



northern
beaches
council

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

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

WEDNESDAY 11 DECEMBER 2019

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

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

Peter Robinson
Executive Manager Development Assessment

Panel Members

Paul Vergotis	Chair
Steve Kennedy	Urban Design Expert
Robert Hussey	Town Planner
Nick Lawther	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 11 December 2019
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1.00pm**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 9 DECEMBER 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 9 December 2019 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	DA2019/0712 - 1A CURRAWONG BEACH, CURRAWONG BEACH - ALTERATIONS AND ADDITIONS TO SIX (6) CABINS
REPORTING OFFICER	MATTHEW EDMONDS
TRIM FILE REF	2019/689333
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0712 for alterations and additions to six (6) cabins at Lot 1 DP 166328, Lot 1 DP 337208, Lot 4 DP 978424 & Lot 10 DP 1092275, 1A Currawong Beach, Currawong Beach subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0712
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 1 DP 166328, 1 A Currawong Beach CURRAWONG BEACH NSW 2108 Lot 1 DP 337208, 1 A Currawong Beach CURRAWONG BEACH NSW 2108 Lot 4 DP 978424, 1 A Currawong Beach CURRAWONG BEACH NSW 2108 Lot 10 DP 1092275, 1 A Currawong Beach CURRAWONG BEACH NSW 2108
Proposed Development:	Alterations and additions to six (6) cabins
Zoning:	E2 Environmental Conservation SP1 Special Activities
Development Permissible:	Yes - Zone SP1 Special Activities Yes - Zone E2 Environmental Conservation
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	NSW Government - Minister Administering the Crown Lands ACT 1989
Applicant:	Northern Beaches Council - Property Leases

Application Lodged:	04/07/2019
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Other
Notified:	27/07/2019 to 26/08/2019
Advertised:	27/07/2019
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,886,555.00
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EXECUTIVE SUMMARY

The proposal seeks consent for alterations and additions to Currawong, an existing eco-tourist facility at Currawong Beach on the Upper Western Foreshores of the Pittwater Waterway. As both the Reserve

Trust Manager of Currawong and the Applicant, Northern Beaches Council has a conflict of interest in determining this application. As such, the application is referred to the Northern Beaches Local Planning Panel for determination.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for alterations and additions to six (6) of the nine (9) existing cabins, specifically:

- Demolition of the existing outhouses associated with Cabin 4 'Magpie', Cabin 5 'Lorikeet', Cabin 6 'Wallaby', Cabin 7 'Possum', and Cabin 8 'Echidna',
- Construction of a new bathroom addition to the rear of each cabin, access via the existing internal bathroom,
- Removal of roof and guttering of each cabin and replacement with new,
- Installation of new water tanks associated with each cabin,
- Installation of bushfire mesh to gutters, windows, doors and undercroft areas of each cabin,
- Replacement and extension of the front deck of each cabin,
- New kitchen fit-out to each cabin, including the installation of new servery windows opposite the front door,
- Removal of wardrobes in Cabin 4 'Magpie', Cabin 5 'Lorikeet', Cabin 6 'Wallaby', Cabin 7 'Possum', and Cabin 8 'Echidna',
- Installation of wall-mounted external clotheslines to each cabin,
- Repairs to existing sandstone flagging,
- Repairs and extension to all BBQ areas,
- Retaining walls (where required),
- Installation of paving around proposed rear additions, and
- Tubestock plantings to rear of cabins.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation
 Pittwater Local Environmental Plan 2014 - 5.13 Eco-tourist facilities
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
 Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
 Pittwater Local Environmental Plan 2014 - 7.10 Essential services
 Pittwater 21 Development Control Plan - D13.3 Building colours and materials
 Pittwater 21 Development Control Plan - D13.5 Front building line
 Pittwater 21 Development Control Plan - D13.14 Currawong

SITE DESCRIPTION

Property Description:	<p>Lot 1 DP 166328 , 1 A Currawong Beach CURRAWONG BEACH NSW 2108 Lot 1 DP 337208 , 1 A Currawong Beach CURRAWONG BEACH NSW 2108 Lot 4 DP 978424 , 1 A Currawong Beach CURRAWONG BEACH NSW 2108 Lot 10 DP 1092275 , 1 A Currawong Beach CURRAWONG BEACH NSW 2108</p>
Detailed Site Description:	<p>The site comprises four separate allotments, with a combined area of approximately 18.9 Hectares. The site is bound by Kuringai Chase National Park to the south and west, Great Mackerel Beach Reserve to the north, and the Pittwater Waterway to the east. The site currently contains an eco-tourist facility, known as Currawong or Currawong Workers' Holiday Camp, which comprises:</p> <ul style="list-style-type: none"> • "Midholme", a farmhouse of local heritage significance, • Nine holiday cabins, • Conference centre, • Caretakers residence, • Games room, • Tennis court, • Volley ball court, • 9 hole golf course, • Associated infrastructure, and • A public wharf that extends below MHWL to enable access to/from the Pittwater Waterway. <p>With the exception of clearing near the foreshore, that associated with the golf course and that immediately surrounding the development, the site is heavily vegetated, with significant established canopy trees. The site experiences a considerable slope upwards to the west (away from the waterway), and features rock outcrops and formations. A watercourse dissects the northern portion of the site, discharging into the Pittwater Waterway.</p>

Currawong Workers' Holiday Camp is an item of State Heritage Significance, and the site is identified as being a heritage conservation area and containing an item of heritage significance under PLEP 2014. The site is also mapped as being bushfire prone, landslip prone, and subject to wave and tidal inundation.

Map:



SITE HISTORY

In February 2015, a Conservation Management Plan was prepared for Currawong by Graham Brooks and Associated Pty Ltd.

On 6 February 2018, Development Consent N0281/17 was issued in relation to the renovation of three of the existing cabins, the games room and the construction of new pathways and retaining walls at the subject site.

On 25 May 2019, the Heritage Council issued a Section 60 Approval for the works approved pursuant to Development Consent N0281/17.

APPLICATION HISTORY

On 4 July 2019, the subject Development Application was lodged with Council.

On 17 July 2019, the subject Development Application was referred to internal and external referral bodies, including the NSW Rural Fire Service ('NSW RFS') and the Heritage Division of the NSW Department of Environment, Energy and Science ('NSW Heritage').

On 28 August 2019, Council advised the NSW RFS and the NSW Heritage that the notification period had concluded and that no submissions had been received. In accordance with clause 70(1) of the EP&A Regulation, the 21 day GTA assessment period commenced on this day.

On 20 September 2019, NSW RFS provided general terms of approval.

On 5 November 2019, NSW Heritage provided informal commentary in regards to the proposal.

On 18 November 2019, Council met with NSW Heritage to discuss the concerns raised in their informal correspondence.

On 29 November 2019, NSW Heritage provided general terms of approval.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via conditions of consent.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality</p>

Section 4.15 Matters for Consideration'	Comments
	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	No submissions were received.
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 application involves alterations to an existing eco-tourist facility (tourist accommodation), being a 'special fire protection purpose' on bushfire prone land. In accordance with s100B of the Rural Fires Act and s4.47 of the EP&A Act, general terms of approval and a bushfire safety authority are required from the NSW RFS.

The application was referred to the NSW RFS as integrated development. The NSW RFS issued general terms of approval and a bush fire safety authority, subject to conditions. See further discussion below.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Approval, without conditions. <i>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to consideration of the notes below.</i> <i>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.</i>
Environmental Health (Solid Fuel/Oil Heater)	Approval, with conditions.
Environmental Health	Approval, with conditions.

Internal Referral Body	Comments
(unsewered lands)	
Landscape Officer	<p>Approval, with conditions.</p> <p><i>There is no impact to significant vegetation from the proposed works. Selected vegetation removal in the vicinity of the works shall be granted to provide a asset protection zone to satisfy bushfire protection regulations.</i></p> <p><i>Landscape works including surface treatments, retaining walling, and planting is proposed that are minor in nature, and address the heritage value of the site. The landscape design and choice of materials reflect the bushland setting of the site.</i></p> <p><i>Council's Landscape section have assessed the application against the following Pittwater 21 Development Control Plan guidelines:</i></p> <ul style="list-style-type: none"> • <i>B4.22 Preservation of Trees and Bushland Vegetation</i> • <i>C1.1 Landscaping</i> • <i>D13.14 Currawong</i>
NECC (Bushland and Biodiversity)	<p>Approval, with conditions.</p> <p><i>This application was assessed against Pittwater LEP Clause 7.6 Biodiversity. The property also contains mapped EECs within the SMCMA V3 mapping project (OEH 2016) and several threatened species records, including White-bellied Sea-eagle, Powerful Owl, Red-crowned Toadlet, and threatened microbats, the Greater Broad-nosed Bat and Southern Myotis.</i></p> <p><i>The proposal is for the restoration of six cabins at Currawong State Park, including construction of a new bathroom for 5 cabins, removal and replacement of roofing and new watertanks for each cabin, bushfire mitigation upgrades i.e. meshing etc., and extending the formalised APZ by 0.18 ha around Possum and Echidna cabins. No EECs are in the vicinity of the works.</i></p> <p><i>The submitted Environmental Impact Assessment for APZ modification report (Kleinfelder, 29/09/2019) identified an additional threatened species, being the Glossy Black-cockatoo (GBC) through evidence of cone chews underneath Allocasurina torulosa trees (T125, T127, T145). The impacts of the 0.18 ha APZ modification is stated as being "removal of a small number of regrowth trees".</i></p> <p><i>The EIA author also states that;</i></p> <ul style="list-style-type: none"> • <i>"All trees can be retained within 5m of the development. A full list of tree species and their habitat value is provided in Table 3 Appendix 3. Tree species will require management to separate canopy connections and lift canopy to greater than 4m from ground layer (pruning) to meet NSW</i>

Internal Referral Body	Comments
	<p>bushfire standards. Up to 10% shrub cover in isolated parcels will be retained as long as there is no link between unmanaged bushland and the cottages."</p> <ul style="list-style-type: none"> • "Feed trees will be retained for Glossy-black Cockatoo" • "Eleven (11) threatened fauna species, including six bird species (Glossy-black Cockatoo, Little Lorikeet, Swift Parrot, Barking Owl, Powerful Owl and Masked Owl) and five mammal species (Little Bent-wing Bat, Eastern Bentwing-bat, Eastern Freetail-bat, Grey-headed Flying-fox and Greater Broad-nosed Bat) were assessed as having potential habitat within the study area. Assessments of Significance concluded that the modification of 0.18 ha of potential breeding and foraging habitat for these species is unlikely to have a significant impact on locally occurring populations due to the large area of suitable vegetation to remain adjacent to the site. The preparation of a Species Impact Statement for the proposed renovation and APZ is not required." <p>The Bush Fire Assessment Report (Kleinfelder, 3/10/2018) states that, "APZ should retain all trees (mature trees greater than 100mm diameter at breast height), but provide management to separate canopy connections and lift canopy to greater than 4m from ground layer (pruning)", which results in all surveyed trees being retained, including all GBC feed trees.</p> <p>During the site inspection, multiple Glossy Black-cockatoo individuals were observed foraging within <i>Allocasuarina torulosa</i> trees west of the cabins, between cabin "Magpie" to the south and "Echidna" to the north. The cockatoos were also observed to forage in <i>A. torulosa</i> trees to the north, extending north of the existing conference centre. Threatened Grey-headed Flying-foxes were observed foraging in the <i>Ficus</i> sp. near the foreshore. An additional seventeen (17) surveyed trees were confirmed to be feed trees during the inspection, these trees are numbered and mapped as T130, T131, T132, T133, T134, T135, T136, T143, T146, T147, T148, T149, T152, T163, T164, T165, T172.</p> <p>The threatened Glossy Black-cockatoo feeds almost exclusively on the seeds of particular <i>Allocasuarina</i> and <i>Casuarina</i> species. Matt Cameron studies the foraging ecology of the GBC and in his 2005 study he found that, "Their specialised diet and low rates of food intake may make Glossy Black- Cockatoos susceptible to even small changes in their food supply." and that "There was no evidence to suggest that Glossy Black-Cockatoos were able to compensate for a reduction in food supply by increasing the rate at which they processed food."</p> <p>The 0.18 ha of vegetation to be formalised as an APZ is already being managed as an APZ. The Project Ecologist will be required to undertake direct supervision of any pruning of <i>Allocasuarina torulosa</i> trees to ensure no cones-producing branches are lopped</p>

Internal Referral Body	Comments
	<p>(T163 and T164 are overhanging Echidna cabin and are within the proposed "5m managed vegetation buffer").</p> <p>Council's Natural Environment - Biodiversity section raises no objections to the proposal, subject to conditions.</p>
NECC (Coast and Catchments)	<p>Approval, without conditions.</p> <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the PLEP 2014 and P21 DCP.</p> <p><u>Estuarine Risk Management</u> The land at 1A Currawong Beach has 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 development of the site.</p> <p>In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.78m AHD would apply at the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.08m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m.</p> <p>The floor levels for the proposed additions and alterations and is above the applicable EPL for the site. The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP subject to conditions.</p> <p><u>State Environmental Planning Policy (Coastal Management) 2018 ("CM SEPP")</u> The subject land has been included in both 'Coastal Use Area' and 'Coastal Environment Area' maps but not been included on the Coastal Vulnerability Area Map under the CM SEPP and in regard to clause 15 of the CM SEPP the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land</p> <p>As such, it is considered that the application does comply with the requirements of the CM SEPP.</p>
NECC (Development Engineering)	<p>Approval, with conditions.</p> <p>No objection to approval, subject to conditions as recommended.</p>
NECC (Riparian Lands and Creeks)	<p>Approval, with conditions.</p> <p>This application has been assessed under:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • Pittwater 21 DCP B4.16 Seagrass Conservation • Pittwater 21 DCP B4.19 Estuarine Habitat • Pittwater 21 DCP B4.20 Estuarine Water Quality • Pittwater 21 DCP B5.9 Water Quality • SEPP (Coastal Management) 2018 - Coastal Environment Area (Platypus Cabin only) <p>The above controls requirements in terms of stormwater can be addressed together. The applicant must ensure that the development does not adversely impact water quality through pollution including turbidity, siltation or increased nutrients. It should also minimise changes to local surface and groundwater flow regimes. Fine sediments must be captured.</p> <p>The Stormwater Plan prepared by NB Consulting Engineers addresses the above requirements by directing stormwater runoff to infiltration trenches. While gravel trenches will be adequate given the distance of the trenches from the waterway, vegetated swales are preferable as they increase nutrient uptake and will further slow runoff velocities.</p> <p>Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Approval, without conditions.</p> <p>The property is not tagged as flood affected, however Council does not have a formal flood study covering this area so the flood behaviour in the area is not fully known. Runoff issues will be addressed within the Development Engineering referral.</p>
Strategic and Place Planning (Heritage Officer)	<p>Approval, with conditions.</p> <p><u>Discussion of reason for referral</u> The proposal has been referred to Heritage as the subject property contains a number of heritage listings</p> <ul style="list-style-type: none"> • Currawong Worker's Holiday Camp - State Heritage Item • Currawong Worker's Holiday Camp Heritage Conservation Area - Local Heritage Item • Midholme - Local heritage item <p><u>Details of heritage items affected</u></p> <ul style="list-style-type: none"> • Currawong Worker's Holiday Camp - State Heritage Item <p>Statement of Significance: Currawong is of State historical significance as an intact remaining example of a mid-twentieth century, union-organised workers' holiday camp in NSW,</p>

Internal Referral Body	Comments
	<p><i>designed for workers 'to get away from crowded industrial areas and enjoy places normally frequented by richer people'. The establishment of the holiday camp was a response to the social and work place reforms taking place in NSW in the post World War II period, following the introduction of annual leave in 1944 and the 40-hour week in 1947.</i></p> <p><i>Physical Description: The majority of the 19.7 ha site is natural bushland, on steeper slopes and escarpment areas. However there is approximately 4 ha of developed, flatter land adjoining the beach, which contains holiday cottages and other buildings which form the Unions NSW holiday camp facility.</i></p> <ul style="list-style-type: none"> • <i>Currawong Worker's Holiday Camp Heritage Conservation Area - Local Heritage Item</i> <p><i>Statement of Significance: The Currawong Heritage Conservation Area is an important cultural landscape for the people of Australia, and is part of the social history of NSW and the region.</i></p> <p><i>Physical Description: The majority of the 19.7 ha site is natural bushland, on steeper slopes and escarpment areas. However there is approximately 4 ha of developed, flatter land adjoining the beach, which contains holiday cottages and other buildings which form the Unions NSW holiday camp facility.</i></p> <ul style="list-style-type: none"> • <i>Midholme - Local heritage item</i> <p><i>Statement of Significance: Midholme, 1a Currawong Beach, built c1910 as a remote farm house, has historic and aesthetic significance as a good example of vernacular cottage house typical of the early Pittwater development.</i></p> <p><i>Physical Description: Midholme is a single storey, timber framed bungalow with weatherboard cladding and wide veranda to three sides. The broken back roof is of slate with terracotta ridge and hip cladding.</i></p> <p><u><i>Other relevant heritage listings</i></u></p> <ul style="list-style-type: none"> • <i>NSW State Heritage Register - Currawong is on the state register. Midholme is not listed in its own right as an item of state heritage, only as a local item.</i> <p><u><i>Consideration of Application</i></u> <i>The proposal seeks consent for alterations and additions to cottages 3</i></p>

