscaped areas of the site including the APZ.	Yes

**The proposal substantially exceeds the threshold previously accepted for the site and the increased density of use is affirmed by the recent legal context of what constitutes a "dwelling" within boarding houses as considered by Preston J under *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66*

*Refer to "Clause 20" assessment details below.

The proposed development fails to satisfy the Locality's Building Height, and Housing Density Control Built Form Controls. Accordingly, further assessment is considered against the applicability of Clause 20(1).

Clause 20(1) stipulates:

"Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the General Principles of Development Control, the Desired Future Character of the locality and any relevant State Environmental Planning Policy."

Housing Density Variation (Cl 20)

The proposal seeks a variation of 1 dwelling per 1,879 sqm for the existing holding (being a variation of 28 fold change, or 96.5% decrease variance to the holding). (Note 1:20ha comparison is not used as the holding has an entitlement on the original holding, as mapped with the gazettal of WLEP 2000.) In determining whether the proposal qualifies for variation under Clause 20(1) consideration is made in the following three step assessment:

(i) General Principles of Development Control

The proposal has been considered for variation under clause 20 and fails to be consistent with the General Principles of development control as detailed in the following section headings of this report.

In summary, variation to the housing density for such a large scale development is not supported against the general Principles and the desired future character. See the discussion on "General Principles of Development Control" in this report for a detailed

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assessment of consistency for issue relating to the protection of water quality, traffic, site facilities, landscaping, minimising bushland clearing, sedimentation and conservation of flora and fauna habitat within the site.

Therefore, the proposal fails to qualify to be supportable for a variation to the development standards, under the provisions of Clause 20(1).

(ii) Desired Future Character of the Locality

In determining whether the proposal qualifies for consideration under Clause 20(1) in terms of the DFC consideration is made as follows:

Consideration of the DFC for the development is addressed in this report. However, in summary the DFC is dictated in part by the housing density standard that is also subject to restrictions for 'existing holdings'. Therefore, this issue must be addressed as follows:

In the *Locality B2 Oxford Falls Valley* the minimum area per dwelling required by the housing density standard is deemed to be the minimum allotment size for allotments created by subdivision – subject to "existing holding" provisions of land, which is adjacent or adjoining lots held in the same ownership on 8 March 1974 and having a combined area of not less than 2 hectares.

Since the holding is more than 2 hectares and the proposal is not for a "single dwelling", or "aged care" the density provision applies the purpose of housing (in this instance a boarding house) across the whole of the holding.

The proposal is subject to satisfying the DFC and, in particular, the test of "low intensity" and "low impact" for development. Part of this test also includes consideration of the key themes of the DFC for location, detached style of building appearance, bushland protection, water quality and streetscape.

In this case, the variation to the housing density of '1 dwelling per 20 hectares' is not supported due to inconsistency with the DFC and general principles. Consent to vary the housing density by more than 10% cannot be granted without the concurrence of the Director of the NSW Department of Planning. As discussed previously in this report the use of the site for a boarding house is a much higher intensity of occupation than for a single dwelling. In this case the subject proposal will result in a substantial housing density variation including a development bearing no physical resemblance to a single dwelling house. For housing purposes the proposal is contradictory to the DFT and "low intensity low impact" requirements for Category 2 development.

In conclusion the proposal fails to qualify for a variation to the development standards, under the provisions of Clause 20(1). (See discussion on "Desired Future Character" in this report for a detailed assessment of consistency).

(iii) Relevant State Environmental Planning Policies

Application of any State environmental planning policies have been addressed previously within this report, including the relevance of SEPP ARH.

<u>Conclusion on Cl 20 Housing Density Variation</u>

The development is not considered to be consistent with the general principles and key elements of the desired future character, including test of 'low intensity low impact. Therefore, the proposal fails to qualify for variation under Clause 20 for the housing density proposed. In this respect, the variation to the Building Height built form control is not supported.

Building Height Variation (Cl 20)

The building height control for the B2 Oxford Falls Locality states that *buildings are not to exceed 8.5 metres in height, where height is the distance measured vertically between the topmost point of the building and the natural ground level below*.

The proposed boarding house has a roof height of 8.9m which equates to a variation of 5.8%. In determining whether the proposal qualifies for variation under Clause 20(1) consideration is made is made in the following three step assessment:

(i) General Principles of Development Control

The building height of the proposal and relevant objectives has been considered for variation under clause 20 and fails to be consistent with the General Principles of development control as detailed below.

Merit consideration of non-compliance

In assessing this element of the proposal, it is necessary to consider the Building Height control objectives. Accordingly the merit considerations are addressed below:

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

The non-compliance with the building height is a minor variation of 0.4m at the apex the skillion roof shape. While this is a minor section of the roof form large floor plate of the building and spans required to cover the upper storey results in visually dominant building bulk that has no sympathy or relationship to the bulk of surrounding residential development. In this regard the proposal does not demonstrate reduced scale of 'detached style' envisaged by the DFC and does not satisfy this objective.

- *Preserve the amenity of the surrounding land.*

The non-compliance with the height standard will not result in inconsistencies with this objective as adjoining and nearby development which overlooks the subject site will not experience adverse impacts with regards to views, privacy and loss of solar access. However, it is noted that the impacts associated with this proposal have not been "minimised" and a compliant building would achieve greater consistency with this objective.

The visual impact of the development is found to be unacceptable in its current form.

- *Ensure that development responds to site topography and minimises excavation of the natural landform;*

The building footprint area has a minor slope and the proposal includes a basement carpark. The principal building area has been disturbed by surface excavation and therefore the natural topography of the land is already modified. In this regard, despite the scale of the proposal, it is considered that the development responds to the topography and therefore satisfies this objective

(ii) Desired Future Character of the Locality

Establishing consistency with the DFC is a requirement for Category 2 uses that is a higher test than for a Category 1 use. The building height proposed is considered against consistency with the DFC. The proposal fails to qualify for a variation under Clause 20(1) due to an inadequate design response to achieve key elements of the DFC. This includes requirements for "detached style", ensuring a landscape setting to screen the building appearance from the street and being development that represents a low intensity low impact use.

A comprehensive consideration of the DFC is made previously in this report under the heading Warringah LEP 2000.

(iii) Relevant State Environmental Planning Policies

Application of any State environmental planning policies have been addressed previously within this report, including the relevance of SEPP ARH.

Conclusion on Cl 20 Building Height Variation

The development is not consistent with the objectives underlying the Building Height built form control to ensure building do not become visually dominant by using a design response that is of a detached style, breaks up the built form, wall mass and roof height (including span) and is sympathetic to the bushland rural setting. Therefore, the proposal fails to qualify for variation under Clause 20 to building height as proposed. In this respect, the variation to the Building Height built form control is not supported.