Internal Referral Body	Comments
	<p><i>through 8 at Currawong. Given the sensitive nature of the site and the scale of works proposed, the proposal was referred to an external heritage advisor.</i></p> <p><i>The Heritage Impact Statement (HIS) provided with the application has recommended the engagement of a specialist heritage architect to oversee the physical works. This recommendation is supported by Heritage. A photographic archival recording of cottages 3-8, both internally and externally, should also be undertaken before works begin, to preserve a record of their existing condition and character. A condition to ensure this happens is also recommended by Heritage.</i></p> <p><i>With regards to a colour scheme, Heritage agrees with the HIS that a recessive scheme should be implemented to help preserve an aspect of modesty with the cottages.</i></p> <p><i>No works are proposed to Midholme, and the physical separation of the nearest cottage will minimise impacts upon it. No concerns are raised with regards to this item.</i></p> <p><i>Therefore Heritage recommends approval of the development application with two conditions.</i></p> <p><i>Considered against the provisions of CL5.10 of PLEP 2014. Is a Conservation Management Plan (CMP) Required? Yes Has a CMP been provided? A CMP for the site was prepared by Graham Brooks and Associates in 2015 for the former Pittwater Council.</i></p> <p><i>Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</i></p> <p><i>Planner Comment: It is noted that the general terms of approval issued by NSW Heritage also require the engagement of a heritage consultant and an archival record of the site.</i></p>
Waste Officer (Council Land)	<p>Approval, without conditions.</p> <p><i>Waste Services has no objection to the Development Application</i></p>

External Referral Body	Comments
Integrated Development – NSW Rural Fire Service (Subdivisions and Special Fire Protection Purposes under Section 100B of Rural Fires Act)	<p>General terms of approval issued.</p> <p>The application involves alterations to an existing eco-tourist facility (tourist accommodation), being a 'special fire protection purpose' on bushfire prone land. In accordance with s100B of the Rural Fires Act and s4.47 of the EP&A Act, general terms of approval and a bush fire safety authority are required from the NSW RFS.</p> <p>The application was referred to the NSW RFS as integrated development. The NSW RFS issued general terms of approval and a bush fire safety authority, subject to conditions. These conditions have been included in the draft determination, attached.</p>

External Referral Body	Comments
Nominated Integrated Development – NSW Office of Environment and Heritage	<p>General terms of approval issued.</p> <p>Currawong Workers' Holiday Camp is identified as a State Heritage Item and heritage approval is required from NSW Heritage under s58 of the Heritage Act 1977. As such, the application constitutes integrated development and the application was referred to NSW Heritage seeking general terms of approval.</p> <p>Informal advice was sent through from NSW Heritage on 5 November 2019 identifying a series of concerns with regard to the extent of works proposed, as follows:</p> <ol style="list-style-type: none"> 1. <i>The proposed alterations and additions will require the demolition of a large proportion of original fabric including five outhouses, the removal of external cladding of Cabins 4-8 and the external and internal cladding, identified for the significance of it's technical innovation, of the remaining intact Sectionit cabin (Cabin 3, Platypus). Use of alternative site-specific design solutions, such as asbestos encapsulation, have not been considered in the heritage impact assessment.</i> 2. <i>The cumulative loss of the original external fabric and layout of all nine cabins, including the two Sectionit cabins, should be considered. The previous heritage approval of alterations and additions to Cabins 1, 2 and 9 (8) acknowledged the retention of the remaining intact cabins. The pre DA notes that are on file make reference to the proposed works to Cabins 1,2 and 9 (8) only.</i> 3. <i>The scale and variation of the bathroom addition to cabins 5,6,7 and 8 is not considered 'modest' and conflicts with the policy to retain the 'unified architectural presentation' (CMP2015, p165). The proposed bathroom layout to Cabins 5,6 and 7 will have an adverse impact on views from and solar access to the kitchens.</i> 4. <i>The appended roof line of the addition detracts from the appreciation of the original form of the cabin roof.</i> 5. <i>Loss of interpretation of rear wall through removal of nibs to rear opening to bathroom additions.</i> 6. <i>Heritage Impact Assessment has not addressed the proposed removal of existing glazed front door or the impact on views from front door of the proposed kitchen servery.</i> 7. <i>Insufficient information in regards to proposed reconstruction of cabins including methodology of removal of cladding, windows, doors, roofing and services including removal, storage and reinstatement of existing fabric, and details of excavation required for services including sewer for new bathrooms.</i> <p>Council, including representatives from both Development Assessment and Property, met with NSW Heritage on 18 November</p>

External Referral Body	Comments
	<p>2019 to discuss the concerns raised.</p> <p>The primary refinement sought by NSW Heritage is in relation to the works proposed to Cabin 3 'Platypus', which is the only cabin of the six cabins involved to be individually rated of high significance. NSW Heritage expressed a preference for Cabin 3 to be retained as is, with only minor works to the internal fit-out of the bathroom and kitchen, any essential maintenance and works to ensure compliance with bushfire requirements. If Cabin 3 was to be generally retained in its current form, NSW Heritage confirmed that they would be more accepting of the changes proposed in relation to the remainder of the cabins. The Applicant has confirmed that they are willing to retain Cabin 3 in its current state, subject to the ability to undertake the minor works outlined above.</p> <p>During the meeting with NSW Heritage, further concerns were expressed in relation to a newly proposed windows. The Applicant confirmed that they are willing to remove these windows from the proposal.</p> <p>General terms of approval were issued by NSW Heritage on 29 November 2019, and have been included in the draft determination, attached.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7(1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated. Council records indicate that the subject site has been used for holiday accommodation & as an eco-tourist facility 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 use of the land as an eco-tourist facility.

SEPP (Coastal Management) 2018

The site is identified as being within the Coastal Use Area and Coastal Environment Area on the Coastal Use Area Map and Coastal Environment Area Map of SEPP (Coastal Management) 2018, and the proposal is subject to the provisions of clauses 13, 14 and 15 of this policy. In this regard, an assessment under the relevant provisions of the SEPP has been carried out as follows:

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

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment: The proposal has been considered by Council's Coast and Catchments Team who have confirmed that the proposal is consistent with the relevant provisions of P21 DCP, and that the proposal is not likely to cause an adverse impact upon the matters listed above. and that the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1), above.

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

Comment: The proposal has been considered by Council's Coast and Catchments Team who have confirmed that the proposal is consistent with the relevant provisions of P21 DCP, and that the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1), above. As such, the consent authority can be satisfied in this regard.

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

- (1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
 - (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
 - (b) *is satisfied that:*
 - (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
 - (c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment: The proposal has been considered by Council's Coast and Catchments Team who have confirmed that the proposal is consistent with the relevant provisions of P21 DCP, and that the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1)(a), above. Furthermore, Council's Coast and Catchments Team that the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14 (1)(a), above. The bulk and scale and size of the proposed development has also considered in line with relevant LEP and DCP controls, and as such, the consent authority can be satisfied in this regard.

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

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

Comment: Council's Coast and Catchment team have reviewed the proposed development with regard to the provisions of this policy, in addition to the relevant provisions of PLEP 2014 and P21 DCP, and have confirmed that the proposed development is not likely to cause increased risk of coastal hazard on the site or other land. As such, the consent authority can be satisfied in this regard.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone SP1: Yes
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	Zone E2 : 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 SP1: Yes Zone E2 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	5.3m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.13 Eco-tourist facilities	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

5.10 Heritage conservation

Clause 5.10 of PLEP 2014 requires consideration of the potential impacts upon those local heritage items listed in Schedule 5 of PLEP 2014. The entirety of the site is identified as 'Currawong Conservation Area' pursuant to Schedule 5 of PLEP 2014 and the site contains 'Midholme', an individual building of local heritage significance also listed in Schedule 5 of PLEP 2014.

In accordance with clause 5.10(4) of PLEP 2014, the consent authority must consider the effect of the proposed development on the heritage significance of the item or area concerned prior to granting consent to the proposal. In this regard, the proposal has been considered by Council's Heritage Officer and an external heritage consultant, who are both satisfied that the proposal is an appropriate design response for the site, subject to the imposition of two conditions requiring the production of an archival record and the engagement of a heritage consultant to monitor construction works. Detailed commentary from Council's Heritage Officer can be seen earlier in this report.

It is noted that the site is also identified as an item of State heritage significance on the State Heritage Register, and the application has been referred to NSW Heritage in this regard. Further commentary in relation to the State heritage listing is provided in the 'Referrals' section of this report.

5.13 Eco-tourist facilities

In accordance with clause 5.13 of PLEP 2014, consent must not be granted unless the consent authority is satisfied of the following:

- *there is a demonstrated connection between the development and the ecological, environmental and cultural values of the site or area, and*

Comment: The site is an item of both State and Local heritage significance due to its historic use as a holiday/camp for those affiliated with the Labor Council of NSW and the Worker's Union. The cabins themselves have aesthetic significance as an example of standardised prefabricated housing of the 1950's, and the site's relation to the water and surrounding bushland is also identified for its aesthetic significance. The proposal, which largely involves upgrades to existing cabins to comply with current standards and improve amenity, seeks to ensure the retention of the heritage/cultural significance of the site for generations to come.

- *the development will be located, constructed, managed and maintained so as to minimise any impact on, and to conserve, the natural environment, and*

Comment: The minor additions have been sited to minimise impacts upon the natural environment. Furthermore, the application was supported by detailed consideration of the implications of necessary bushfire requirements in order to minimise the impact on surrounding bushland, specifically existing canopy trees of high landscape or ecological significance.

- *the development will enhance an appreciation of the environmental and cultural values of the site or area, and*

Comment: The proposal seeks to improve the current facilities at the site to preserve the heritage significance of the site, and to ensure the viability of the site for the long term.

- *the development will promote positive environmental outcomes and any impact on watercourses, soil quality, heritage and indigenous flora and fauna will be minimal, and*

Comment: As above, the proposal predominantly seeks consent for necessary upgrades to ensure the long term retention of the facility. Furthermore, as specifically considered with respect to other relevant LEP and DCP controls, the proposal has been designed to ensure that any impacts of the works have been appropriately minimised.

- *the site will be maintained (or regenerated where necessary) to ensure the continued protection of natural resources and enhancement of the natural environment, and*

Comment: Should the application be approved, conditions of consent are recommended to require the on-going maintenance of the site in accordance with necessary bushfire requirements and for the landscaped treatment to remain consistent with the approved landscaped plans. Further conditions are also recommended to ensure the appropriate treatment of wastewater and stormwater.

- *waste generation during construction and operation will be avoided and that any waste will be appropriately removed, and*

Comment: The application was supported by a waste management plan, and should the application be approved, a condition is recommended to require consistency with the waste management plan both during construction and over the life of the development.

- *the development will be located to avoid visibility above ridgelines and against escarpments and*

from watercourses and that any visual intrusion will be minimised through the choice of design, colours materials and landscaping with local indigenous flora, and

Comment: The works in question are limited to 6 existing cabins, which are secondary to existing waterfront development and will be screened from view by vegetation.

- *any infrastructure services to the site will be provided without significant modification to the environment, and*

Comment: The application proposes alterations and additions to existing cabins, which are already connected to existing services. However, the application proposes to upgrade the development to provide improved stormwater management provisions, which have been sited to minimise the impact upon the surrounding environment.

- *any power and water to the site will, where possible, be provided through the use of passive heating and cooling, renewable energy sources and water efficient design, and*

Comment: The application proposes to install water tanks adjacent to each of the existing cabins to improve water efficiency at the site.

- *the development will not adversely affect the agricultural productivity of adjoining land, and*

Comment: Not applicable - the site does not adjoin agricultural land.

- *the following matters are addressed or provided for in a management strategy for minimising any impact on the natural environment:*
 - *measures to remove any threat of serious or irreversible environmental damage,*
 - *the maintenance (or regeneration where necessary) of habitats,*
 - *efficient and minimal energy and water use and waste output,*
 - *mechanisms for monitoring and reviewing the effect of the development on the natural environment,*
 - *maintaining improvements on an on-going basis in accordance with relevant ISO 14000 standards relating to management and quality control.*

Comment: The use of the site as an eco-tourist facility is managed by Northern Beaches Council. Should this application be approved, Council will be required to maintain the site in accordance any conditions imposed, in addition to those imposed in relation to previous applications. The site is also subject to the provisions of a Conservation Management Plan, to ensure that the site is managed to ensure/protect the heritage significance of the site.

As such, Council can be satisfied that the development is consistent with the provisions of clause 5.13 of PLEP 2014.

7.2 Earthworks

In accordance with clause 7.2 of PLEP 2014, in deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:

- *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- *the effect of the development on the likely future use or redevelopment of the land,*

- *the quality of the fill or the soil to be excavated, or both,*
- *the effect of the development on the existing and likely amenity of adjoining properties,*
- *the source of any fill material and the destination of any excavated material,*
- *the likelihood of disturbing relics,*
- *the proximity to, and potential for adverse impacts on any waterway, drinking water catchment or environmentally sensitive area,*
- *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*
- *the proximity to and potential for adverse impacts on any heritage item, archaeological site, or heritage conservation area.*

The consent authority can be satisfied that all relevant matters listed above have been considered in the assessment of this application, by virtue of consideration of specific LEP and DCP controls and referrals to relevant internal and external referral bodies.

7.6 Biodiversity protection

In accordance with clause 7.6(3) of PLEP 2014, before determining a development application for development on land to which this clause applies, the consent authority must consider:

- *whether the development is likely to have:*
 - *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
 - *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
 - *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
 - *any adverse impact on the habitat elements providing connectivity on the land, and*
- *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: Council can be satisfied that the matters identified above have been considered by Council's Natural Environment referral officers, who are satisfied that the proposal will not result in any adverse impacts upon the biodiversity values of the site.

In accordance with clause 7.6(4) of PLEP 2014, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- *the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- *if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- *if that impact cannot be minimised - the development will be managed to mitigate that impact.*

Comment: The proposed works have been sensitively designed and sited to avoid any significant adverse impacts upon the natural environment. Whilst a certain level of impact is anticipated in relation to clearing associated with bushfire, the application has demonstrated that this has been strategically considered in order to minimise impacts to vegetation of high ecological and landscape significance.

7.7 Geotechnical hazards

In accordance with clause 7.7(3) of PLEP 2014, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- *site layout, including access,*
- *the development's design and construction methods,*
- *the amount of cut and fill that will be required for the development,*
- *waste water management, stormwater and drainage across the land,*
- *the geotechnical constraints of the site,*
- *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: Access to the site is comparably constrained, and as such, the proposal has been designed to balance the extent of excavation with areas of fill, to limit the amount of materials to be transported to/from the site. However, the extent of site disturbance proposed is comparably minor, with excavation/fill limited to a maximum height of approximately 800mm. The application was supported by a geotechnical risk management report, which certifies that the proposed development has been designed and can be constructed to minimise risk and impacts to the surrounding environment. The proposal has also been reviewed by Council's Development and Stormwater Engineers, who are supportive of the application.

Pursuant to clause 7.7(4) of PLEP 2014, development consent must not be granted to development on land to which this clause applies unless:

- *the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*
- *the consent authority is satisfied that:*
 - *the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
 - *if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
 - *if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact*

Comment: The proposed new bathrooms are to be connected to the existing waste water management system, however no changes are proposed to the system itself. Conditions of consent have been recommended to require certification of the operation of the system. The proposal seeks consent to upgrade stormwater management facilities on the site, and Council's Stormwater Engineers have confirmed that these systems have been designed in accordance with the relevant DCP controls. Furthermore, the application has been supported by a geotechnical risk management report to certify that the proposal has been designed to minimise risk associated with the landslide prone nature of the site.

As such, the consent authority can be satisfied that the provisions of this clause have been satisfactorily addressed.

7.10 Essential services

In accordance with clause 7.10 of PLEP 2014, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- *the supply of water,*
- *the supply of electricity,*
- *the disposal and management of sewage,*
- *stormwater drainage or on-site conservation,*
- *suitable vehicular access.*

Council can be satisfied that the site has access to all services essential to the development, as follows:

- The currently contains a number of water tanks, for use as both potable water and for firefighting purposes. Furthermore, additional rainwater tanks are proposed to harvest rain water from the roofs of the six relevant cabins.
- Mains electricity is available to each of the six cabins.
- The site is serviced by an existing on-site waste water treatment system.
- Stormwater drainage is proposed on the site as part of the application.
- Whilst the site is inaccessible by road, the site has suitable access via the waterway.

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.13 Upper Western Foreshores Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire 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
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes
B5.3 Greywater Reuse	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.4 Stormwater Harvesting	Yes	Yes
B5.5 Rainwater Tanks - Business, Light Industrial and Other Development	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C5.1 Landscaping	Yes	Yes
C5.2 Safety and Security	Yes	Yes
C5.7 Energy and Water Conservation	Yes	Yes
C5.8 Waste and Recycling Facilities	Yes	Yes
C5.16 Building Facades	Yes	Yes
C5.17 Pollution control	Yes	Yes
D13.1 Character as viewed from a public place	Yes	Yes
D13.2 Scenic protection - General	Yes	Yes
D13.3 Building colours and materials	No	Yes
D13.5 Front building line	Yes	Yes
D13.14 Currawong	No	Yes
D13.16 Stormwater overflow	Yes	Yes
D13.18 Site disturbance	Yes	Yes

Detailed Assessment

D13.3 Building colours and materials

The application seeks consent to repaint the cabins in a light green tone, inconsistent with the provisions of this control which prescribes the use of dark and earthy tones. However, the control provides a variation in relation to heritage items, where colours appropriate to the heritage of the building are used. In this respect, the proposed colours and finishes are supported by both Council's internal heritage adviser and NSW Heritage. As such, the application of this variation is considered to be warranted.

D13.5 Front building line

The site does not have a defined minimum front building line, with the suitability of the proposal in relation to the front setback subject to merit assessment. The proposed works are associated with existing cottages, the closest of which is located approximately 66m from the front boundary (MHWM) and behind other existing structures. The proposed works do not detract from consistency with the outcomes of the front building line control, and the setback of the proposed works in relation to the front

boundary is considered to be acceptable on merit.

D13.14 Currawong

Clause D13.14 of P21 DCP comprises a series of requirements that are specific to any development at Currawong. These individual requirements are considered, as follows:

- *Development must not exceed the existing building footprints.*

Comment: The proposed development seeks to increase the footprint of each of the six of the existing cabins, with extensions to decks and bathrooms, contrary to this development control. However, the footprints of the proposed additions are appropriately minimised, and have been designed to improve the usability and amenity of the individual cabins. Furthermore, the additions have been individually designed and sited to minimise site disturbance and avoid impact upon existing canopy trees and rock outcrops.

- *Development must be located in an area that is not subject to hazard or is designed, located and constructed so as to be safe from the impact of any hazard. (See Part B Hazards).*

Comment: The entire site is subject to multiple hazards. However, the consent authority can be satisfied that the proposed additions have been sited and designed to be safe from the impact of any hazards.

- *The appearance of Currawong from Pittwater must be maintained, with no additional buildings visible from the waterway.*

Comment: The six cabins in question are located upslope from the foreshore and are generally screened from the view as seen from the waterway. The proposal will not result in any additional buildings that are visible from Pittwater.

- *Development must be secondary to the existing vegetation and screened by vegetation.*

Comment: The six cabins in question are secondary to existing foreshore/waterfront development and will be screened by existing vegetation as seen from the waterway.

- *Adequate servicing provision is to be made for water, sewerage, drainage, transport, traffic, and parking.*

Comment: The existing site is supported by adequate infrastructure to service the development. However, it is noted that the provision of water is to be improved by virtue of the proposed new water tanks adjacent to each of the six relevant cabins.

- *Adequate provision is to be made for access, rescue and evacuation in the event of an emergency.*

Comment: Access to the site is limited to water access only, and no change is proposed in this regard. The retention of existing access arrangements is considered to be reasonable in the circumstances where the capacity and intensity of the site is not increasing. The previous consent issued in 2018 required the preparation of a Bush Fire Emergency Management and Evacuation Plan, which remains relevant in relation to the site as a whole.

- *Stormwater quality and quantity discharged from the site shall be no worse than the existing pre-development condition and improvements are provided by implementation of best practice*

water sensitive urban design principles.

Comment: The proposed development incorporates the installation of new water tanks associated with each of the relevant six cabins in order to capture and reuse rainwater at the subject site. Council's Development Engineers are satisfied in this regard.

- *No fences are to be erected on the site.*

Comment: The application does not involve the erection of any fences.

- *A proponent for future development of Currawong should have regard for the proponent's report and the Minister's Part 3A decision.*

Comment: Not applicable.

Despite minor non-compliance with the requirements of this Control which seek to prevent any increase to the footprint of development on the site, the proposal is considered to be an appropriate design solution for the site, that achieves consistency with the Outcomes of this Control, as follows:

- *Achieve the desired future character of the Locality.*

Comment: The proposed works maintain consistency with the desired future character of the Upper Western Foreshores Locality.

- *Development respects, conserves and maintains the heritage significance, architectural qualities, character, visual characteristics and environment of the area.*

Comment: The proposed development is considered to be a sensitive design solution which appropriately balances the need to respect, maintain and conserve the heritage significance of the site, whilst also providing for improved amenity to attract visitors to the site.

- *The balance between the built form and its setting is maintained.*

Comment: The application seeks consent for minor additions to the existing cabins, however the dominance of landscaping across the site is maintained and is not impacted by the proposal.

- *The safety and health of occupants is ensured.*

Comment: A number of works proposed are required to upgrade the cabins in line with current standards and bushfire requirements, to maximise the safety of the visitors to the site.

- *Development is screened by vegetation when viewed from any public place.*

Comment: The cabins in question are setback from the beachfront, behind existing foreshore development and vegetation. As such, the proposed works will be appropriately screened as seen from the Pittwater Waterway.

- *Wildlife is permitted unhindered access through Currawong.*

Comment: With the exception of screening to the undercroft of the cabins for bushfire purposes, the proposed development will not impact upon the movement of wildlife through the site.

- *Adverse traffic effects from development are mitigated against.*

Comment: The proposed development does not seek to intensify the capacity of the existing facility, and as such, is unlikely to result in any adverse impacts upon water traffic or traffic at surrounding public wharves (ie: Palm Beach).

- *Development incorporates the principles of ecologically sustainable development.*

Comment: The application proposes the inclusion of water tanks to maximise water reuse on the site. Furthermore, the proposal includes new roof sheeting and insulation to maximise thermal efficiency within each of the relevant cabins.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$18,866 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,886,555.

CONCLUSION

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

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

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

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

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

In light of commentary from NSW Heritage, conditions are recommended to ensure the maintenance of a greater proportion of the existing fabric of Cabin 3, being the most intact representation of the original condition of the cabins and the cabin of highest heritage significance. Subject to conditions, the proposed development is considered to achieve an appropriate balance between the maintenance/protection of the heritage significance of the site and necessary upgrades to provide appropriate levels of amenity for visitors to the site.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/0712 for Alterations and additions to six (6) cabins on land at Lot 1 DP 166328, 1 A Currawong Beach, CURRAWONG BEACH, Lot 1 DP 337208, 1 A Currawong Beach, CURRAWONG BEACH, Lot 4 DP 978424, 1 A Currawong Beach, CURRAWONG BEACH, Lot 10 DP 1092275, 1 A Currawong Beach, CURRAWONG BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Cover Page DA00, Issue B	July 2019	Northern Beaches Council
Site Plan, Construction Sediment Control Plan DAS01, Issue B	July 2019	Northern Beaches Council
Platypus Cabin 3 DAPL01, Issue B	July 2019	Northern Beaches Council
Platypus Cabin 3 DAPL02, Issue B	July 2019	Northern Beaches Council
Magpie Cabin 4 DAM01, Issue B	July 2019	Northern Beaches Council
Magpie Cabin 4 DAM02, Issue B	July 2019	Northern Beaches Council
Lorikeet Cabin 5 DAL01, Issue B	July 2019	Northern Beaches Council
Lorikeet Cabin 5 DAW01, Issue B	July 2019	Northern Beaches Council
Wallaby Cabin 6 DAW02, Issue B	July 2019	Northern Beaches Council
Possum Cabin 7 DAPS01, Issue B	July 2019	Northern Beaches Council
Possum Cabin 7 DAPS02, Issue B	July 2019	Northern Beaches Council
Echidna Cabin 8 DAE01, Issue B	July 2019	Northern Beaches Council
Echidna Cabin 8 DAE02, Issue B	July 2019	Northern Beaches Council
Materials and Finishes Schedule	July 2019	Northern Beaches

DAMF01, Issue B		Council
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Engineering Plans		
Drawing No.	Dated	Prepared By
Site Extend Plan D01, Issue A	14 May 2019	NB Consulting Engineers
Site Drainage Plan & Drainage Details D02, Issue A	14 May 2019	NB Consulting Engineers
Site Drainage Plan Platypus D03, Issue A	14 May 2019	NB Consulting Engineers
Site Drainage Plan Magpie D04, Issue A	14 May 2019	NB Consulting Engineers
Site Drainage Plan Lorikeet D05, Issue A	14 May 2019	NB Consulting Engineers
Site Drainage Plan Wallaby D06, Issue A	14 May 2019	NB Consulting Engineers
Site Drainage Plan Possum D07, Issue A	14 May 2019	NB Consulting Engineers
Site Drainage Plan Echidna D08, Issue A	14 May 2019	NB Consulting Engineers
Drainage Details D09, Issue A	14 May 2019	NB Consulting Engineers

b) Approved Reports

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Risk Management Report 2017-084.3	November 2018	Crozier Geotechnical Consultants
Environmental Impact Assessment for APZ Modification	29 September 2018	Kleinfelder Australia Pty Ltd
Bushfire Risk Management Report	3 October 2018	Kleinfelder Australia Pty Ltd

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
Cover Sheet CB-S2-00, Revision D3	11 June 2019	Thompson Berrill Landscape Design P/L
Context Plan CB-S2-01, Revision D3	11 June 2019	Thompson Berrill Landscape Design P/L
Cabin 3 - Platypus Landscape Plan CB-S2-02A, Revision D3	11 June 2019	Thompson Berrill Landscape Design P/L
Cabin 4 - Magpie Landscape Plan CB-S2-02B, Revision D3	11 June 2019	Thompson Berrill Landscape Design P/L
Cabin 5 - Lorikeet Landscape Plan CB-S2-02C, Revision D3	11 June 2019	Thompson Berrill Landscape Design P/L
Cabin 6 - Wallaby Landscape Plan CB-S2-02D, Revision D3	11 June 2019	Thompson Berrill Landscape Design P/L
Cabin 7 - Possum Landscape Plan CB-	11 June 2019	Thompson Berrill

S2-02E, Revision D3		Landscape Design P/L
Cabin 8 - Echidna Landscape Plan CB-S2-02F, Revision D3	11 June 2019	Thompson Berrill Landscape Design P/L
Typical Details - Walls, Paving and Planting CB-S2-03A, Revision D3	11 June 2019	Thompson Berrill Landscape Design P/L
Hard Landscape Finishes and Planting Species CB-S2-03B, Revision D3	11 June 2019	Thompson Berrill Landscape Design P/L

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	3 July 2019	Northern Beaches Council

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

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

2. **Compliance with NSW Rural Fire Service Requirements**

The development must be carried out in compliance with the general terms of approval and the bush fire safety authority issued by the NSW Rural Fire Service on 20 September 2019, as follows:

1. In addition to the previous general terms of approval contained within the Bush Fire Safety Authority dated 8 November 2017 issued for the site, the following conditions apply.
2. Each of the proposed non-combustible tanks shall be fitted with a 65mm metal Storz fitting with a ball or gate valve. The gate or ball valve, pipes and tank penetration shall be metal and have a 50mm inner diameter. A portable 3kW (5hp) minimum petrol or diesel powered pump, together with a 19mm (internal diameter) fire hose, shall be provided on site for connection to the tanks.
3. The proposed new works to Cabins 3, 4, 5, 6, 7 and 8 shall comply with section 2 and section 7 (BAL 29) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas - 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection' 2006.

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

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

3. **Compliance with NSW Heritage Requirements**

The development must be carried out in compliance with the general terms of approval issued by NSW Heritage on 29 November 2019, as follows:

1. **Works Not Approved**
The following works are not approved unless as amended under the following conditions of approval:

- a. Demolition of existing external and internal cladding, the bathroom addition including opening of the western wall, creation of the kitchen servery, the enlarged deck and the installation of a fireplace to Cabin 3.
- b. New window on eastern elevation of Cabin 4.
- c. Removal of the multi paned front doors.
- d. Rear highlight window to the existing bedroom of Cabins 5, 6 and 7.
- e. Revised plans, that indicate the above amendments, are to be submitted for assessment and approval by the Heritage Council of NSW (or delegate) with the s.60 application.

Reason: To ensure that the proposal will not impact the significance of the original fabric of Currawong Workers' Holiday Camp.

2. **Amendments to Approved Plans**

The approved plans are to be amended, as follows:

- a. Cabin 3 is to be maintained in its original layout and with original fabric as a 'retention in sample'. All asbestos cladding on Cabin 3 must be retained insitu in accordance with the recommended method to 'encapsulate exposed sections and maintain in a good condition' (Asbestos Buildings Materials Assessment, Various Buildings, 1a Currawong Beach, Prensa, June 2014, Appendix C).
- b. The proposed BAL29 deck to Cabin 3 is to be constructed to match the existing configuration. Access to the lawn area or a small sandstone paved area at the south of the cabin can be provided. A freestanding clothesline is to be provided at the rear of the cabin.
- c. The layout of the bathroom additions to Cabins 5, 6, 7 and 8 is to replicate the proposed bathroom addition layout of Cabin 4 Magpie. The perimeter paths to the additions is to be to maximum 1000mm width and the drying area is to be relocated to the rear western wall of the addition or else be a freestanding structure.
- d. Proposed retaining wall to the rear of Cabin 3 is to be sandstone/sandstone faced concrete block to match similar wall at Cabin 1 Kookaburra.
- e. Revised plans, that indicate the above amendments, are to be submitted for assessment and approval by the Heritage Council of NSW (or delegate) with the s.60 application.

Reason: To ensure that the proposal will not impact the significance of the original fabric of Currawong Workers' Holiday Camp.

3. **Additional Information**

To enable a thorough heritage impact assessment of some aspects of the proposal, the following information is to be provided with the s60 application for assessment and approval by the Heritage Council of NSW (or their delegate):

- a. Detail of the proposed timber retaining wall at the rear of the cabins is to be provided.
- b. Details of the any excavation required for required additional water and sewer lines is to be provided.
- c. A detailed methodology of the proposed removal of asbestos cladding, wall lining, windows, doors, roofing and services and reconstruction of the cabins including the

removal, secure storage, repair and reinstatement of existing fabric should be provided with the s60 application.

- d. Details of the rear doors have not been provided. Proposed details of external doors and lighting to cabins is to be provided.
- e. Details of proposed materials and finishes to bathrooms and kitchens are to be provided.

Reason: No information or impact assessment has been provided for this work, nor are they identified in the scope of works.

4. **Cabin 4, 5, 6, 7 and 8 Reconstruction**

- a. The recladding of the cabins must be completed within 12 months of the removal of the asbestos perimeter sheeting from the first cabin.
- b. The reroofing of the cabins including flashing, capping, gutters and downpipes must be completed within 12 months of the removal of the existing metal roof sheeting from the first cabin.

Reason: The character of the structures contributes to an understanding of the use and occupancy of the whole of the Currawong Workers' Holiday Camp.

5. **Specialist Tradespersons**

All work to, or affecting, significant fabric at Currawong Workers' Holiday Camp shall be carried out by suitably qualified tradespersons with practical experience in conservation and restoration of similar heritage structures, materials and construction methods.

Reason: So that the construction, conservation and repair of significant fabric follows best heritage practice.

6. **Heritage Consultant**

A suitably qualified and experienced heritage consultant must be nominated for this project. The nominated heritage consultant must provide input into the detailed design, provide heritage information to be imparted to all tradespeople during site inductions, and oversee the works to minimise impacts to heritage values. The nominated heritage consultant must be involved in the selection of appropriate tradespersons and must be satisfied that all work has been carried out in accordance with the conditions of this consent.

Reason: So that appropriate heritage advice is provided to support best practice conservation and ensure works are undertaken in accordance with this approval.

7. **Heritage Interpretation Plan**

The Heritage Interpretation Strategy and Implementation Plan for Currawong Workers' Holiday Camp prepared by Urbis dated 25 February 2019 submitted with the previous application must be amended to include the remaining six cabins in accordance with the Heritage publication 'Interpreting Heritage Places and Items Guidelines' (2005), and submitted for approval to the Heritage Council of NSW (or delegate) prior to the issue of a Construction Certificate/ Government certification. The interpretation plan must detail how information on the history and significance of name of item will be provided for the public, and make recommendations regarding public accessibility, signage and lighting. The plan must identify the types, locations, materials, colours, dimensions, fixings and text of interpretive devices that will be installed as part of this project.

The approved interpretation must be in place on site prior to the issue of an occupation certificate.

Reason: Interpretation is an important part of every proposal for works at heritage places.

8. **Site Protection**

Significant built and landscape elements are to be protected during site preparation and the works from potential damage. The nominated heritage consultant is to be involved in the determination of appropriate protection systems. Protection systems must ensure significant fabric, including landscape elements, is not damaged or removed.

Reason: To ensure significant fabric including vegetation is protected during construction.

9. **Photographic Archival Recording**

A photographic archival recording of Currawong Workers' Holiday Camp must be prepared prior to the commencement of works. The recording is capture the setting of the site but focus on these elements that will be modified by the proposal. This recording must be in accordance with the NSW Heritage Division publications 'How to prepare archival records of heritage items' and 'Photographic Recording of Heritage Items using Film or Digital Capture'. The original copy of the archival record must be deposited with the Heritage Division, Office of Environment and Heritage, and an additional copy provided to Northern Beaches Council.

Reason: To capture the condition and appearance of the place prior to, and during, modification.

10. **Historical Archaeology**

The applicant shall submit a baseline archaeological assessment prepared by a suitably qualified and experienced historical archaeologist. This assessment should identify whether relics of local or state significance may be harmed by this activity and whether appropriate mitigation measures or alteration of the design should occur based on the significance of the relics which may be present. This assessment shall be submitted prior to works commencing on site.