WLEP 2000 General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of *WLEP 2000* are applicable to the proposed development:

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	Yes	This General Principle seeks to ensure that development does not result in excessive glare and solar reflections. Conditions of consent will ensure that the roof finish be within the medium to dark colour range to blend with the bushland setting for the roof.	Yes (subject to conditions)

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General Principles	Applies	Comments	Complies
		Accordingly, the proposal is considered to satisfy this General Principle.	
CL42 Construction Sites	Yes	The site provides adequate area for the handling and storage of building materials, and will not unreasonably impact on the amenity of the locality subject to construction management. The proposal however does not include suitably comprehensive and robust erosion control measures for the construction phase. Therefore, the proposal places water quality of the Narrabeen Lagoon catchment at risk and aquatic habitat of Wheeler Creek. This is inconsistent with the requirements for Category 2 development and warrants refusal of the application.	No (Reason for refusal)
CL43 Noise	Yes	Clause 43 of LEP 2000 provides "*Development is not to result in noise emission which would unreasonably diminish the amenity of the area and is not to result in noise intrusion which would be unreasonable to the occupants*". While it is anticipated that there will be some degree of increased noise generated from the proposed boarding house, the level of noise must be appropriately managed to ensure that there is no unreasonable impacts on the amenity of nearby dwellings. The closest dwelling is 60m east, within a retirement village. A noise assessment Acoustic report (dated 5 April 2017) prepared by *PKA Acoustic Consulting* has been submitted with the application and addresses noise from plant equipment and potential resident nose. The Applicant has submitted a boarding house operational Plan of Management (PoM) which includes guidelines and 'house rules' to be applied in order to manage and mitigate noise from the site, including amplified music, social gatherings and the like. The PoM is necessary to ensure acoustic impacts from the density of occupation are suitably minimised to protect the amenity of the surrounding residences and neighbourhood by imposing restrictions on the use of indoor and outdoor communal areas if required. Additionally, a standard condition of consent will require that all air conditioners and plant equipment result in noise emissions no more	Yes (subject to conditions)

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General Principles	Applies	Comments	Complies
		than 5db(A) above ambient background level when measured from a property boundary. For the reasons listed above the proposal is considered to satisfy the requirements of Clause 43, subject to conditions adhering to the PoM and standard conditions for noise emissions.	
CL44 Pollutants	Yes	The proposal is located within the headwater catchment to Wheeler Creek and South Creek and will be connected to a new sewer line (currently under construction) to Sydney Water sewer mains in Willandra Road north of the site. A waterways impact statement (dated 22/3/2017) by *Woodlots and Wetlands Pty Ltd* has been provided to address riparian impacts but is not supported by Council's NEU – Biodiversity section due to potential biodiversity impacts. Therefore, the proposal is unsatisfactory against the requirements of this clause.	No (Reason for refusal)
CL45 Hazardous Uses	No	No comment	N/A
CL46 Radiation Emission Levels	No	No comment	N/A
CL47 Flood Affected Land	No	No comment	N/A
CL48 Potentially Contaminated Land	Yes	The area of the site which the development is proposed has historically been vacant. A statement prepared by *EBG Environmental Geoscience (*dated September 2013) has been provided detailing that the site is suitable for the proposed land use and that no further investigation is required. Conditions are recommended to address the site management issues raised in the applicant's environmental assessment report.	Yes (subject to conditions)
CL49 Remediation of Contaminated Land	No	No comment	N/A
CL49a Acid Sulfate Soils	No	No comment	N/A
CL50 Safety & Security	Yes	The proposal maintains an acceptable level of safety and security through the site design and layout and a Boarding House PoM. Assessment of the proposal with regard to clause	Yes (subject to condition)

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General Principles	Applies	Comments	Complies
		50 is provided as follows: • The proposed building will have open surroundings for the building and is visible towards Willandra Road to maintain passive surveillance • Entrance to the building is clearly accessible from the driveway and parking is contained with a basement area . Subject to compliance with this requirement the proposal is satisfactory in terms of safety and security.	
CL51 Front Fences and Walls	Yes	The proposal includes no references fencing details. Accordingly, a condition of consent may be recommended detailing the fencing to be of a rural style wooden post and wire or post and rail only, to suit the bushland setting. Any fence netting should have minimum height of 1.5m and maximum aperture of 100mm x 250mm, to enable the easier movement of wildlife away from Willandra Road toward the bushland habitat areas within the site.	Yes (subject to condition)
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	No	No comment – Site does not have a common boundary with a Council Park or Reserve.	N/A
CL53 Signs	Yes	No advertising signs are proposed as accommodation is made by appointment. Conditions may be included to ensure signs are not erected without consent as applicable to the recommendation. (The existing "Marsden" sign erected has been identified for compliance action as appropriate.)	Yes (subject to condition)
CL54 Provision and Location of Utility Services	Yes	The site has access to electrical and water services with connections to be managed by the relevant service provider. A Section 73 Certificate from *Sydney Water* is required, as applicable since the proposal is in a rural area and not a dwelling house and is not made pursuant to SEPP ARH. The site proposed to be connected to *Sydney Water* sewer line as per a sewer extension approval 168552WW from Sydney Water dated .10 July 2018	Yes (subject to condition)
CL55 Site Consolidation in	No	No comment	N/A

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General Principles	Applies	Comments	Complies
'Medium Density Areas'			
CL56 Retaining Unique Environmental Features on Site	Yes	This General Principle seeks to ensure that development is responsive to the existing environmental features on the site and on adjoining land. The subject site contains extensive natural bushland, exposed rock outcrops scattered over the site and pockets of 'hanging swamp' as well as riparian land for the upper catchment of Wheeler Creek. The proposed boarding house is located in the approximate position as the previously approved dwelling house (as per DA2013/0525) and a smaller scale boarding house (as per DA2013/1203). The position does not result in any direct or unreasonable impact to natural rock outcrops. Tree clearing issues required for bushfire protection under *Planning for Bushfire Protection* to pursuant to the *Environmental Planning and Assessment Act 1979*. Much of these areas have already been cleared as part of works undertaken following the approval of DA2013/0525 (dwelling house). Accordingly, the proposal satisfies this General Principle.	Yes (subject to condition)
CL57 Development on Sloping Land	Yes	This General Principle seeks to reduce the impact of development on sloping land by minimising the visual impact of development and the extent of excavation by requiring development to step down the site. The subject has a variable falls from south-west to north-east by approximately 4m to 6m within the broad area proposed for the building footprint and APZ. The western areas of the site have a more significant slope rising a further 28m. These areas are not proposed to be altered by the development. The site is not identified on the Landslip Hazard Map. Accordingly, the proposal is considered acceptable in terms of this General Principle.	Yes
CL58 Protection of Existing Flora	Yes	This general principle requires that development be sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation and on remnant native ground cover species.	No (Reason for refusal)

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General Principles	Applies	Comments	Complies
		The proposal requires additional land clearing and surpasses the threshold permitted under DA2013/0525 and DA2013/1203 on the site. The larger scale and intensity of use will enlarge the impact area of the clearing works. Therefore, the proposal is not consistent with the objectives of this clause minimise impacts on remnant flora by way of containing the scale of the building form to site the established disturbed area. Therefore, the proposal is unsatisfactory against the requirements of this clause.	
CL59 Koala Habitat Protection	Yes	The proposal has been reviewed by Council's Natural Environment Unit, Biodiversity who have indicated that as the site may be potential Koala habitat but unlikely to contain any Koala population. Accordingly, the proposal is acceptable in terms of this General Principle.	Yes
CL60 Watercourses & Aquatic Habitats	Yes	The proposal has been reviewed by Council's NEU (Biodiversity) and do not support the proposed development impacts. No conditions of approval are recommended due to the potential adverse effect on local watercourses including Narrabeen Lagoon. Council's NEU (Riparian) have recommended refusal given the associated concerns with flora and fauna impacts, sediment water runoff and inconsistency with the DFC this general principle is not satisfied.	No (Reason for refusal)
CL61 Views	No	The are no coastal or district views across the site likely to be impacted by the proposed development	N/A
CL62 Access to sunlight	Yes	This General Principle seeks to ensure that development does not unreasonably reduce sunlight to surrounding properties. The proposed boarding house retains a reasonable and equitable level of sunlight to both the subject site and the adjoining properties with no less than 2 hours of sunlight between 9am and 3pm on 21st June. There is sufficient separation between the proposed building and surrounding development to prevent overshadowing. Therefore, there will be no adverse impact to the existing solar access of from the boarding house with respect to any nearby housing. Accordingly, the proposal satisfies this General	Yes

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General Principles	Applies	Comments	Complies
		Principle.	
CL63 Landscaped Open Space	Yes	This General Principle seeks to ensure that development provides landscaped open space that contributes to the amenity of the area. The majority of the site will be retained as dense natural bushland but the proposal will create further APZ incursions into the remnant bushland areas which should be avoided. Given the high occupancy, the provision of landscaped open space does not allow for the accommodation of appropriate outdoor recreational needs of the occupants and service functions, including the provision for clothes drying and landscape screening. Further details are provided under the Referral Response by Council's Landscape Officer. Therefore, the proposal is unsatisfactory against the requirements of this clause.	No (Reason for refusal)
CL63A Rear Building Setback	Yes	Natural bushland areas at the rear setback between 20m-100m along the rear boundary within the site will remain unchanged and protected by a Bushland Management Plan.	Yes (subject to condition)
CL64 Private open space	Yes	This General Principle seeks to ensure that housing is provided with an area of private open space that can be used as an extension of the living area for dining or the outdoor enjoyment of occupants. While the proposed boarding house is not a dwelling, the intent of this control is considered relevant, and the site has sufficient land area to accommodate private open space for occupants in the areas around the communal building, and extending from the communal dining area. Therefore, the proposal is unsatisfactory against the requirements of this clause due to inadequate detail.	Yes (subject to condition)
CL65 Privacy	Yes	The closest dwelling to the subject site is to the east, "Willandra retirement village" on the opposite side of Willandra Road. The proposal shows that at least 8 boarding rooms have their own external access allowing separate / alternative access, being more akin to being attached domiciles. Adequate separation distance is available to the closest neighbours to ensure privacy to adjacent residents.	Yes (subject to condition)

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General Principles	Applies	Comments	Complies
		Accordingly, the proposal satisfies this General Principle.	
CL66 Building bulk	Yes	The size and appearance of the proposed development is substantially larger that the boarding house approved under DA2013/1203 and has minimal building articulation / modulation to break up the wall planes and overall mass. By visual comparison the proposed building will substantially larger than the adjacent RFS centre and the semi-detached villa units opposite, along the frontage of Willandra Retirement Village. Therefore, the building bulk and scale is out of context to satisfying Category 2 development and being consistent with the DFC.	No (Reason for refusal)
CL67 Roofs	Yes	This General Principle seeks to ensure that development provides a roof form that complements the local skyline and integrates with the built form of the development. The proposed roof form comprises skillion style. Thus the roof span is expansive by comparison to a single detached family dwelling. The roof expanse is approximately double that of nearby buildings; such as the RFS centre and clustered villas within Willandra Retirement Village therefore having a greater visual impact. Having regard to the DFC, and envisaged future development to maintain *'low intensity and low impact'* characteristics, the proposal is not consistent with the rural character of development in the B2 Oxford Falls Valley Locality. Therefore, the proposal is unsatisfactory against the requirements of this clause.	No (Reason for refusal)
CL68 Conservation of Energy and Water	Yes	As the proposed development is classified as a Class 3 Building in accordance with the Building Code of Australia (BCA), SEPP BASIX does not apply due to recent changes to Basix for large boarding houses. The proposed form of development is instead affected by the energy efficiency related provisions contained within Section J - Energy Efficiency of Volume One of the BCA. Conditions requiring compliance with the BCA are contained within the recommended conditions.	Yes (subject to condition)
CL69 Accessibility – Public and Semi-Public Buildings	Yes	The building is not a public building however accessibility is required to be maintained to satisfy a Class 1b building, including compliance with current standards under AS1428 and satisfy	Yes (subject to condition)

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General Principles	Applies	Comments	Complies
		the *Disability Discrimination Act 1992*. Subject to conditions the proposal is able to meet these requirements.	
CL70 Site facilities	Yes	The proposal currently includes a bin storage room located on the eastern boundary adjoining Willandra Road. This structure should be setback 6.5m from the boundary with screen planting provided within the setback to provide adequate screening. In addition, large volumes of domestic garbage will be generated by the collective garbage and from 29 rooms and a communal kitchen. The common kitchens shows only four x 4 burner stove tops, two double sinks with two dishwashers and four fridge freezer units to properly cater for communal activity and servicing requirements. The common kitchen areas are inadequate and warrant refusal of the proposal. The does not indicate the adequacy of laundry washing / dryers and clothes line to service 29 rooms. A boarding house development of the potential occupancy proposed should have adequate laundry facilities provided, plus generous outdoor drying facilities. The site facilities proposed are inadequate to satisfy this general principle and warrant refusal of the application.	No (Reason for refusal)
CL71 Parking facilities (visual impact)	Yes	This General Principle seeks to ensure that parking facilities are sited and designed so as not to dominate the street frontage. The proposed parking facilities are provided as garage under the boarding house. The garage entry is located side-on to Willandra road and therefore does not create an unreasonable visual impact. Accordingly, the proposal is considered to satisfy this General Principle.	Yes (subject to condition)
CL72 Traffic, access & safety	Yes	This General Principle seeks to ensure that vehicle movements to and from a development do not interfere with the flow of traffic or compromise pedestrian safety. The proposed parking facilities provide direct access to Willandra Road via the proposed vehicle driveway and will comply with Australian	No (Reason for refusal)