Following the receipt of the Archaeological Assessment, the Heritage Council of NSW or its delegate reserves the right to issue additional archaeological conditions to manage the archaeology. Matters such as (but not limited to) preparation of an archaeological excavation methodology and research design, fieldwork methodology, artefact analysis and final reporting may be included as part of these archaeological conditions.

Reason: To appropriately manage archaeological resources.

11. **Aboriginal Objects**

Should any Aboriginal objects be uncovered by the work which is not covered by a valid Aboriginal Heritage Impact Permit, excavation or disturbance of the area is to stop immediately and the Office of Environment & Heritage is to be informed in accordance with the National Parks and Wildlife Act 1974 (as amended). Works affecting Aboriginal objects on the site must not continue until the Department of Premier and Cabinet has been informed and the appropriate approvals are in place. Aboriginal objects must be managed in accordance with the National Parks and Wildlife Act 1974.

Reason: This is a standard condition to identify to the applicant how to proceed if Aboriginal objects are unexpectedly identified during works.

12. **Compliance**

If requested, the applicant and any nominated heritage consultant may be required to participate in audits of Heritage Council of NSW approvals to confirm compliance with conditions of consent.

Reason: To ensure that the proposed works are completed as approved.

13. **Section 60 Application**

An application under section 60 of the Heritage Act 1977 must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

Reason: To meet legislative requirements.

4. **Prescribed Conditions**

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which

the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

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

7. **Stormwater Disposal**

Engineering Plans in accordance with the requirements of section 3.1.2 Drainage of the Building Code of Australia Housing Provision and AS/NZS 3500.3.2:1998 - Stormwater Drainage – Acceptable solutions are to be submitted and certified by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. The stormwater disposal system must comply with the recommendations of the Geotechnical Report prepared by Crozier Geotechnical Consultants dated 16 November 2018.

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

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

8. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Amendments to the Approved Plans**

Amended plans demonstrating compliance with the general terms of approval issued by NSW Heritage, as replicated in Condition 3 of this consent, are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises the impact upon the heritage significance of the site.

10. **Wastewater Certified Engineering Details**

The applicant shall submit to Council certified engineering details for the existing on-site wastewater treatment system and all new proposed connections. The drawings shall be drawn to scale, dimensioned and accompanied by a listing of all components with name, model, size,

description, function, material of manufacture and location of the wastewater system. All components are to be shown including electric motor(s), gearbox, compressor, pump(s), valves, diffusers, venturi, media, media fixings, chlorinator, pipework, scum collection and sludge pumping equipment, baffles, partitions, brackets, fastenings, electrodes, float switches, control panel and the arrangement of alarms.

Reason: Compliance with Australian Standards and NSW Health Guidelines.

11. **Engagement of a Project Arborist**

A Project Arborist with a minimum of AQF Level 5 is to be appointed for the duration of the works. The Project Arborist is to implement pre-construction tree protection measures and direct supervision all works within 5m of significant trees.

Evidence demonstrating Project Arborist engagement is to be provided to the Principal Certifying Authority prior to the issue of construction certificate.

Reason: Tree protection in accordance with relevant Natural Environment LEP/DCP controls.

12. **Amendment of Landscape Plans**

The Approved Landscape Plans referenced in Condition 1 of this Consent are to be amended in accordance with the following:

- o Deletion of *Imperata cylindrica*, *Lomandra longifolia* var. *longifolia*, *Gahnia grandis* (due to being highly flammable species and non-local natives)
- o Replacement with *Hibbertia scandens*, *Correa reflexa*, *Hardenbergia violacea*

The amended Landscape Plan is to be certified by a qualified landscape architect, arborist or ecologist prior to issue of the construction certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls.

13. **Preparation of Environmental Management Checklist**

A Construction Environmental Management Checklist is to be prepared by the Project Ecologist and is to incorporate all measures for the protection of native vegetation, wildlife and habitats during the construction phase. Measures specified in the checklist must include all requirements of conditions of this consent addressing construction-related impacts on biodiversity, including but not limited to:

- o Preparation of a site Induction which addresses the sites' biodiversity values, particularly the threatened Glossy Black-cockatoo and its habitats and any mitigation measures, such as noise reduction and work hours, to minimise impacts to this species throughout construction.
- o Direct supervision of pruning of any *Allocasurina torulosa* trees to ensure no loss of cone-producing branches
- o Supervision of any vegetation removal, including the dead tree if it is required to be removed to comply with bushfire mitigation measures
- o Relocate Coarse Woody Debris

The Checklist is to be provided to the Principal Certifying Authority prior to the issue of the construction certificate.

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

14. **Preparation of a Tree Protection Plan**

No trees within the proposed APZ with a DBH greater than 100mm are approved for removal.

Prior to the issuance of the construction certificate, a Tree Protection Plan, prepared by a minimum AQF level 5 Arborist, shall be issued to the Certifying Authority documenting the extent and alignment of tree protection fencing for all existing prescribed trees within 5 metres of the proposed works. All tree protection measures is to be in accordance with AS4970-2009.

Reason: To protect existing trees not impacted by the development.

15. **Engagement of a Project Ecologist**

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

- o Environmental Impact Assessment for APZ modification report (Kleinfelder, 29/09/2019)
- o Bush Fire Assessment Report (Kleinfelder, 3/10/2018)

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

- o Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>) OR
- o Biodiversity Assessment Method assessor accreditation under the NSW Biodiversity Conservation Act 2016 (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Employment of a project ecologist is to be certified by the Principal Certifying Authority Prior to issue of construction certificate.

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

16. **Compliance with Standards**

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

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

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

17. **Certification of Adherence with Approved Reports**

Written certification from suitably qualified persons shall be submitted to the Principal Certifying Authority, stating that all the works/methods/procedures/control measures/recommendations endorsed by Council in the Approved Reports referenced in Condition 1 have been adopted in the construction certificate detail.

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

Reason: To ensure compliance with the recommendations endorsed by Council.

18. **Consistency with NSW Heritage Requirements**

Evidence of compliance with the general terms of approval issued by NSW Heritage (excluding those to be satisfied prior to the issue of an occupation certificate), as replicated in Condition 3

of this consent, is to be provided to the Certifying Authority prior to the issuance of the construction certificate.

Reason: To ensure consistency with the requirements of NSW Heritage.

19. **Consistency with NSW RFS Requirements**

A suitably qualified professional is to provide certification that the general terms of approval issued by NSW RFS, as replicated in Condition 2 of this Consent, have been incorporated into the construction certificate application and plans.

Evidence demonstrating satisfaction of this requirement is to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure consistency with the requirements of NSW RFS.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

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

21. **Construction Environmental Management Checklist Inductions**

All workers, including site inspectors and sub-contractors, are to be briefed on measures specified in the Construction Environmental Management Checklist through a site induction prior to workers commencing their works. Evidence of the site induction is to be documented and provided to the Principal Certifying Authority prior to issue of the occupation certificate.

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

22. **Implementation of the Tree Protection Plan - Certified by Project Arborist**

All trees that are specifically nominated to be retained by notation or condition as a requirement of the development consent shall be maintained and protected during any vegetation clearing, demolition, excavation and construction on the site in accordance with the approved Tree Protection Plan. All tree protection measures are to be in accordance with Australian Standards AS 4970—2009 'Protection of Trees on Development Sites'.

A certificate demonstrating compliance must be prepared by the project arborist and submitted to the Principal Certifying Authority prior to commencement of any works on the site.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

24. **Tree and Vegetation Protection**

Existing trees and vegetation shall be retained as follows:

- a. all trees and vegetation within the site, nominated for retention, shall be protected during all construction stages, excluding exempt trees under the relevant planning instruments or legislation,
- b. all other trees and vegetation located on adjoining properties,

Tree protection shall be generally undertaken as follows:

- a. all tree protection shall be in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular attention to section 4, and AS4373-2007 Pruning of amenity trees,
- b. any tree roots exposed during excavation with a diameter greater than 25mm within the TPZ must be assessed by a AQF Level 5 Arborist,
- c. to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- d. no tree roots greater than 25mm diameter are to be cut from protected trees unless authorized by a AQF Level 5 Arborist on site,
- e. all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- f. should either or both d) and e) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations and shall report on the tree protection action undertaken, including photographic evidence,
- g. any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009.

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

25. **Dead or Injured Wildlife**

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

Reason: To protect native wildlife in accordance with Section 2.1 of the NSW Biodiversity Conservation Act 2016.

26. **No Material Storage within 5m/calculated Tree Protection Zone (TPZ)**

No storage of building materials or building waste, excavated fill or topsoil storage is to occur within 5m or the notional TPZ of trees shown on the approved landscape working drawing(s) as being retained or within protective fenced areas. Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.

Reason: To protect and retain trees proposed for retention.

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

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

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

28. **Relocation of Logs and Coarse Woody Debris**

All logs and branches are to be salvaged from trees prior to any vegetation clearing and reused as fauna habitat within the bushland areas outside of the APZ.

Details demonstrating compliance are to be provided to the Principal Certifying Authority prior to issue of the occupation certificate.

Reason: To protect wildlife habitat in accordance with relevant Natural Environment LEP/DCP controls.

29. **Implementation of Construction Environmental Management Checklist**

Evidence that all works were undertaken in accordance with the Construction Environmental Management Checklist is to be provided to the Principal Certifying Authority prior to issue of the occupation certificate.

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

30. **Installation of Solid/Fuel Burning Heaters**

Installation work must be carried out by an appropriately experienced and qualified person and in accordance with the relevant provisions of AS2918:2001 – Domestic Solid Fuel Burning Appliances – Installation.

Reason: To ensure the installation is completed in a legislatively compliant manner.

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

31. **Certification of Landscaping**

Prior to the issue of the 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 the Approved Landscape Plans referenced in Condition 1 of this Consent, as amended by any other conditions of this Consent.

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

32. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the occupation certificate.

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

33. **Consistency with NSW Heritage Requirements**

Evidence of compliance with the general terms of approval issued by NSW Heritage, as replicated in Condition 3 of this consent, is to be provided to the Certifying Authority prior to the issuance of the construction certificate.

Reason: To ensure consistency with the requirements of NSW Heritage.

34. **Geotechnical Certification Prior to Occupation Certificate**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

35. **Certification of Adherence with Approved Reports**

Written certification from suitably qualified persons shall be submitted to the Principal Certifying Authority, stating that all the works/methods/procedures/control measures/recommendations endorsed by Council in the Approved Reports referenced in Condition 1 have been adhered to.

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

Reason: To ensure compliance with the recommendations endorsed by Council.

36. **Certification of Fireplace Installation**

Prior to the issuance of the occupation certificate, a certificate from an appropriately qualified person is to be provided to the the Principal Certifying Authority and Council confirming that all fireplaces have been installed in accordance with all relevant legislation, Building Code of Australia, Australian Standards, specifications and manufacturer requirements.

Reason: To ensure the system operates in a legislatively compliant manner.

37. **Waste Water System**

Prior to the issue of the occupation certificate, the waste water system must be activated and effectively operating to the satisfaction of the Principal Certifying Authority, and a copy of a s68 (Local Government Act 1993) approval to operate the Waste Water System is to be provided to the Certifying Authority

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

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity.

38. **Certification of Tree Protection – Certified By Project Arborist**

All tree protection measures to be implemented, as specified in the Tree Protection Plan and these conditions of consent are to be implemented at the appropriate stage of development.

Completion of arborist requirements and satisfactory establishment/initiation of post-construction measures is to be certified by the consulting arborist and details submitted to the Principal Certifying Authority prior to issue of the occupation certificate.

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

39. **Implementation of Construction Environmental Management Checklist**

Construction is to be undertaken in accordance with the Constructional Environmental Management Checklist. Details demonstrating compliance are to be provided to the Principal Certifying Authority prior to issue of the occupation certificate.

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

40. **Protection of Habitat Features – Certified by Ecologist**

All natural landscape features, including rock outcrops, native vegetation, soil and watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

There shall be no damage to intertidal habitats including rocky shores, seagrass beds, salt marshes or mangroves.

Details demonstrating compliance are to be certified by the project ecologist and provided to the Principal Certifying Authority prior to issue of the occupation certificate.

Reason: To protect wildlife habitat in accordance with relevant Natural Environment LEP/DCP controls.

41. **Consistency with NSW Rural Fire Service Requirements**

A suitably qualified bush fire consultant is to provide certification that the requirements of the NSW Rural Fire Service, as specified in the bush fire safety authority issued on 20 September 2019, and as replicated in Condition 2 of this Consent, have been adhered to.

Evidence of compliance is to be provided to the Principal Certifying Authority prior to the issuance of the occupation certificate.

Reason: To ensure consistency with the requirements of the NSW Rural Fire Service.

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

42. **Landscape Maintenance**

Any existing landscaping required to be retained together with any additional landscaping required by this Consent is to be maintained for the life of the development.

Landscape establishment maintenance works shall be undertaken for a minimum period of 12 months following practical completion. Landscape materials shall be maintained in good order. If any planting under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the Approved Landscape Plan referenced in Condition 1 of this Consent, as amended by any other condition.

Reason: To maintain local environmental amenity and ensure landscaping continues to integrate into the bushland setting.

43. **Environmental and Priority Weed Control**

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: Preservation of environmental amenity.

44. **Maintenance of Solid Fuel Heaters**

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

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

45. **Operation of Solid Fuel Burning Heaters**

You are requested to take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures should include:

- o Using dry seasoned hardwood
- o Storing wood in a dry well ventilated place
- o Having a hot and well oxygenated fire
- o Ensuring that the chimney flue is clean
- o Checking the chimney at different stages of the fire to see if there is any smoke

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

46. **Control of Weeds**

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

Reason: Weed management.

47. **Clearance of Structures from Trees**

A minimum of 200mm clearance is to always be maintained from proposed bearers, joists and decking to the tree trunk of any native tree unless prior written approval from Council.

Reason: To protect existing trees.

48. **No Planting Environmental Weeds**

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

Reason: Weed management.

49. **Protection of Trees and Bushland Vegetation**

All existing trees as indicated in the Survey Plan and/or approved Landscape Plan shall be retained except where Council's prior written consent has been obtained, for trees that stand within the envelope of approved development areas and removal is approved through an arborist report. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.

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

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

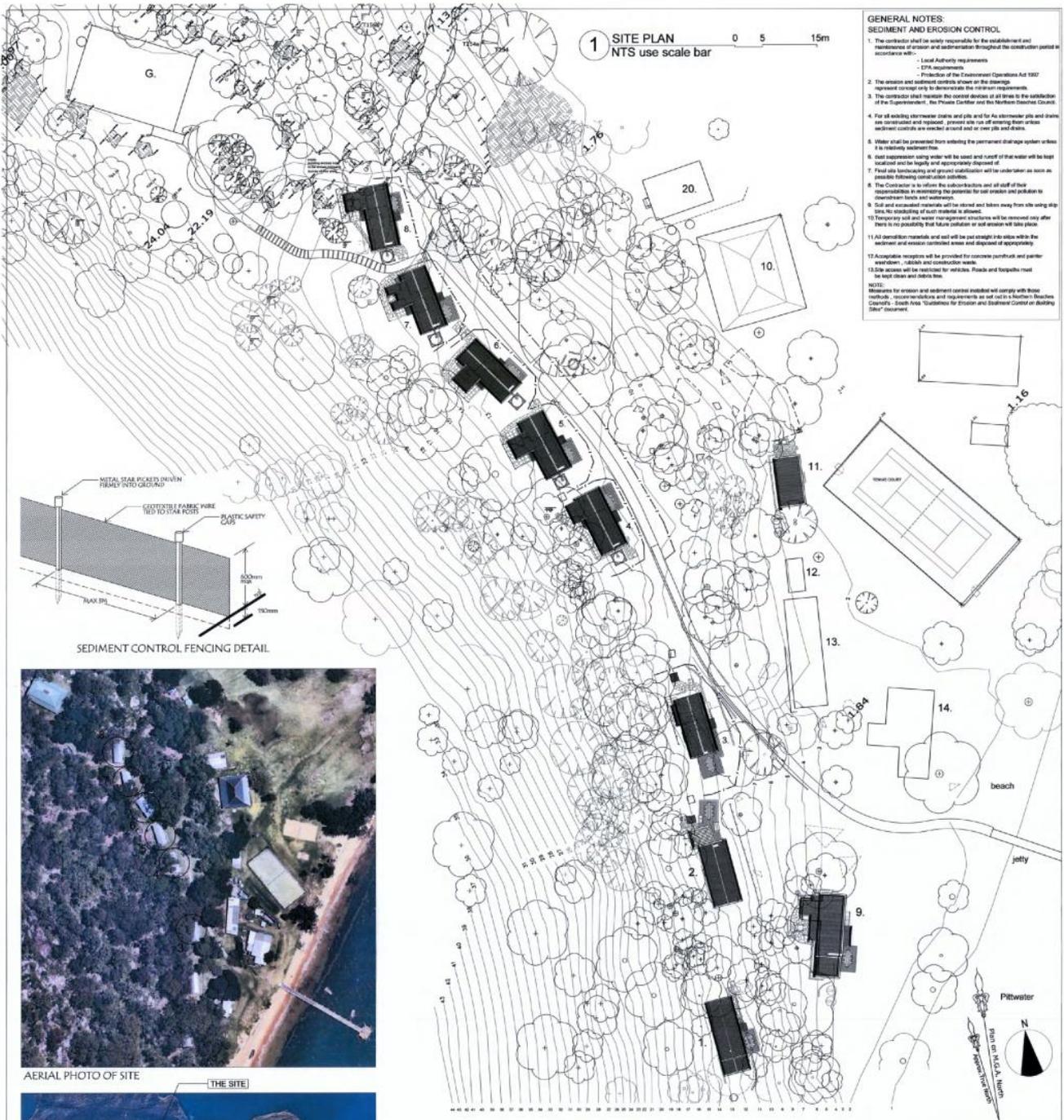
If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.

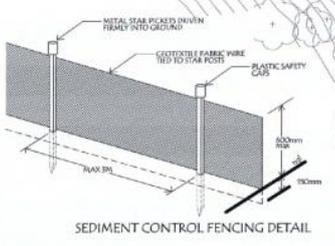
51. **Dead or Injured Wildlife**

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

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



- GENERAL NOTES:**
SEDIMENT AND EROSION CONTROL
- The contractor shall be solely responsible for the establishment and maintenance of erosion and sedimentation throughout the construction period in accordance with:
 - Local Authority requirements
 - EPA requirements
 - Protection of the Environment Operations Act 1997
 - The erosion and sediment controls shown on the drainage management concept only to demonstrate the minimum requirements.
 - The contractor shall maintain the correct device at all times to the satisfaction of the Superintendent, the Private Designer and the Northern Beaches Council.
 - For all existing stormwater drains and pits, and for all stormwater pits and drains, any unobstructed and repaired, prevent site run off entering them unless sediment controls are erected around and over pits and drains.
 - Water shall be prevented from entering the permanent drainage system unless it is in a regulated sediment trap.
 - Costs associated with water will be used and runoff of that water will be kept contained and be legally and appropriately disposed of.
 - Final site landscaping and ground stabilisation will be undertaken as soon as possible following construction activities.
 - The Contractor is to advise the subcontractors and all staff of their responsibilities in minimising the potential for soil erosion and pollution to neighbouring lands and waters.
 - Soil and excavated materials will be stored and taken away from site using slip covers to the satisfaction of local council authorities.
 - Temporary soil and water management structures will be removed only after there is no possibility that future erosion or soil erosion will take place.
 - All demolition materials and soil will be put straight into sites with the treatment of erosion control devices and disposal of appropriate.
 - Appropriate signage will be provided for access, egress, and parking areas, including and construction areas.
 - Site access will be restricted for vehicles. Roads and footpaths must be kept clear and debris free.
- NOTE:**
Measures for erosion and sediment control installed will comply with these methods, - erosion-reduction and requirements as set out in Northern Beaches Council's - Soils and - Guidelines for Erosion and Sediment Control in Building Sites' document.



Rev	Description	Date
A	FOR INFORMATION	JAN 19
B	DEVELOPMENT APPLICATION	JUL 19

- legend**
- sediment control fencing
- key**
the Cabins (numbered as per CMP 2015)
- Kookaburra
 - Goanna
 - Platypus
 - Magpie
 - Lorikeet
 - Wallaby
 - Possum
 - Echidna
 - Blue Tongue
 - Midholme
 - Games room
 - fibro maintenance shed
 - large metal maintenance shed
 - Manager's Residence/ Reception Building
 - Caretaker's Cottage
 - Trade Union Training Authority Building and its access path
- BUILDINGS INCLUDED IN THIS DEVELOPMENT APPLICATION**

northern beaches council

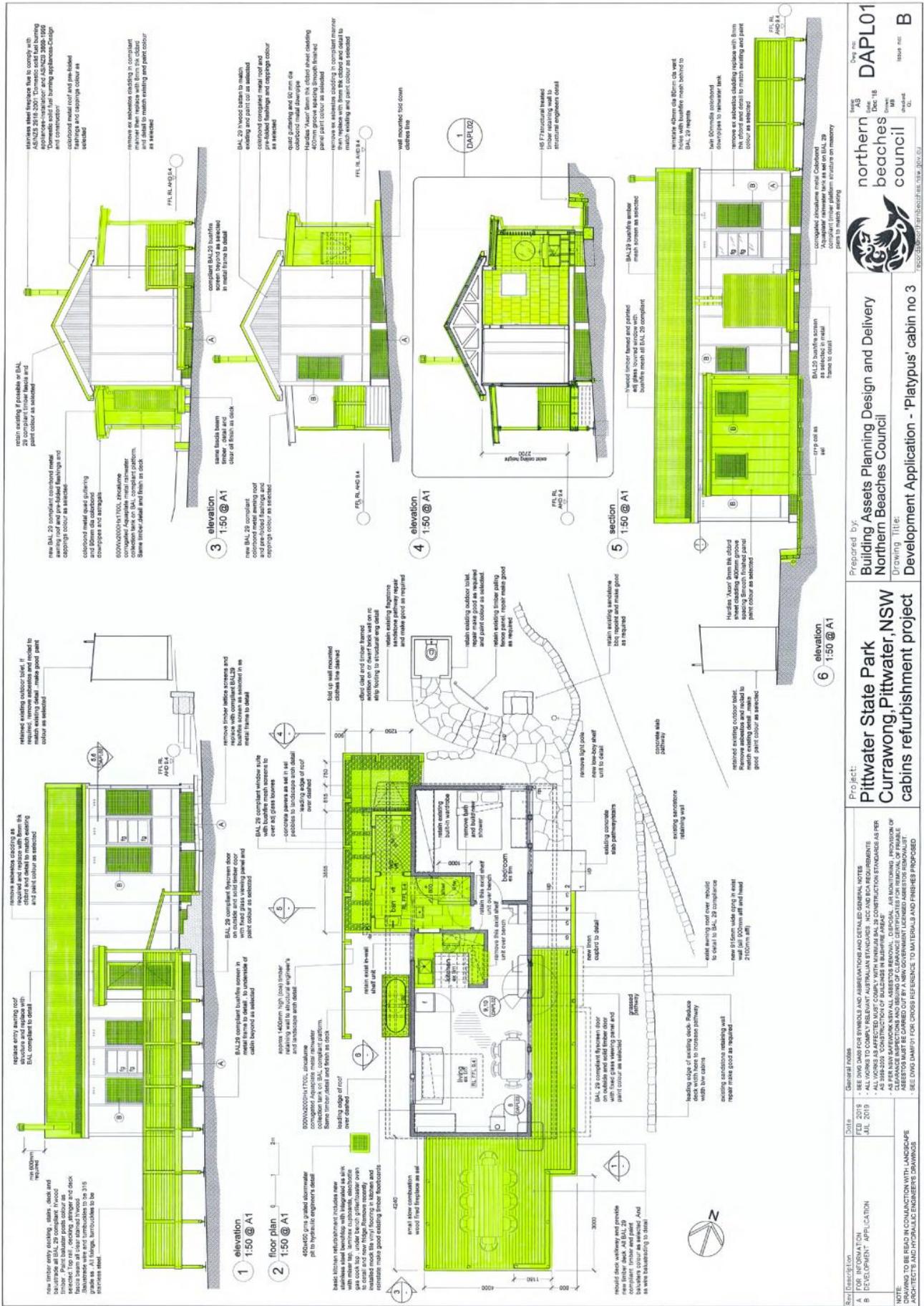
Project:
Pittwater State Park , Currawong Beach , Pittwater NSW.
Refurbishment of Platypus, Magpie, Lorikeet, Wallaby, Possum and Echidna cabins

Prepared by:
Building Assets - Planning, Design and Delivery NBC

Drawing title:
Site , Location aerial Photo Construction Sediment Control Plan and Site Plan

Scale: AS
Date: Aug 2018
Drawn by: MJC
Checked by: OL

Drawing no: **DAS01**
Rev no: **B**

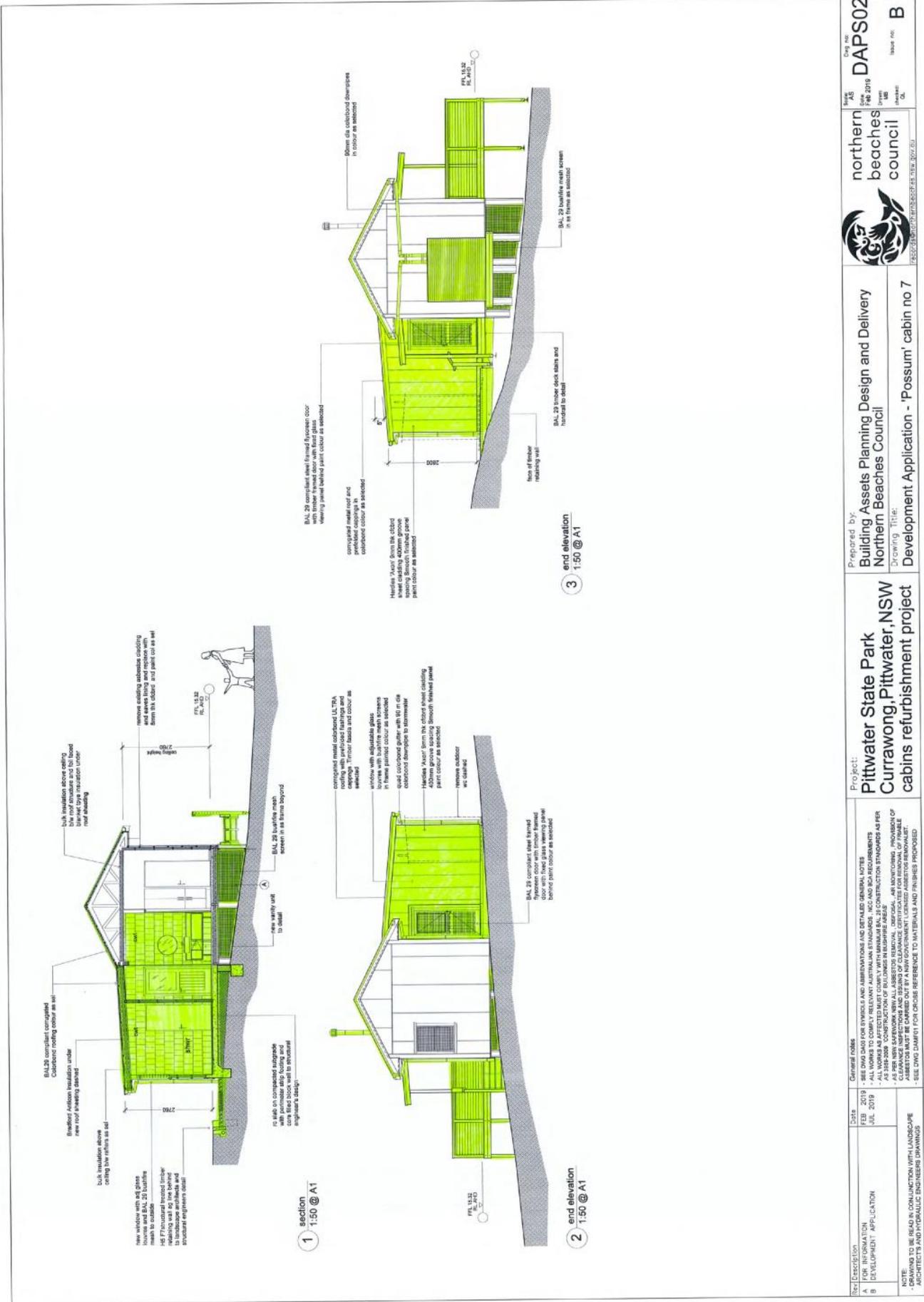


Drawn by: **DAPLO1**
 Checked by: **AS**
 Date: **16 Dec 18**
 Scale: **1:100**
 Project: **northern beaches council**
 Drawing Title: **Development Application - 'Platypus' cabin no 3**
 Issue No: **B**

Prepared by:
**Building Assets Planning Design and Delivery
 Northern Beaches Council**
 Drawing Title:
Development Application - 'Platypus' cabin no 3

Project:
**Pittwater State Park
 Currawong, Pittwater, NSW
 cabins refurbishment project**

Rev	Description	Date	General notes
A	FOR INFORMATION	FEB 2019	
B	DEVELOPMENT APPLICATION	APR 2019	<ul style="list-style-type: none"> SEE DWG DAMP101 FOR SYMBOLS AND ABBREVIATIONS AND DETAILED GENERAL NOTES ALL WORKS TO COMPLY RELEVANT AUSTRALIAN STANDARDS, ACC AND BCA REQUIREMENTS ALL WORKS TO COMPLY WITH NSW FIREWORKS ACT 2017 AS 1530.8.1 CONSTRUCTION OF BUILDINGS IN BUSHFIRE PRONE AREAS CONSTRUCTION STANDARDS AS PER AS 1530.8.2 CONSTRUCTION OF BUILDINGS IN BUSHFIRE PRONE AREAS CONSTRUCTION STANDARDS AS PER AS PER NSW BUSHFIRE RISK MITIGATION ACT 2015, BUSHFIRE RISK MITIGATION ACT 2015 (PROVISION OF ASBESTOS MUST BE CARRIED OUT BY A NSW GOVERNMENT LICENSED ASBESTOS REMOVAL ASBESTOS MUST BE CARRIED OUT BY A NSW GOVERNMENT LICENSED ASBESTOS REMOVAL SEE DWG DAMP101 FOR CROSS REFERENCE TO MATERIALS AND FINISHES PROPOSED



northern beaches council

Project: Pittwater State Park Currawong, Pittwater, NSW cabins refurbishment project

Prepared by: Building Assets Planning Design and Delivery Northern Beaches Council

Drawing Title: Development Application - 'Possum' cabin no 7

Drawn by: [Name]

Checked by: [Name]