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General Principles	Applies	Comments	Complies
		Standard 2890.1. Councils' Development Engineers raised no objections to the proposed works, subject to conditions. The conditions of consent will ensure the works comply with Councils technical specifications for driveways and vehicle crossings. Having regard to traffic volume, the proposal must be deemed to meet the DFC as a Category 2 development. In this case a higher threshold for traffic volumes of 0.4 movements for the likely potential occupancy is warranted due to the location that has limited public transport and not conveniently close to other retail services. This results in a peak traffic movement of 23 vehicles. Based on the considerations made by Hussey C in "*Vigor Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128"* the proposal is therefore above the peak traffic generation that found to be unacceptable for *low intensity low impact* development as related in assessment against consistency with the DFC. Therefore, the proposal is unsatisfactory against the requirements of this clause.	
CL73 On-site Loading and Unloading	Yes	Due to the position of the parking area and main entrance to the building with the vehicle approach to the basement. The loading bay proposed for the bin room is in an unsuitable location which prevents a landscape screening to address the DFC. Further, the site provides adequate space to enable vehicles to enter and leave in a forward direction consistent with the requirements of this general principle.	No (Reason for refusal)
CL74 Provision of Carparking	Yes	Schedule 17 does not provide a parking rate specifically for boarding house uses. The applicant has submitted a *Traffic and Parking Assessment* prepared by "Varga Traffic Planning Pty Ltd" dated 8/10/2018 which applies the minimum requirements of SEPP ARH as a guide providing fifteen (15) car spaces, six (6) motorcycle and six (6) bicycle spaces. The *Traffic and Parking Assessment* prepared by "Varga Traffic Planning Pty Ltd", estimates up to 11.2 vehicle movements per hour in peak periods. While LEP 2000 does not provide a specific	No (Reason for refusal)

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General Principles	Applies	Comments	Complies
		parking rate for boarding house developments it is a recommendation of this report that the higher parking provision provided for under SEPP ARH of 0.5 spaces per room be applied in this instance due to the location of the site not being close to any local shops and having a large site area enabling off-street parking to be provided easily. SEPP ARH provides this parking rate at a higher ratio of 0.4 for developments that are in less accessible locations. The proposal does not allocate any parking for visitors on site and the WLEP 2000 requires 1 space per unit for 'apartment style housing'. Similarly a Motel also requires 1 space per unit plus employee parking. The parking analysis for the site is not considered to be adequate to address this clause in accordance with Clause 74 and Schedule 17.	
CL75 Design of Carparking Areas	Yes	This General Principal seeks to ensure that carparking is designed to minimise visual impact and provide a safe and efficient environment for both vehicles and pedestrians. Car parking, motorcycle spaces, and the disabled person's parking space are within the basement structure. Willandra Road is capable of accommodating traffic from the proposal and the driveway access is satisfactory subject to compliance with AS2890.1 Council's Traffic Engineer has reviewed the proposed parking and traffic conditions on the site and raised no objections to the design safety of the parking area. Accordingly, subject to conditions the proposal satisfies this General Principle.	Yes (subject to condition)
CL76 Management of Stormwater	Yes	This General Principal seeks to ensure that adequate provision is made for the management of stormwater. The application has been assessed by Council's Development Engineers and their recommendations incorporated in the consent conditions. (See further discussion under Referrals in this report.) Accordingly, the proposal satisfies this General Principle.	Yes (subject to condition)
CL77 Landfill	Yes	Landfill, if necessary, will utilise existing material on site sourced from excavation for building footprint, driveway and ancillary works. No new fill material is proposed to be brought from	Yes (subject to condition)

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General Principles	Applies	Comments	Complies
		outside the site. Accordingly, the proposal satisfies this General Principle.	
CL78 Erosion & Sedimentation	Yes	Appropriate management of erosion and sedimentation works on the site have not been provided to the satisfaction of Council's NEU. Detailed assessment is provided in the NEU referral response. Disturbance of the site will not minimise potential sediment impacts on Wheeler Creek and the Narrabeen Lagoon. In this regard, the *Waterways impact statement* prepared by "Woodlots and Wetland Pty Ltd" dated 22.3.2017 is not supported. Accordingly, the proposal is considered to satisfy this General Principle.	No (Reason for refusal)
CL79 Heritage Control	No	No comment	N/A
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	Yes	This clause is addressed in the Aboriginal Heritage Office (AHO) advice that should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW *Office of Environment and Heritage* (OEH) and *the Metropolitan Local Aboriginal Land Council* be contacted. Accordingly, subject to conditions the proposal satisfies this General Principle.	Yes (subject to condition)
CL81 Notice to Heritage Council	No	No comment	N/A
CL82 Development in the Vicinity of Heritage Items	No	The proposal is not within close proximity to any local heritage items identified in the Warringah LEP 2000 or Warringah LEP 2011 (applies to adjacent land).	Yes
CL83 Development of Known or Potential Archaeological Sites	Yes	The AHO have advised that for development on this site "in so far as areas of *in situ* sandstone outcrop are proposed for impact (such as overhangs over 1m in height or platforms over 2m square), the *Aboriginal Heritage Office* (AHO) recommend a preliminary inspection by a qualified Aboriginal heritage professional". There are no rock overhangs within 20m of proposed building footprint however other undeveloped parts of the property contain exposed *in situ* sandstone. No objection to approval of the proposal subject to requirement of the AHO as detailed in the referral response.	Yes (subject to condition)

General Principles	Applies	Comments	Complies
		Accordingly, subject to conditions the proposal satisfies this General Principle.	

SCHEDULES

Schedule 8 - Site analysis

The Site Analysis plan submitted for the development is unsatisfactory to address the requirements of Schedule 8.

Schedule 17 - Carparking Provision

See assessment under Clause 74 of the General Principles of this report which demonstrates the proposal's ability to satisfy the requirements of this Schedule. At full capacity the proposal could accommodate 58 adults but it is reasonable to assume a "normality" of 50% of lodger rooms having 2 persons, given the high demand for affordable rental housing in proximity to urban land and commercial centres of Dee Why and Brookvale. The submitted plans do not identify any allocated visitor spaces to the building, which would be warranted given the high intensity use.

Given the location of this development a comparable study with another operating boarding house of similar size in a rural locality (such as Lot 2506 Linden Avenue Belrose) would be appropriate. Reason being the site is a more car dependant area (as per Locality C8 Belrose North), being well away from local shops only serviced by one form of public transport. It is highly likely that this development will generate a higher demand for parking than is provided as a comparison to a "motel".

POLICY CONTROLS
Northern Beaches Section 7.12 Contributions Plan 2019

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of $19,700 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of $1,970,000.

OTHER MATTERS FOR CONSIDERATION

Department of Planning Concurrence
The proposal requires concurrence from the Director of the *NSW Department of Planning* (the DoP) for variation to housing density under WLEP 2000.

In particular if the land is less than 20 hectares and more than 2 hectares *"Consent may be granted for development that will contravene these housing density standards but, if by more than 10 per cent, only with the concurrence of the Director."*

The proposal achieves a density of 1 dwelling per 2.67 hectares for the Lot (but 1 dwelling per 5.45 hectares of the 'existing holding') and thus varies the housing density standard by more than 10% (96.5% or 28 fold) the variation is unsupportable for the holding.

Council must not grant consent to the application unless the NSW Director of Planning has provided concurrence. Concurrence has not been sought, as the application for refusal.

CONCLUSION

This report provides a comprehensive assessment of the DA for the redevelopment of the site for the purposes of a 29 room boarding house on the site known as No.74 Willandra Road, Narraweena

Permissibility of boarding houses under WLEP 2000, as a Category 2 development, facilitates the provision of low-cost, flexible rental accommodation to a range of tenants, and is subject to consistency with the DFC Statement, Built Form Controls and General Principles. Boarding House development, as affordable housing is consistent with the State Government objective for new generation boarding houses in the metropolitan areas of Sydney.

The site already has approval for a small scale low intensity low impact boarding house that was based on a previously approved built form for a dwelling house in the same location. On that precedent of minimal physical changes to the approved dwelling house, it was considered a satisfactory development in the Locality to provide an alternative form of affordable housing to meet the housing needs of the local demographic. The additional impacts and up-scaling with the current proposal use exceeds the threshold for *low intensity low impact* development as envisaged by the DFC as demonstrated in "*Vigour Master Pty Ltd v Warringah Shire Council [2008] NSWLEC 1128".* Previous interpretations of "housing" vs "dwellings" vs "boarding house" have been clarified by Preston J in *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66.*

The B2 Oxford Falls Valley Locality states that, *future development will be limited to new detached style housing conforming with the housing density standard.* In this case, the proposal is of detached style housing but cannot conform to the density standard over the 'existing holding'. In addition, the integrity of the DFC and General Principles are compromised by the high intensity use as associated impacts from such a large scale boarding house on the site despite being on the rural fringe of the Locality.

For the reasons stated in this report, it is apparent that while there is public benefit to be gained from boarding house style accommodation, it is not in the public benefit to diminish the local environmental planning instrument and rural character for poor quality outcomes that results in higher intensity and higher impact development than envisaged by the DFC. Issues raised in public objection to the proposal have been addressed and where applicable are concurred with as reasons of refusal in the public interest.

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 2000;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

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

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

- Inconsistent with the requirements of the General Principles of Warringah LEP 2000
- Inconsistent with the Desired Future Character of the Warringah LEP 2000, including requirement for 'low intensity, low impact' development
- Inconsistent with the aims of the Warringah LEP 2000
- Inconsistent with the test of 'clause 20' required for built form variations to LEP 2000
- Inconsistent with the requirements to demonstrate consistency with the DFC for 'Category 2' development of Warringah LEP 2000 – B2 Oxford Falls Valley
- Inconsistent with the objects specified in Section 5(a) (i) and (ii) of the Environmental Planning and Assessment Act 1979.

It is considered that the proposed development fails to satisfy the appropriate controls and assessments procedures have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Planning Panel, as the consent authority REFUSE Development Consent to Development Application No. DA2018/1692 for the construction of Boarding House on land at Lot 810 DP 752038 Willandra Road Narraweena, for the reasons outlined as follows:

1. 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 the *Warringah Local Environmental Plan 2000* in that the proposal is exceeds the housing density controls. In particular

    - The B2 Oxford Falls Locality housing density controls are significantly exceeded.

    - The proposal includes multiple domiciles (dwellings) as established under *SHMH Properties Australia Pty Ltd v City of Sydney Council [2018] NSWLEC 66*

    - Concurrence of the *NSW Director of Planning* is required and has not been made for a variation to the housing density of more than 10%.

    - The proposal fails to qualify for a variation to the housing density and building height controls pursuant to the requirements of 'Clause 20' of the *Warringah Local Environmental Plan 2000*.

2. Pursuant to Section 4.15(1) (a) (i) and (b) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the

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provisions of the *Warringah Local Environmental Plan 2000* in that the proposal is inconsistent with the Desired Future Character (DFC) Statement of the B2 Oxford Falls Valley Locality. In particular, the proposal does not satisfy DFC requirements for a "Category 2" development to conform to:

- *Low intensity and low impact uses;*
- *Satisfying the housing density standards;*
- *Detached style appearance for housing types;*
- *Enhancing the natural landscape;*
- *Minimising disturbance of vegetation;*
- *Ensuring buildings blend with the natural landscape;* and
- *Ensuring ecological values of natural watercourses.*

3. Pursuant to Section 4.15(1) (a) (i) and (b) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of the *Warringah Local Environmental Plan 2000* in that the proposal is inconsistent with the 'General Principles of Development Control'. In particular the proposal does not satisfy the requirements of:

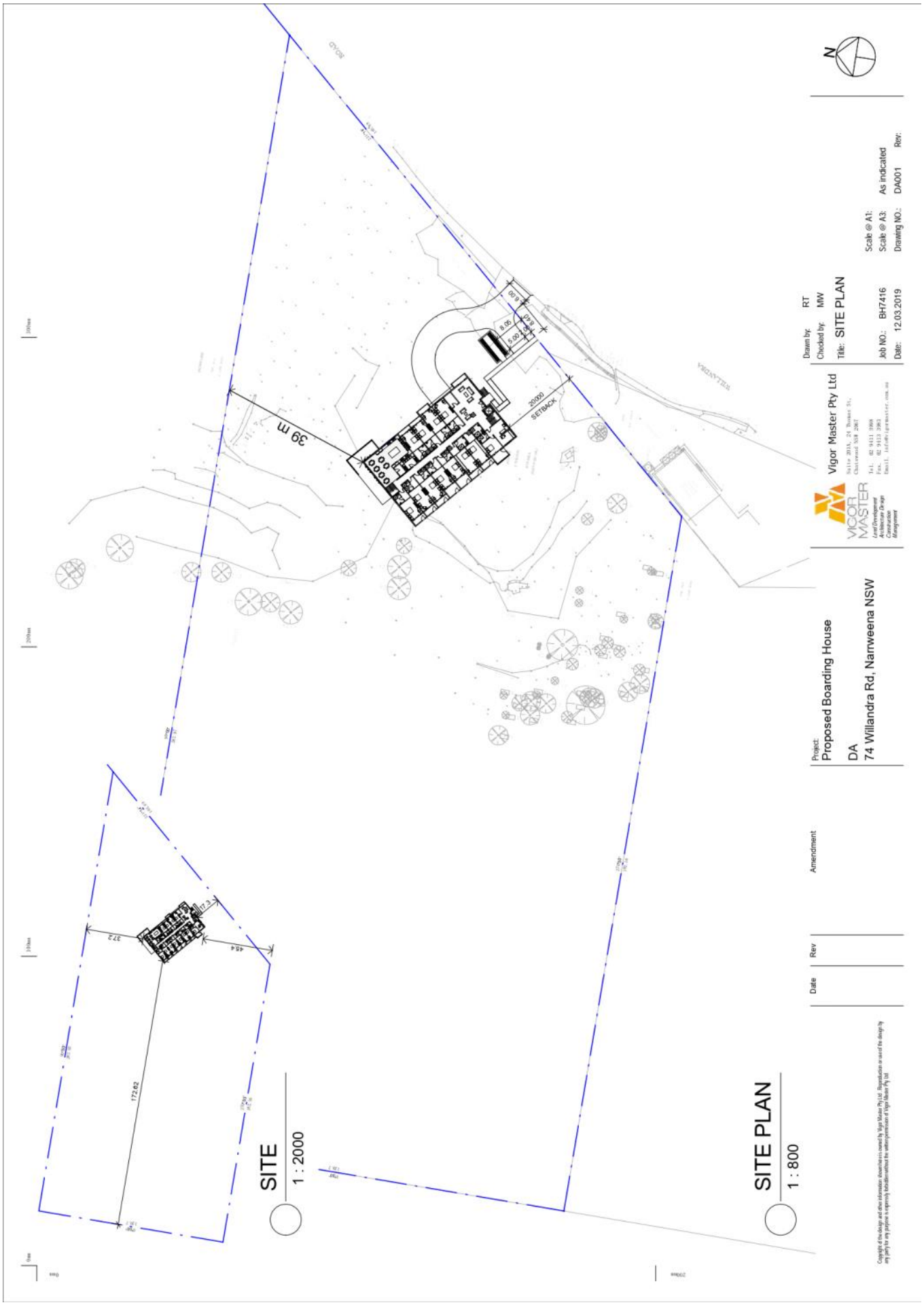
    - *Clause 44 Pollutants*
    - *Clause 58 Protection of existing flora;*
    - *Clause 60 Watercourses and aquatic habitat;*
    - *Clause 63 Landscaped open space;*
    - *Clause 64 Private open space;*
    - *Clause 66 Building bulk;*
    - *Clause 70 Site facilities;*
    - *Clause 73 On-site loading and unloading;*
    - *Clause 74 Provision of carparking;*
    - *Clause 78 Erosion and sedimentation;*
    - *Schedule 5 – Bushland in urban areas;*
    - *Schedule 8 – Site analysis; and*

4. Pursuant to Section 4.15 (1) (b) and (c) of the *Environmental Planning and Assessment Act 1979* the proposed development is unsuitable for the site. In particular the proposal exceeds the threshold considerations for 'low intensity low impact' development as established within *Vigour Master Pty v Warringah Shire Council [2003] NSWLEC 1128.*

5. Pursuant to Section 4.15 (1) (e) of the *Environmental Planning and Assessment Act 1979* the proposed development is not in the public interest. In particular the proposal does not meet the provisions of the relevant local

environmental planning instrument for the creation of a better environment and maintaining the desired character of the rural locality.

6. Pursuant to the *Environmental Planning and Assessment Act 1979* the proposal is inconsistent with *Clause 1.3 Objects*, for the provision of affordable housing in a manner that is consistent with the applicable local planning controls to promote a better environment.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Project:
Proposed Boarding House
DA
74 Willandra Rd, Narrweena NSW
Amendment
Date
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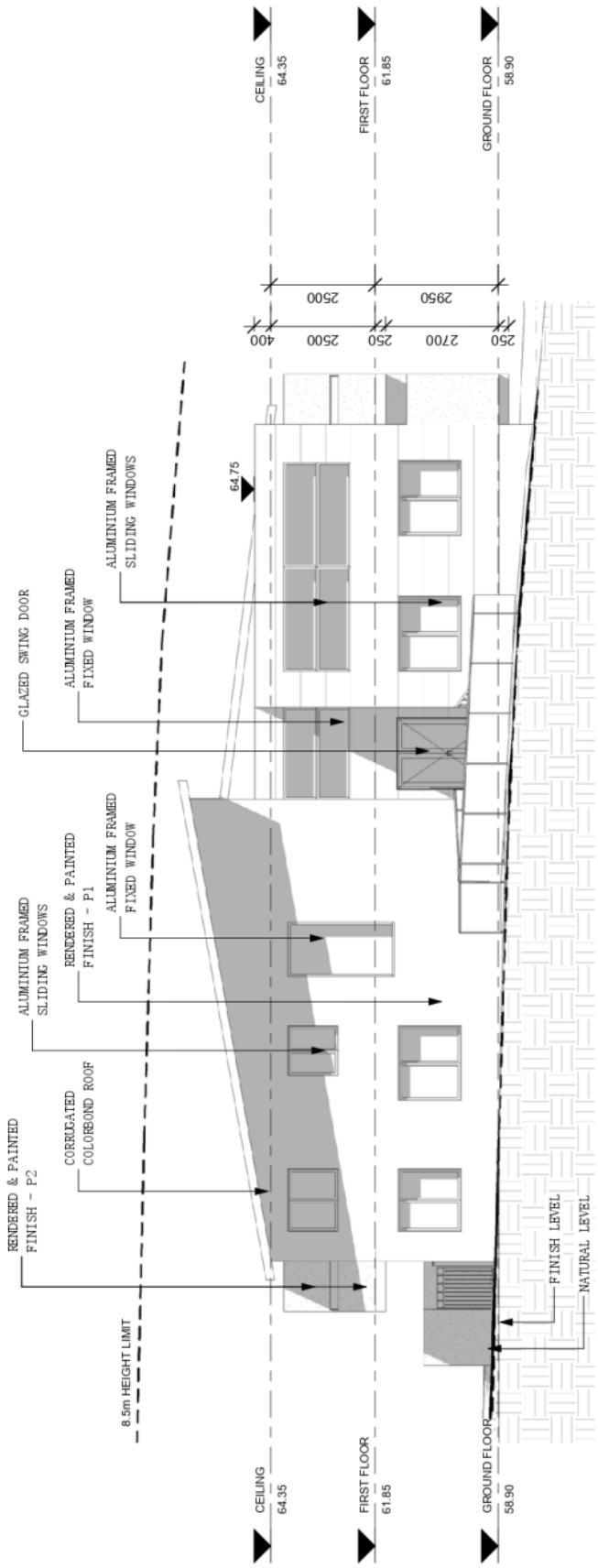