Scale: 1:50

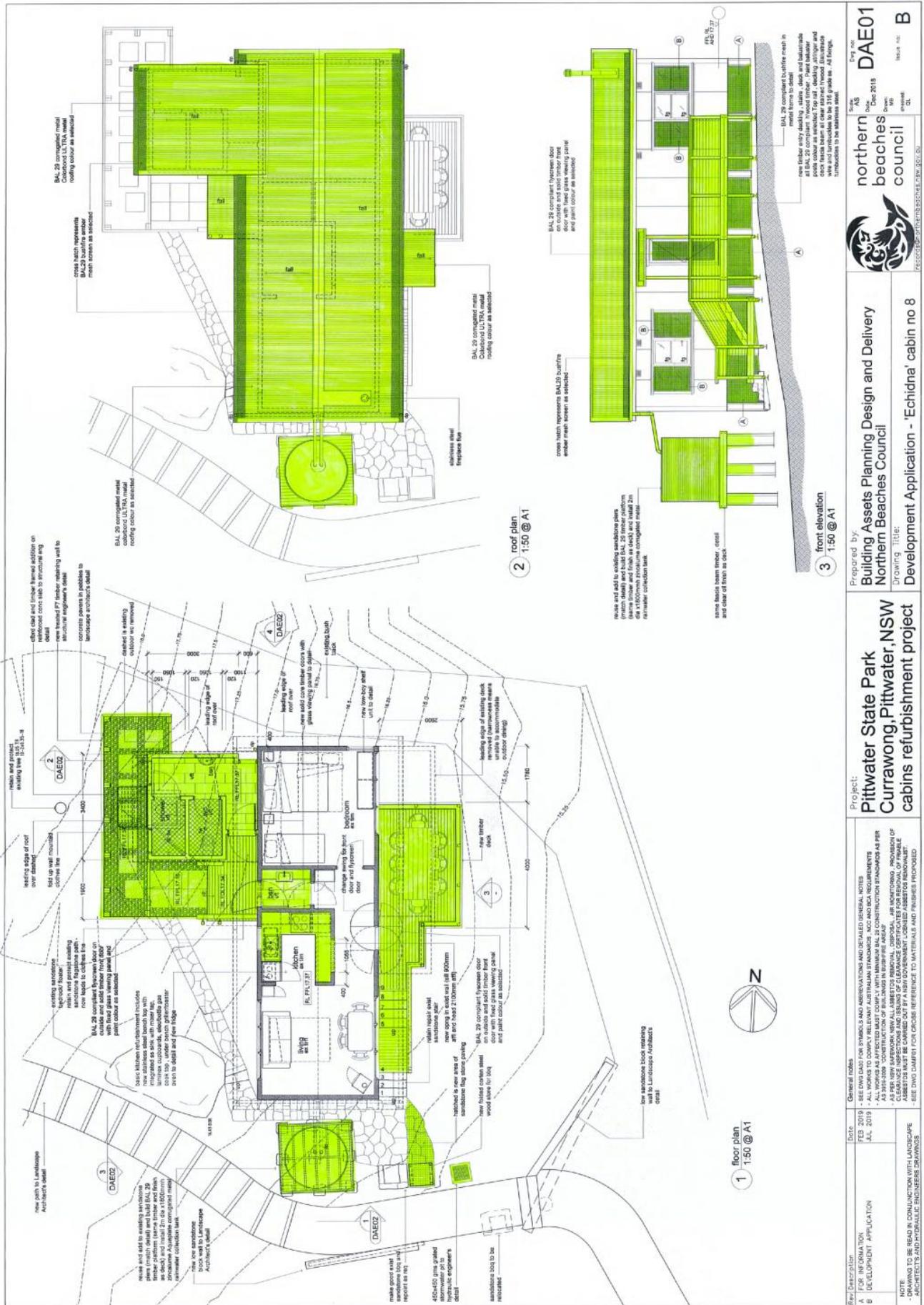
Issue No: B

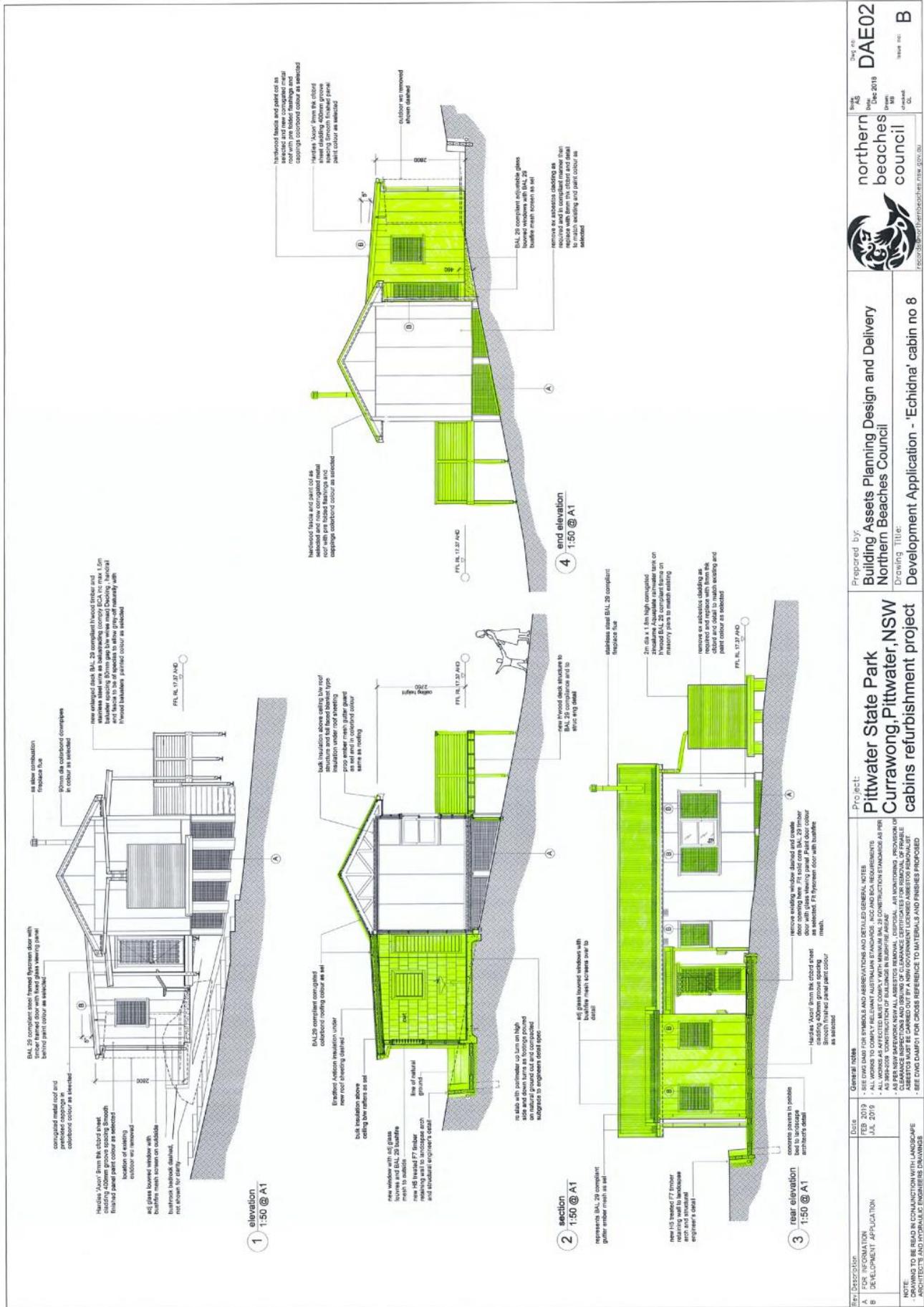
Doc No: DAPS02

Date: FEB 2019

Project No: [Number]

Client: [Name]





ITEM 3.2	DA2019/0812 - 33 STARKEY STREET, FORESTVILLE - DEMOLITION WORKS AND CONSTRUCTION OF A BOARDING HOUSE
REPORTING OFFICER	MATTHEW EDMONDS
TRIM FILE REF	2019/689345
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. DA2019/0812 for demolition works and construction of a Boarding House at Lot 2 DP 363929, 33 Starkey Street, Forestville for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0812
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Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 2 DP 363929, 33 Starkey Street FORESTVILLE NSW 2087
Proposed Development:	Demolition works and construction of a Boarding House
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Linshop Pty Ltd
Applicant:	Linshop Pty Ltd

Application Lodged:	30/07/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	21/09/2019 to 12/10/2019
Advertised:	21/09/2019
Submissions Received:	51
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 1,893,876.00
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EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application DA2019/0812 for demolition works and construction of a boarding house at 33 Starkey Street, Forestville.

The proposed development is generally compliant with the development standards under the *Warringah Local Environmental Plan 2011* (WLEP 2011) and the numeric controls under the *Warringah Development Control Plan 2011* (WDCP 2011). However, the proposed development is found to be incompatible with the character of the locality, in relation to the *State Environmental Planning Policy (Affordable Rental Housing) 2009* ('SEPP ARH 2009'), as well as certain siting and design controls under the WDCP 2011. The proposed development received 51 submissions objecting to the development for issues in relation to character, traffic and parking concerns, site access, amenity,

design, property value, surrounding infrastructure, density, boarding house management, cost of rent, vegetation, conditions of consent, and the notification process. The application is referred to the Northern Beaches Local Planning Panel for review and determination due to the number of submissions received.

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. Based on a detailed assessment of the proposal against the applicable planning controls, the proposal is unsuitable and is an inappropriate development for the subject site. Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be **refused**.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the following works:

- Demolition of structures;
- Construction of a boarding house, as follows:
 - 12 boarding rooms, and one manager's room (with private open space), each with kitchenette and bathroom facilities;
 - Two internal communal living rooms;
 - Basement car park for 7 cars, 3 motorcycles and 3 bicycles, and storage;
- One outdoor living area;
- Bin storage; and
- Landscaping works.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.2 Earthworks

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - C4 Stormwater
 Warringah Development Control Plan - C9 Waste Management
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 2 DP 363929 , 33 Starkey Street FORESTVILLE NSW 2087
Detailed Site Description:	<p>The Assessing Officer visited the site on 10 September 2019.</p> <p>The subject site consists of one (1) corner allotment located on the eastern side of Starkey Street.</p> <p>The site is regular in shape with frontages of 29.325m (splayed) along Starkey Street and 28.955m along Cannons Parade. The site has a surveyed area of 910.5m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a part one-, part-two storey detached dwelling.</p> <p>The site slopes approximately 2m from north to south and contains shrubs, and a range of small to large trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one- and two-storey detached residential developments.</p>

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site. The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on "Notification & Submissions Received" in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>See discussion throughout this report.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 51 submission/s from:

Name:	Address:
Mr Peter Edwin Clark	32 A Starkey Street FORESTVILLE NSW 2087
Maria Viola Coppa	C/- Raine & Horne Real Estate 11 The Centre FORESTVILLE NSW 2087
Mr Conor Francis Farley Dena Fouroulis	43 Cannons Parade FORESTVILLE NSW 2087
Carol Ann Fitzsimons	2 / 37 Starkey Street FORESTVILLE NSW 2087
Mrs Donna Joy Gray	4 Bushland Avenue FORESTVILLE NSW 2087
Mr Anthony David Morgan	3 / 11 - 13 Bernie Avenue FORESTVILLE NSW 2087
Mrs Salpy Bilbosian Mr Abraham Bilbosian	50 Bantry Bay Road FRENCHS FOREST NSW 2086
Mrs Carol Joan Timbs	44 Cannons Parade FORESTVILLE NSW 2087
Rohan Andrew Niall Persaud	35 Cannons Parade FORESTVILLE NSW 2087
Elena Cardnell	116 Arthur Street FORESTVILLE NSW 2087
Mr James Roland Brennan	44 Starkey Street FORESTVILLE NSW 2087
Mr PO Kin Yam	4 Paxton Street FRENCHS FOREST NSW 2086
Miss Sabrina Yam	2 Connemara Avenue KILLARNEY HEIGHTS NSW 2087
Mrs Miyuki Saito	37 Cannons Parade FORESTVILLE NSW 2087
Mrs Lisa Nicole Tantillo	57 Cannons Parade FORESTVILLE NSW 2087
Mr Martin Richard Bulfield	14 Connemara Avenue KILLARNEY HEIGHTS NSW 2087
Mrs Thalia Margaret Mary Strang	36 Deakin Street FORESTVILLE NSW 2087
Mr Stephen Brett Wark	26 Carlow Crescent KILLARNEY HEIGHTS NSW 2087
Mr Justin William Glancy	C/- Quinn Homes Pty Ltd Po Box 458 GLENORIE NSW 2157
Mrs Linda Margaret Dowbiggin	5 Rhonda Avenue FRENCHS FOREST NSW 2086
Ms Stephanie Alyssa Kyme	86 Cook Street FORESTVILLE NSW 2087
Mr Garnet James Kent Mrs Barbara Janette Kent	37 A Starkey Street FORESTVILLE NSW 2087

Name:	Address:
Mr John Costaiolas	4 Kildare Grove KILLARNEY HEIGHTS NSW 2087
Ms Rose Mary Loughnane	108 Cook Street FORESTVILLE NSW 2087
Mr Stephen Andrew Venn	93 Cook Street FORESTVILLE NSW 2087
Belinda Lee Clemesha	110 Cook Street FORESTVILLE NSW 2087
Mr Alfred George Thomas Dovey	8 Drumcliff Avenue KILLARNEY HEIGHTS NSW 2087
Scott Alexander Maclean	25 Starkey Street FORESTVILLE NSW 2087
Ms Karen Joy Sole	94 Cook Street FORESTVILLE NSW 2087
Ms Dawn Patricia Belton	30 Carlow Crescent KILLARNEY HEIGHTS NSW 2087
Mr Garland Daniel Lau	70 Cook Street FORESTVILLE NSW 2087
Ian Cooper	1 Tyrone Avenue FORESTVILLE NSW 2087
Sandra Robyn Bridekirk	14 Waterfall Avenue FORESTVILLE NSW 2087
Ms Fengyu Zhao	42 Cannons Parade FORESTVILLE NSW 2087
Mr John Wallace Kershler Mrs Nancy Janice Kershler	31 Starkey Street FORESTVILLE NSW 2087
Mrs Beatrice Tantillo	21 Cannons Parade FORESTVILLE NSW 2087
Susan Margaret Macandrew	20 Killarney Drive KILLARNEY HEIGHTS NSW 2087
Mr Zoran Padovan Mrs Vesna Vicky Padovan	122 Melwood Avenue KILLARNEY HEIGHTS NSW 2087
Ms Vanessa Anne Dickey	12 Glentrees Avenue FORESTVILLE NSW 2087
James Gregory Carr	3 Tyrone Avenue FORESTVILLE NSW 2087
Glen Sanders Ms Hillary Cherry	45 Cannons Parade FORESTVILLE NSW 2087
Jacqueline Chan	5 Tyrone Avenue FORESTVILLE NSW 2087
Mr John Maxwell Gercken	48 Starkey Street FORESTVILLE NSW 2087
Ms Therese Rose Blaisdale Richard Lee Correll	12 Rathowen Parade KILLARNEY HEIGHTS NSW 2087
Mr Philip John Douglas Wright	44 Cook Street FORESTVILLE NSW 2087
Mrs Patricia Anne Kay	38 Starkey Street FORESTVILLE NSW 2087
Withheld Withheld Withheld	FORESTVILLE NSW 2087
Kylie Symonds	21 Calca Crescent FORESTVILLE NSW 2087
Mrs Philippa Louise Webb	52 Cook Street FORESTVILLE NSW 2087
Ms Marianne Lanfranca	12 Roscommon Crescent KILLARNEY HEIGHTS NSW 2087
Brenda Gratton	Address Withheld NSW

The proposal received a large number of submissions objecting to the proposal. Many of the submissions raised similar issues. As such, the matters raised have been grouped and addressed as follows:

Character of the Area

Objectors raised concern that the proposed development is not in character with the area and is inconsistent with Council's draft Towards 2040 plan, due to its density, bulk and scale. Objectors raised that the area is low density, family-oriented.

Comment:

The subject site is zoned R2 Low Density Residential, which allows for boarding house development. As detailed below, the proposed development is consistent with the maximum boarding house density for the R2 zone. However, the proposed development is found to be incompatible with the character of the local area in relation to bulk, scale and form, in relation to the requirements of the SEPP ARH 2009. This is included as a reason for refusal.

Appropriateness of the Development

Objectors raised concern that the proposal is not wanted or needed in the area, that there is a moratorium on boarding houses, and that other boarding house developments with capacity already exist in the area. Objectors also raised that other locations may be better, and that this site may be better suited by a seniors housing development. Concern was raised that the proposed development would bring undesirable residents and safety concerns. Objectors raised concern that the proposed development is a commercial land use in a residential area.

Comment:

There is no moratorium on boarding houses. The existence of other boarding houses in the area does not prevent consideration of this development application. Hypothetical consideration of other land uses for the subject site and alternative locations for boarding houses is not a relevant planning matter for consideration under the EP&A Act 1979.

Behaviour of boarding house residents is to be in accordance with the Plan of Management, which is enforced by the onsite manager. Boarding houses are a form of residential accommodation, as defined by the WLEP 2011.

Traffic and Parking

Objectors raised concern about increased traffic congestion and pedestrian/vehicular conflict as a result of the proposed development, particularly on bin collection day. Concern was also raised that the proposed development is not supported by adequate onsite parking, that the required passing bay is too wide for the streetscape, and that vehicular access should not be via Cannons Parade.

Comment:

The proposed development is acceptable in relation to on-street parking impacts, as it provides seven car parking spaces, three motorcycle spaces, and three bicycle racks, in accordance with the requirements of the SEPP ARH 2009. Council's Traffic Engineer is satisfied in relation to traffic safety and the driveway location, subject to the provision of a passing bay on site. Bins can be placed kerbside for collection on the evening prior to collection, and moved back to the bin storage area on the day of collection, by the boarding house manager.

Access - To the site, and on the site

Objections raised concern that the site is more than 400m from public transport, and that the footpath to bus stops is too steep to be accessible. Concern was also raised that the proposal relies on an alternative fire safety solution, and that internal accessibility information is insufficient.

Comment:

The proposed development is located within 200m walking distance from bus stops on each side of Starkey Street that are serviced in accordance with the requirements of the SEPP ARH 2009. There is no requirement for the pathway to these bus stops to achieve a specific gradient. The proposed development is acceptable in relation to internal access and safety requirements, as detailed in the submitted Building Code of Australia Access Assessment Report.

Amenity

Concern was raised in objections in relation to impacts to amenity, including overshadowing, noise, and privacy. Concern was also raised that the driveway location would cause light glare from headlights as

cars exit the basement.

Comment:

The proposed development does not result in unreasonable overshadowing of adjoining properties, and is consistent with the requirements of Clause D6 Access to Sunlight of the WDCP 2011. The proposed development is not anticipated to result in unreasonable noise impacts, as supported by the submitted Plan of Management and Acoustic Report. The proposed development does not provide a suitable design response to adjoining properties in relation to privacy. This is included as a reason for refusal. The proposed development is anticipated to generate up to one vehicle per hour in the evenings, which is not considered to result in unreasonable light glare from headlights.

Design

Objectors raised concern with the design of the proposal, citing excessive bulk and scale, inadequate front setbacks, poor articulation, and that the lift overrun and mechanical plant may be visible from the streetscape.

Comment:

The proposed development is wholly compliant with numerical built form controls within the WLEP 2011 and the WDCP 2011. However, the proposed development is found to be incompatible with the character of the local area in relation to bulk, scale and form, in relation to the requirements of the SEPP ARH 2009. This is included as a reason for refusal. Mechanical plant and the lift overrun are incorporated into the design, so would not be unreasonably imposing elements in the streetscape.

Property Value

Concern was raised that the proposed development will reduce the value of surrounding properties.

Comment:

Property value is not a relevant matter for consideration under the EP&A Act 1979.

Supporting Infrastructure

Concern was raised that the proposed development will result in increased stress on water supply.

Comment:

The proposed development is supported by a BASIX Certificate, which details that the development is suitably water-efficient.

Notification

The notification sign was not erected on site for the first public notification period. Some surrounding residents were not notified of the development application by letter. The notification sign for the second public notification period was not correctly erected.

Comment:

The development application was re-notified due to the notification sign not being erected on site for the first notification period. For both the first and second public notification periods, letters advising residents of the development application were sent to relevant surrounding properties, in accordance with the requirements of Clause A.7 of the WDCP 2011. The sign for the second notification period was erected on site in accordance with requirements.

Density

The proposed development breaches the 12-room limit set by the SEPP ARH 2009, as it contains 13 rooms.

Comment:

Clause 30AA of the SEPP ARH 2009 provides that a consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential (as in this case) unless it is satisfied that the boarding house has no more than 12 boarding rooms. The proposed development is compliant with this requirement, as it proposes 12 boarding rooms, and one manager's room.

Boarding House Management

Objectors raised concern that different rules apply to boarding houses in their individual plans of management. Concern was also raised about who manages boarding house occupation.

Comment:

Plans of management for boarding houses are assessed on a case by case basis on their appropriateness for the proposed development. The boarding house manager is in charge of monitoring occupation and operation in accordance with the plan of management.