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Rev:

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VIGOR MASTER
Land Development
Architectural Design
Construction
Management

Project:
Proposed Boarding House
DA
74 Willandra Rd, Narrweena NSW

Amendment

Date	Rev

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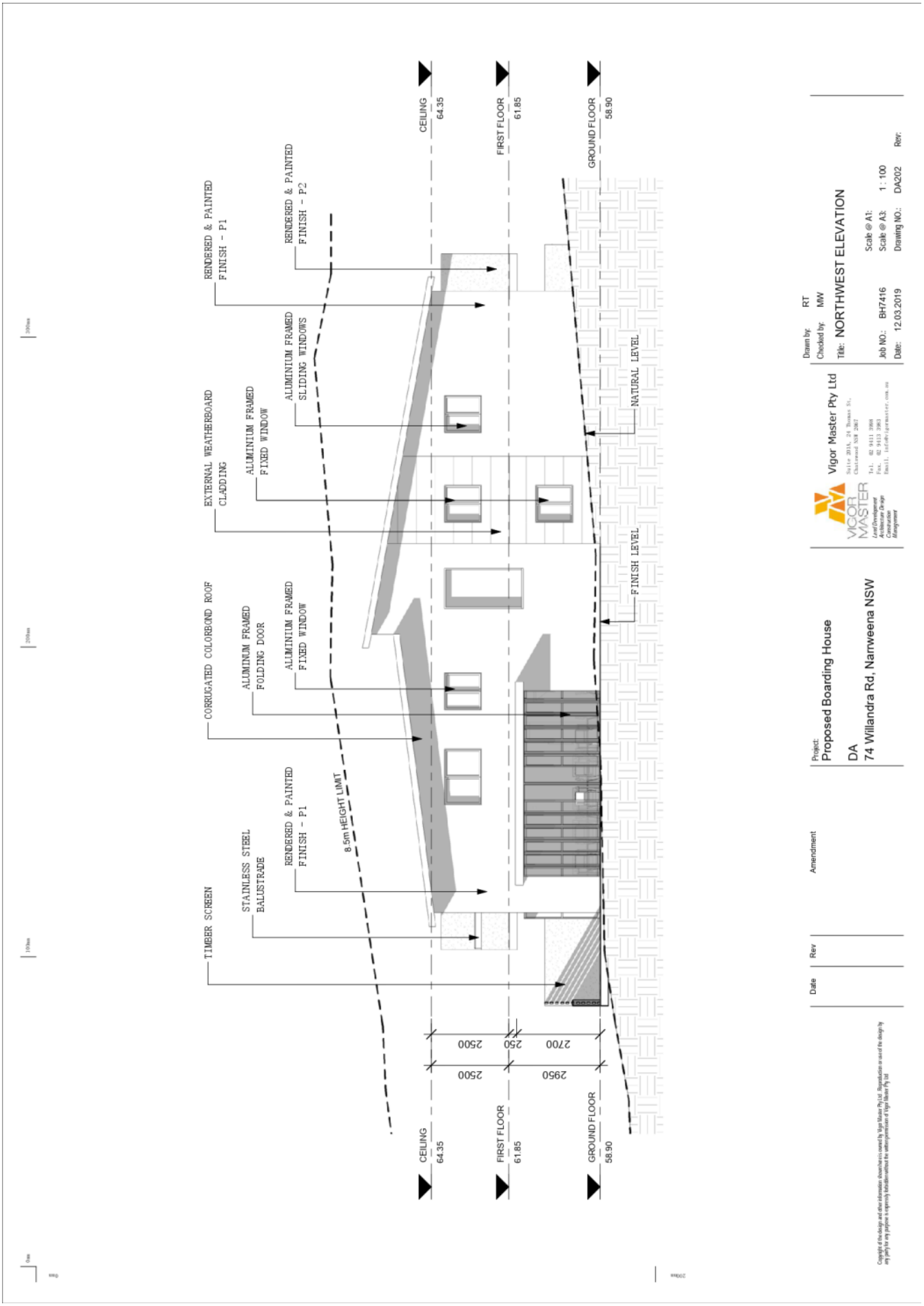
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EXTERNAL WEATHERBOARD CLADDING
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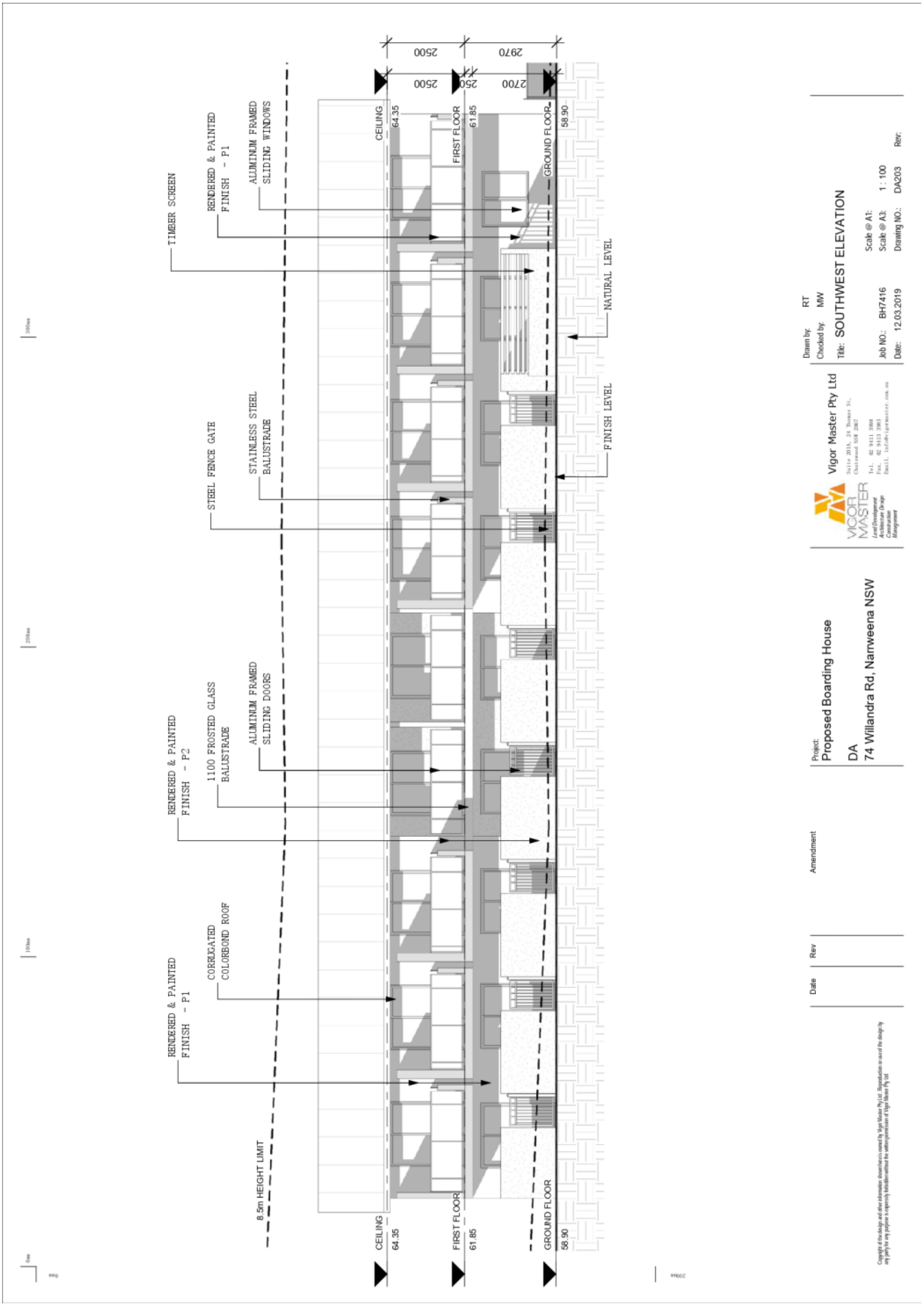
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CORRUGATED COLORBOND ROOF
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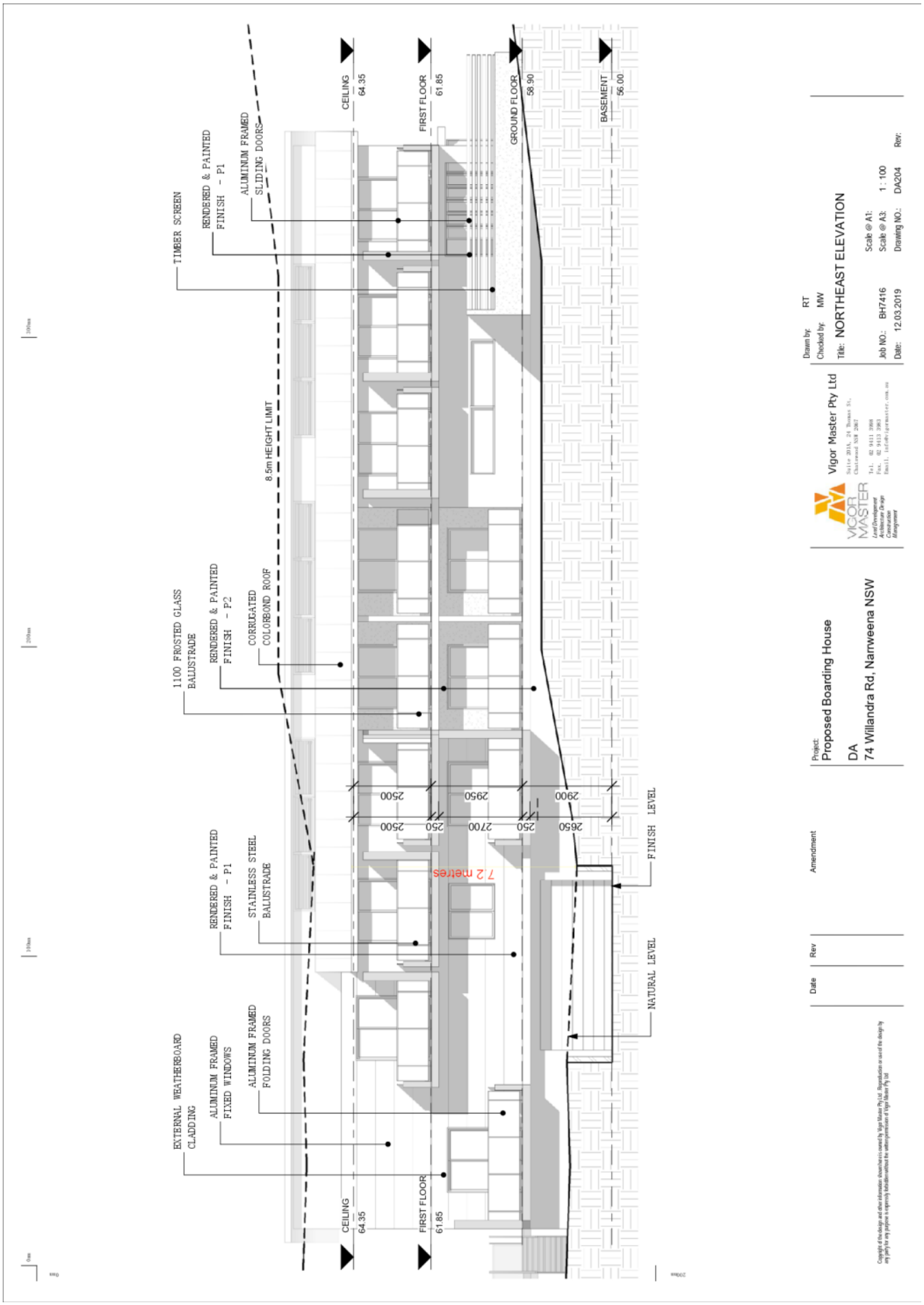
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ALUMINUM FRAMED SLIDING DOORS
CEILING 64.35
FIRST FLOOR 61.85
GROUND FLOOR 58.90
BASEMENT 56.00
8.5m HEIGHT LIMIT
1100 FROSTED GLASS BALUSTRADE
RENDERED & PAINTED FINISH - P2
CORRUGATED COLORBOND ROOF
2500
2500
250
2700
250
2950
2650
2900
7.2 metres
RENDERED & PAINTED FINISH - P1
STAINLESS STEEL BALUSTRADE
FINISH LEVEL
NATURAL LEVEL
EXTERNAL WEATHERBOARD CLADDING
ALUMINUM FRAMED FIXED WINDOWS
ALUMINUM FRAMED FOLDING DOORS
CEILING 64.35
FIRST FLOOR 61.85
Drawn by: RT
Checked by: MW
Title: NORTHEAST ELEVATION
Job NO.: BH7416
Date: 12.03.2019
Scale @ A1:
Scale @ A3: 1 : 100
Drawing NO.: DA204
Rev:
Vigor Master Pty Ltd
Project:
Proposed Boarding House
DA
74 Willandra Rd, Narrweena NSW
Amendment
Date
Rev