Affordable Housing

Concern was raised that this type of housing is not 'affordable'.

Comment:

The property market sets the rate for rental prices, as there is no legislation capping rental prices for this development.

Vegetation

Concern was raised about vegetation removal on site.

Comment:

The subject site is supported by a landscape plan, which details appropriate replacement planting.

Recommended Conditions of Consent

One submission recommended conditions of consent in relation to fire safety, demolition, excavation, noise impacts, surveying the site and constructed building, dilapidation surveys, and certification of acoustic impacts.

Comment:

Should the application be approved, the development will be subject to conditions of consent as appropriate.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Recommendation: Approval with conditions</p> <p>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.</p> <p>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.</p>
Environmental Health (Industrial)	<p>Recommendation: Approval with conditions</p> <p>Proposal to demolish existing dwelling and construct a boarding house for: 12 (2 person) rooms and a manager's room; underground car parking and outdoor communal area. The noise report, Statement of Environmental Effects and Plan of Management address most the appropriate (operational) points of concern of the Environmental Health team. Those being, the impacts of noise from communal areas and mechanical plant (air conditioning units) on the surrounding residences. We have taken the assessment further and thought about the potential impact of headlights on the house located opposite the</p>

Internal Referral Body	Comments
	car park entry -increased driveway use and the driveway angle being aimed at the windows of the dwelling may cause nuisance, as well as the noise from rock hammering during excavation.
Landscape Officer	<p>Recommendation: Approval with conditions</p> <p>The Landscape Plans and Arborist's Report provided with the application are noted.</p> <p>The Landscape plans indicate replacement trees, screening shrubs and groundcovers to compensate for trees and other existing planting to be removed, which is supported. The proposed soft landscape areas around the building are considered adequate to enable establishment of the proposed planting.</p> <p>In view of the above, the proposed landscape works are not objected to in general terms, however some minor additions and substitutions of species is recommended to respond to the site conditions and provide additional screening to adjoining residences.</p> <p>Subject to conditions as provided, no objections are raised with regard to landscape issues.</p>
NECC (Development Engineering)	<p>Recommendation: Refusal</p> <p>Development Engineering cannot support the application due to:</p> <p>1) Stormwater: The consultant proposed an underground on site stormwater detention tank. The tank is proposed to connect to Council's stormwater pit on Starkey Street. The submitted plan states that the pipe connection is at RL116.12, which is about 800 mm lower than the grate of the pit. However, the depth of the pit is less than 650 mm in accordance with Council's asset management system. It means the connection is not sufficient. Furthermore, the proposed orifice plate is at RL 116.46, which is lower than the pit level. The orifice is a "drowned" orifice. The OSD system needs to be amended to ensure the system is to operate under the inlet control. As such, the proposed stormwater drainage does not comply with the clause C4 Stormwater of Council's Warringah DCP.</p> <p>2) Driveway: The new driveway shall be minimum 5.5 m wide include a waiting bay within the property to ensure the entry and exit of any vehicle. The applicant must amend the building design to accommodate the requirement. As such, the proposed driveway does not comply with the clause C2 Traffic, Access and Safety of Council's Warringah DCP.</p>
Strategic and Place Planning (Urban Design)	<p>Recommendation: Refusal</p> <p>The applicant seeks approval to demolish the existing structures and construction of a new boarding house development containing 12 boarding rooms, 1 manager's room and common living areas. The proposal cannot be supported for the following reasons:</p>

Internal Referral Body	Comments
	<p>1. Clause 30A of the SEPP states that: A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area. The proposal can be made more compatible with the character of the local area:</p> <p>a. The surrounding neighbourhood is generally dominated by single and double storey traditional and contemporary dwellings with a range of pitched and flat roofs. The proposal seeks to incorporate a double storey contemporary design with a butterfly metal roof incorporating dark grey face-brick feature walls/ frames and rendered & painted elements. This style of building is becoming increasingly prevalent within the area and is generally acceptable as a transitional approach if the bulk and scale of the built form is treated sensitively.</p> <p>b. The proposed elevations appear very institutional like with the double height framing consistently repeated around the building so much so it gives the impression of a residential flat building look which is out of character with the surrounding freestanding houses. The facade treatment should be broken down further into single and double storey elements to help break down the scale. The two piece butterfly roof could also be split into smaller skillion roofs treatment to help break down the bulk of the building. The preferred impression should be that of a 'well-articulated big house look' to blend in better with the surrounding houses.</p> <p>2. Privacy screenings of windows to the upper units should only be used as a last resort to minimise privacy issues to immediate neighbours. Balconies to Unit 103, 106 and 207 should be re-orientated to the Eastern rear setback area to minimise noise and overlooking issues to the neighbouring house on the north.</p>
Traffic Engineer	<p>Recommendation: Approval with conditions</p> <p>The proposal is for demolition of the existing house and construction of a 12 room boarding house. There are 7 parking spaces including one manager's parking space, 3 motorbike and 3 bicycle spaces provided within the site.</p> <p>The proposed development is expected to generate 5 vehicle trip per hour during weekday peak period. This is deemed to have a negligible impact on the road network. The proposed parking provision complies with the SEPP requirements.</p> <p>The car parking design is in compliance with Australian Standards AS2890, however, given the location of the driveway in close vicinity of the roundabout, provision of a passing bay within the site will be required. Therefore, the driveway shall be 5.5m wide at the first 6m from the property boundary. This will prevent queuing or reversing on the frontage street and is required to minimise the adverse impact on the frontage street and the roundabout function.</p>

Internal Referral Body	Comments
	<p>In view of the above, no objection is raised on the proposal subject to provision of a passing bay.</p> <p><u>Assessing Officer's Comment:</u> The matter of providing a passing bay of adequate dimensions onsite would require redesign of the proposed boarding house to a greater scale than can be imposed by condition of consent. As such, this is included as a reason for refusal.</p>
Waste Officer	<p>Recommendation: Refusal</p> <p>The applicant has not complied with the Northern Beaches Council Waste Management Guidelines as follows. A redesign is required to ensure compliance.</p> <p>The bin room must be able to accommodate 12 x 240L bins required for the 13 dwellings. Plus, accommodate 1 x 240L vegetation bin for every 200m² of landscaped open space on the site. The current plan bin storage shows the bins in a double stacked layout which fails to provide a workable solution for waste removal contractors and residents. Two reasons:</p> <ol style="list-style-type: none"> 1) Contractor must preposition bins to access full bins or the correct bin (red, blue, yellow or green) for collections. 2) Residents will fail to fill the rear bins if the front bins exceed their capacity due to the inability to reach. <p>Redesign to ensure single stack bins.</p> <p>The Waste Storage Area must be:</p> <ol style="list-style-type: none"> a) Clear of any obstructions and security devices. b) Incorporated entirely within the site boundary and, if it is an external structure, be designed to reduce visual impact and clutter. Chapter 4 – Three or more occupancy developments NORTHERN BEACHES COUNCIL Waste Management Guidelines Page 4 of 6 Effective Date: 25 October 2016 c) No closer than 3m from any dwelling openings. d) Clear of any entry points to stormwater systems and prevent waste water from entering any stormwater system. <p>The pathway and access between the Waste Storage Area and Collection Point will be:</p> <ol style="list-style-type: none"> 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. <p>A bulky goods waste storage area must be provided that will be:</p> <ol style="list-style-type: none"> a) A minimum of 4m³ per 10 dwellings fit for the purpose of storing bulky goods. b) A room or caged area separate from the Waste Storage Area. c) to be located within 6500mm of the front property boundary d) A maximum ramp gradient of 1 in 8. e) Hazard free and not via a pathway with vehicular traffic. f) A minimum width of 1200mm.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 3: Boarding houses

Clause 25: Definition

For the purposes of this Division, the Standard Instrument defines a 'boarding house' as a building that:

- "(a) is wholly or partly let in lodgings, and*
 - (b) provides lodgers with a principal place of residence for 3 months or more, and*
 - (c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
 - (d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*
- but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".*

In this Division 'communal living room' means "a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room".

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.	Consistent The site is located within the R2 Low Density Residential and, as such, the proposed use is permissible with consent under WLEP 2011.

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

Requirement	Comment
(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area. Note: Accessible area means land that is within: (c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.	Consistent The site is located within the R2 Low Density Residential zone and is situated not more than 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.
(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.	Not applicable. The site is located within the Sydney region.

Clause 28: Development may be carried out with consent

Requirement	Comment
Development to which this Division applies may be carried out with consent.	The development constitutes the construction of a boarding house, as defined by the Standard Instrument. Therefore, the development may be considered under this Division of the SEPP as

	development which may be carried out with consent.
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Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed	Compliant/Comment
(1) Density and scale A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP.	Not applicable
	(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	Floor space ratios are not applied in WLEP 2011 or WDCP.	Not applicable
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus: (i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.	The subject site is zoned R2 Low Density Residential, which does not allow for residential flat building development. The land does not contain a heritage item. The site is not subject to a floor space ratio control.	Not applicable
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) building height	if the building height of	The proposed	Compliant

	all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	development is 8.4m in height, being below the maximum building height of 8.5m.	
(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	The landscape treatment of the front setback areas is compatible with the streetscape in which the building is located, including adequate dimensions and planting to soften the visual bulk of the proposed development. Total landscaped area equates to 40.2% of the site.	Compliant
(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	The proposed development includes two communal living rooms, being one on each level. The communal living areas are each orientated to achieve a minimum of 3 hours of direct sunlight between 9am and 3pm in midwinter.	Compliant
(d) private open space	if at least the following private open space areas are provided (other than the front setback area): (i) one area of at least 20m ² with a minimum dimension of 3.0m is provided for the use of the lodgers, (ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m ² with a minimum dimension of 2.5m is provided adjacent to that	(i) The proposal provides an open space of 24sqm area with a minimum dimension of 3m. (ii) The proposal provides accommodation for a boarding house manager, including a private open space area of 13.6sqm (2m x 6.8m).	(i) Compliant (ii) Not compliant. However, this non-compliance is minor in consideration of the generous dimensions of private open space proposed.

	accommodation,		
(e) parking	<p>if:</p> <p>(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p>	<p>(i) Not applicable.</p> <p>(ii) Not applicable.</p> <p>(iia) The proposal includes 12 boarding rooms (plus one manager's room), and provides 7 car parking spaces.</p> <p>(iii) The proposal includes one manager's room and does not allocate a parking space for that manager.</p>	Compliant
(f) accommodation size	<p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger,</p>	<p>(i) Not applicable.</p> <p>(ii) The boarding rooms proposed are a minimum of 22sqm, up to 25sqm, with the manager's room being 36sqm.</p>	Compliant

	or		
	(ii) 16 square metres in any other case.		
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	Bathroom and kitchen facilities are provided for each room.	Compliant
	(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	Noted	Noted

Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	The proposal includes 12 boarding rooms, and provides two communal living rooms.	Compliant
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m ² ,	The boarding rooms proposed are a minimum of 22sqm, up to 25sqm.	Compliant
(c) no boarding room will be occupied by more than 2 adult lodgers,	Each boarding room will allow for a maximum of two occupants.	Compliant
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Private bathroom and kitchen facilities are provided in each boarding room.	Compliant
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The proposal has the potential to accommodate 24 lodgers and provides for one boarding house manager.	Compliant
(g) if the boarding house is on land zoned primarily for	Not applicable. The subject site is zoned R2 Low Density	Compliant

commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	Residential.	
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	The proposal includes 12 rooms, and provides racks for three bicycle and three motorcycles.	Compliant
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	Subclause (1) applies, as the proposal is for construction of a new boarding house.	Noted

Clause 30AA: Boarding houses in Zone R2 Low Density Residential

A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Comment:

The subject site is zoned R2 Low Density Residential, and proposes 12 boarding rooms (plus one manager's room).

Clause 30A: Character of the local area

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 and *Project Venture Developments v Pittwater Council (2005)* NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003)* NSWLEC 268 Senior Commissioner Roseth developed the following Planning Principles:

The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.

Comment:

The predominant built form along the nearby portions of Starkey Street and Cannons Parade is one- and two-storey detached housing. These developments are coupled with significant front setbacks, thereby mitigating the visual impact of the built form. The proposed development includes a significant proportion of the development presenting as three storeys to the Cannons Parade. While the proposed development includes a numerically compliant front setback to Cannons Parade, the setback proposed is significantly less than the established prevailing building line. This coupled with the greater building height results in an undesirable visual domination of the subject site in its streetscape context. In this regard, it is considered that the scale of the development is incompatible with the streetscape and inconsistent with the first principle.

The second principle is that where the size of a development is much greater than the other buildings in the

street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.

Comment:

While compliant with the relevant numerical built form controls, the proposed development is of greater size than existing development in the street, in relation to height, bulk and scale. The proposed development includes double-height framing around each facade, giving the visual impression of being a residential flat building, rather than low density detached housing. Additionally, the proposed development is generally box-like in its form, with inadequate articulation and modulation to the facades. The proposed design does not adequately break down the bulk and scale of the development to a level of acceptable compatibility with the context of the area. In this regard, the development is considered to be incompatible with the scale of surrounding development and inconsistent with the second principle.

The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation.

Comment:

The subject site slopes diagonally from north-west to south-east. This topography is altered for the purposed of the basement parking area. The proposed development is consistently at a maximum height of RL126.40 across the entire built form, and does not step down with the topography. As such, the proposed development does not adequately respond to the topography of the site. In this regard, it is considered that effective methods have not been employed in the design of the development to reduce its visual dominance, and that the proposal is inconsistent with the third principle.

The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity.

Comment:

The proposed development includes materials and forms of a more modern style than those predominantly used in the streetscape. A more modern style can be acceptable, where bulk and scale are adequately managed to reduce visual impact. As above, the proposed development includes double-height framing around each facade, giving the visual impression of being a residential flat building, rather than low density detached housing. The proposed materials and form do not adequately break down the bulk and scale of the development to a level of acceptable compatibility with the context of the area. In this regard, the development is considered to be inconsistent with the fourth principle.

The above principles were further developed in *Project Venture Developments v Pittwater Council (2005) NSWLEC 191* to include the following:

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

Comment:

The physical impacts of the development on surrounding properties are assessed as consisting of constraints on the development potential of surrounding sites, privacy, overshadowing and noise.

Constraints on the development potential of surrounding sites

The proposed development is generally sited to ensure reasonable development of adjoining properties, except in relation to visual privacy. The impacts of the proposed development on adjoining properties are discussed throughout this report.

Privacy

The proposed development includes boarding room balconies within close proximity of the northern side boundary. This is addressed in detail in the section of this report relating to Clause D8 Privacy of the WDCP 2011.

Overshadowing

The proposed development does not unreasonably overshadow the subject site or adjacent sites, as demonstrated by the submitted shadow diagrams.

Noise

The proposed development is not anticipated to result in unreasonable noise impacts, as supported by the submitted Plan of Management and Acoustic Report.

Conclusion to character assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is incompatible with the character of the local area and surrounding wider locality. This matter warrants the refusal of the development application.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1031119M dated 24 July 2019). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	45	45

A condition can be imposed 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.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.4m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	No

Detailed Assessment

6.2 Earthworks

Under Clause 6.2 Earthworks of the WLEP 2011, the consent authority must consider the following matters before granting development consent for earthworks:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,

Comment:

As detailed in the sections of this report relating to Internal Referrals - Development Engineering and Clause C4 Stormwater of the WDCP 2011, the proposed development is not supported by adequate stormwater management measures. As such, Council (as the consent authority) cannot be satisfied that the proposed development will not cause disruption to, or detrimental effect on, existing drainage patterns in the locality. This is included as a reason for refusal.

The proposed development is supported by a Geotechnical Investigation Report, which details that geotechnical risks associated with the development are acceptable, subject to compliance with recommendations. As such, Council (as the consent authority) can be satisfied that the proposed development, if approved, is not likely to cause disruption to, or detrimental effect on soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land,

Comment:

The proposed development, if approved, will not unreasonably effect future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both,

Comment:

The submitted Waste Management Plan details that the materials excavated to enable the proposed

development are of suitable quality for reuse on site, or recycling offsite.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,
Comment:

If approved, the required earthworks would be managed by conditions of consent so as not to unreasonably impact upon the existing and likely amenity of adjoining properties.

(e) the source of any fill material and the destination of any excavated material,
Comment:

The submitted Waste Management Plan details that excavated materials will be reused on site or recycled offsite to Bingo Industries and Bingo Recycling Centre.

(f) the likelihood of disturbing relics,
Comment:

The subject site is not classified as having Aboriginal heritage potential. As such, Council (as the consent authority) is satisfied that the likelihood of disturbing relics onsite would be low, if the development were to be approved and carried out.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.
Comment:

The proposed development is not in close proximity to any watercourse, drinking water catchment, or environmentally sensitive area. As such, Council (as the consent authority) is satisfied that the proposed development has low potential for adverse impacts on these features.

6.4 Development on sloping land

Under Clause 6.4 of the WLEP 2011, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

Comment:

The proposed development is supported by a Geotechnical Investigation Report, which details that geotechnical risks associated with the development are acceptable, subject to compliance with recommendations.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment:

As detailed in the sections of this report relating to Internal Referrals - Development Engineering and Clause C4 Stormwater of the WDCP 2011, the proposed development is not supported by adequate stormwater management measures. As such, Council (as the consent authority) cannot be satisfied that the proposed development will not cause significant detrimental impacts due to stormwater discharge or existing subsurface flow conditions. This is included as a reason for refusal.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies

B1 Wall height	Max. 7.2m	Max. 7.2m	N/A	Yes
B3 Side Boundary Envelope	4m	Within envelope	N/A	Yes
	4m	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	N: 0.9m	2m	N/A	Yes
	E: 0.9m	3.8m	N/A	Yes
B7 Front Boundary Setbacks	6.5m (Primary)	6.5m	N/A	Yes
	3.5m (Secondary)	3.5m	N/A	Yes
B9 Rear Boundary Setbacks	6m	Corner lot - no rear boundary	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	40.2% (366.1sqm)	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	Yes	Yes
C4 Stormwater	No	No
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	No
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

C2 Traffic, Access and Safety

Council's Traffic Engineer has reviewed the application, and has established that a 5.5m wide passing bay for the first 6 metres from the property boundary is required, given the close proximity to the roundabout at the intersection of Starkey Street and Cannons Parade. Council's Traffic Engineer recommends that this matter be dealt with via condition of consent. However, this would require redesign of the boarding house to a greater scale than can be imposed by a condition of consent. The application is therefore not supported in this regard. The objectives of the control are addressed as follows:

To minimise traffic hazards.

Comment:

The proposed development is not serviced by a driveway of suitable dimensions (i.e. with passing bay) to satisfactorily avoid or minimise queuing onto Cannons Parade, which may impact upon the function of the nearby roundabout at the intersection of Starkey Street and Cannons Parade, and result in traffic hazards.

To minimise vehicles queuing on public roads.

Comment:

The proposed development is not serviced by a driveway of suitable dimensions (i.e. with passing bay) to satisfactorily avoid or minimise queuing onto Cannons Parade.

To minimise the number of vehicle crossings in a street.

Comment:

The proposed development does not increase the number of vehicle crossings in Starkey Street or Cannons Parade.

To minimise traffic, pedestrian and cyclist conflict.

Comment:

The proposed development is not serviced by a driveway of suitable dimensions (i.e. with passing bay) to satisfactorily avoid or minimise queuing onto Cannons Parade or reversing at the street frontage. This may result in traffic, pedestrian and/or cyclist conflict.

To minimise interference with public transport facilities.

Comment:

The proposed development is not anticipated to interfere with public transport facilities.

To minimise the loss of "on street" kerbside parking.

Comment:

The proposed development includes one driveway to Cannons Parade, in a comparable location to the existing driveway. Although wider than the existing driveway, the driveway required for this development does not unreasonably minimise on-street parking.

C4 Stormwater

The objectives of this control are addressed as follows:

To protect and improve the ecological condition of Warringah's beaches, lagoons, waterways, wetlands and surrounding bushland.

To minimise the risk to public health and safety.

To reduce the risk to life and property from flooding.

To manage and minimise stormwater overland flow, nuisance flooding and groundwater related damage to properties.

To protect Council's stormwater drainage assets during development works and to ensure Council's drainage rights are not compromised.

To minimise the quantity of stormwater runoff from new development on Council's drainage system.

Comment:

The subject site is not classified as flood prone land. However, the proposed development does not provide adequate stormwater management measures, as detailed in the section of this report relating to Internal Referrals - Development Engineering. As such, the proposal is unable to achieve compliance with the above objectives.

Integrate Water Sensitive Urban Design measures into the landscape and built form to maximise amenity.

Comment:

The proposed development is supported by a BASIX Certificate, which details that the development is suitably water-efficient.

C9 Waste Management

The objectives of this control are addressed as follows:

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

To design and locate waste storage and collection facilities which are convenient and easily accessible; safe; hygienic; of an adequate size, and with minimal adverse impacts on residents, surrounding neighbours, and pedestrian and vehicle movements.

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

To achieve waste avoidance, source separation and recycling of household and industrial/commercial waste.

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

To minimise any adverse environmental impacts associated with the storage and collection of waste.

Comment:

The proposed development is not supported by suitable waste storage, collection and management measures, as detailed in the section of this report relating to Internal Referrals - Waste Officer. As such, the proposal is unable to achieve compliance with the above objectives.

To discourage illegal dumping.

Comment:

The proposed development includes a bin store room that, while visible from the Canons Parade street frontage, obscures bins from view at the street level, thereby not encouraging illegal dumping.

D8 Privacy

The proposed development includes balconies to boarding rooms within 2m of the northern boundary, presenting an unreasonable visual privacy impact. The objectives of the control are addressed as follows:

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

Comment:

The proposed balconies include 'palisade screen' features to the northern elevation, in an attempt to mitigate direct viewing to the property to the north. However, this screening is particularly open, thereby allowing direct viewing. A heavier screen would add further bulk to the proposed development. As such, the proposed development does not demonstrate satisfactory design and siting in respect of the visual privacy of the property to the north.

To encourage innovative design solutions to improve the urban environment.

Comment:

A more skilful design to the boarding house could be employed in order to provide suitable amenity to the boarding rooms, while mitigating undesirable impacts to the adjoining property to the north. The proposed development does not adequately demonstrate innovative design in relation to visual privacy.

To provide personal and property security for occupants and visitors.

Comment:

The proposed development is suitably designed to provide personal and property security for occupants and visitors.

D9 Building Bulk

The proposed development presents unreasonable bulk and scale on the site, in consideration of the surrounding character. The objectives of the control are addressed as follows:

To encourage good design and innovative architecture to improve the urban environment.

Comment:

Despite its compliance with numerical built form controls, the proposed development presents an unreasonable visual imposition to the streetscape, as the resultant building bulk and scale is not adequately mitigated. The proposed development does not sufficiently articulate or 'break down' the form of the building via stepping in at upper levels, or via variation to materials and finishes. This results in the development appearing as a large, box-like form. The scale of this form presents as a residential flat building, amongst smaller detached dwelling houses. The proposed development does not demonstrate the most skilful design for the site in order to improve the urban environment.

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

Comment:

The proposed development presents unreasonable bulk and scale to the street in consideration of the existing built form character of the area. The proposed development is of greater scale than other development in the street at present, with lesser front setbacks and greater height than the prevailing form. The proposed development gives the appearance of being a residential flat buildings, in amongst smaller detached single dwelling houses. As such, the visual impact of the proposed

development is not suitably minimised to provide compatibility with the streetscape.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

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

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

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

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

- Incompatibility with the character in the locality;
- Excessive building bulk and scale;
- Undesirable materials and finishes;
- Impacts to visual privacy; and
- Unacceptable vehicular access.

The proposed development is recommended for refusal in relation to the matters above. It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0812 for the Demolition works and construction of a Boarding House on land at Lot 2 DP 363929, 33 Starkey Street, FORESTVILLE, 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 Clause 30A Character of the Local Area of the State Environmental Planning Policy (Affordable Rental Housing) 2009.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Development on Sloping Land of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4 Stormwater of the Warringah Development Control Plan.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C9 Waste Management of the Warringah Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D8 Privacy of the Warringah Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D9 Building Bulk of the Warringah Development Control Plan.

4.0 REVIEW OF DETERMINATIONS

ITEM 4.1 REV2019/0061 - 8 PACIFIC PARADE, MANLY - REVIEW OF DETERMINATION OF APPLICATION DA2019/0478 FOR DEMOLITION WORKS, THE CONSTRUCTION OF TWO SEMI-DETACHED DWELLINGS AND TORRENS TITLE SUBDIVISION

REPORTING OFFICER MATTHEW EDMONDS

TRIM FILE REF 2019/689355

ATTACHMENTS 1 [↓](#) Assessment Report
 2 [↓](#) Site Plan, Elevations and Subdivision Plan
 3 [↓](#) Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. REV2019/0061 for Review of Determination of Application DA2019/0478 for demolition works, the construction of two semi-detached dwellings and Torrens title subdivision at Lot 38 Sec 1 DP 4603, 8 Pacific Parade, Manly for the reasons set out in the Assessment Report.

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2019/0061
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Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 38 DP 4603, 8 Pacific Parade MANLY NSW 2095
Proposed Development:	Review of Determination of Application DA2019/0478 for demolition works, the construction of two semi-detached dwellings and Torrens title subdivision
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Annetta Cora Verduyn
Applicant:	BBF Town Planners

Application Lodged:	14/10/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	04/11/2019 to 18/11/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.1 Minimum subdivision lot size: 10.8%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 0.00
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EXECUTIVE SUMMARY

This application is a review of determination of DA2019/0478 for the 'construction of two semi-detached dwellings and the subdivision of land into two lots', each with an area of 222.9sqm. The original application was referred to the NBLPP for determination as it involved a 10.8% variation to Clause 4.1 Minimum Subdivision Lot Size under the Manly Local Environmental Plan 2013 (MLEP 2013). The development application was refused by the NBLPP due to inconsistency with the provisions of Clause 3.1 Streetscapes and Townscapes of the Manly Development Control Plan (MDCP).

This review of determination has been submitted with amendments to the proposed dwelling design in response to the NBLPP's reason for refusal. The amended proposal has been assessed, however the design remains inconsistent with the requirements of Clause 3.1 Streetscapes and Townscapes of

MDCP, and for this reason the application is recommended for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of the following:

- Subdivision of the land into two lots, each resulting in an area of 222.9sqm
- Construction of two semi-detached dwellings each consisting of four bedrooms, living room/dining room/kitchen, internal courtyard and deck;
- Construction of a single carport for each dwelling;
- Associated landscaping works throughout the development.

The proposed development has been amended following the determination of the original application. Specifically, the changes which form part of this review of determination are:

- Ground floor plate is shifted slightly towards the rear boundary to accommodate the redesign of Bedroom 4 and the introduction of a small balcony element facing the street;
- The first floor plate is shifted towards the rear of the property to facilitate the redesign of Bedroom 2 and to provide an increased front setback of between 6.77m and 7.16m.
- Collectively these design amendments achieve a more recessive and articulated first floor streetscape presentation, with the first floor integrated with a pitched roof form and setback 900mm behind the front facade alignment of the ground floor plate below;
- The amended design visually differentiates the horizontal wall and pitched roof elements in terms of detailing and materiality and ensures that the first floor sits behind the alignment of the ground floor below; and
- The separation of the proposed carports and their redesign to provide simple skillion roof forms.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 6.1 Acid sulfate soils
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.3 Flood planning
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 38 DP 4603 , 8 Pacific Parade MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Pacific Parade.</p> <p>The site is regular in shape with a frontage of 12.19m along Pacific Parade and a depth of 36.575m. The site has a surveyed area of 445.7m².</p> <p>The site is located within the R1 General Residential zone and accommodates a dwelling house on the site and a detached carport.</p> <p>The site is relatively flat and contains vegetation to the rear of the property and trees to the front of the property. The street trees along Pacific Parade are identified as having local heritage significance, identified under the MLEP Item 191.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of detached dwellings and semi-detached dwellings.</p>

Map:



SITE HISTORY

Prelodgement Meeting PLM2018/0161

A prelodgement meeting was held in relation to the following proposal:

- "Demolition and Construction of 2 new semi-detached dwellings, carports and external works"

The notes provided from this meeting stated that the proposed development was not supported and required a redesign, including a reduction in the Floor Space Ratio calculation and increased setbacks, including the setbacks to the proposed car parking.

DA2019/0478

An application for the "Demolition works, construction of semi-detached dwellings and land subdivision" was considered by the NBLPP at the meeting of 19 June 2019. The NBLPP refused the the application on the grounds of non-compliance with the control 3.1.1.1 of the Manly DCP in regards to streetscape character.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was

determined on 19 June 2019 by the NBLPP and the Notice of Determination was issued on 25 June 2019. The review was lodged on 14 October 2019 and is to be considered by the NBLPP on 11 December 2019, which is within 6 months of the date of determination.

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

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

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly, it is concluded that the amended scheme is substantially the same as the original proposal.

Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

The proposal is considered against the matters under Section 4.15 of the Environmental Planning and Assessment Act 1979 as follows:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. No matters have arisen that require further consideration.</p> <p>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.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>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.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter is only relevant should consent be granted.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). The proposal is capable of complying with the BCA.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the proposal is for a type of residential accommodation which is permissible in the zone.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The proposal is not considered suitable for the site given the inconsistency with the predominant streetscape character of Pacific Parade. In particular, the proposed design does not reflect the built form characteristics of the surrounding buildings and materiality.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on "Notification & Submissions Received" in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>The application is not considered to be in the public interest due to the streetscape presentation being at odds with the predominant character of the locality.</p>

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mr Graham Joseph Ashby	10 Pacific Parade MANLY NSW 2095
Mrs Christine Anne Gain	6 Pacific Parade MANLY NSW 2095

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

- 10 Pacific Parade - The amended application has not changed to any large degree the design in relation to the character of all other properties in the street.
The listed minor alterations do not influence the overall impact the proposed design will have and will certainly not "assist in maintaining the character of the locality."
- 6 Pacific Parade - We feel the design does not compliment the predominant building form and distinct building character of the homes in Pacific Parade Manly.
- 10 Pacific Parade - I would also refer council to the concerns noted in my original submission.

The matters raised within the submissions are addressed as follows:

- *The amended application has not changed to any large degree the design in relation to the character of all other properties in the street.
The listed minor alterations do not influence the overall impact the proposed design will have and will certainly not "assist in maintaining the character of the locality."*
- *We feel the design does not compliment the predominant building form and distinct building character of the homes in Pacific Parade Manly.*
Comment:
This issue has been discussed in detail within section 3.1.1.1 of this assessment report regarding streetscape character. The proposal is found to be unsympathetic to the predominant streetscape character in regards to building design and materiality. In this regard, the application is recommended for refusal.
- *I would also refer council to the concerns noted in my original submission.*
Comment:
The submission from 10 Pacific Parade against the original application DA2019/0478 raised a number of issues including solar access, retention of the large Norfolk Pine tree within the rear yard, non-compliance with Floor Space Ratio, non-compliance with landscaping and open space control, proposed wall abutting the common boundary and fire safety concerns, privacy impact from the first floor windows and insufficient details regarding sewage connection.

Each of these issues were discussed in the original assessment report and the proposal was found to not have an unreasonable amenity impact with regards to privacy and solar access, fire safety or the ability to retain the existing Norfolk Pine. Through the amended design, the proposed building footprint has been reduced to comply with the Floor Space Ratio and the proposal is considered to retain an appropriate amount of open space and landscaping within the rear yard.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Recommendation: Approve with conditions</p> <p>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.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Acid Sulphate)	<p>Recommendation: Approve without conditions</p> <p>The development does not disturb, expose or drain acid sulfate soils and cause environmental damage.</p> <p>The site is located in a class 4 area. Based on the original Statement of Environmental Effects (DA2019/0478) the proposal requires some excavation works for the proposed footings however such works do not extend more than 2 metres below ground level and will not lower the water table by more than 2 metres. Based on the information provided in the amended plans and Statement of Environmental Effects this appears unchanged.</p>
Landscape Officer	<p>Recommendation: Approve with conditions</p> <p>Comments and conditions provided for the previous referral for this DA are still considered relevant and are included as below.</p> <p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation, and the completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types, and specifically: 3.3.1 Landscaping Design; 3.3.2 Preservation of Trees or</p>

Internal Referral Body	Comments
	<p>Bushland Vegetation; and 4.1.5 Open Space and Landscaping.</p> <p>A Landscape Plan is provided with the development application, and this generally satisfies the requirements of Manly DCP2013, excluding the proposal to remove the Norfolk Island Pine in the rear of the property, which is not accepted.</p> <p>No Arboricultural Impact Assessment is provided with the application, and retention and protection of existing significant trees shall be conditioned.</p> <p>Pacific Parade street trees planted within the carriageway of the road reserve are listed items of Local Significance, and shall be protected from damage during construction works, as conditioned.</p> <p>The existing Norfolk Island Pine in the rear yard is of significant size, appears in good condition, and as such requires arboricultural assessment for any intention to remove this from the site. The proposed development does not indicate a need to remove this tree for development works. The Norfolk Island Pine shall be retained and protected during the works.</p> <p>A large Gum tree exists within neighbouring property No. 6 Pacific Parade, and shall be conditioned to be protected during the works.</p>
NECC (Development Engineering)	<p>Recommendation: Approve with conditions</p> <p>Development Engineering has no objection to the application subject to the following condition of consent.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Recommendation: Approve without conditions</p> <p>The proposed DA is not affected by the 1% AEP flood extent and generally meets the flood requirements in the LEP and DCP.</p>
Strategic and Place Planning (Heritage Officer)	<p>Recommendation: Approve with conditions</p> <p>HERITAGE COMMENTS</p> <p>Discussion of reason for referral</p> <p>The proposal has been referred to Heritage as it is within proximity of heritage listed items: Item I191 - Street trees - Pacific Parade Item I2 - All stone kerbs</p> <p>Details of heritage items affected</p> <p>The site is in a highly distinctive area with predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation such as the heritage listed street trees that contributes the character of the local area.</p>

Internal Referral Body	Comments																					
	<p>Details of the item as contained within the Manly heritage inventory is as follows:</p> <p>Item I191 - Street trees - Pacific Parade <u>Statement of significance:</u> Listed for its aesthetic importance to the streetscape.</p> <p><u>Physical description:</u> Avenue planting of mixed tree species planted in carriageway. Species include Port Jackson Fig, Brush Box and Camphor Laurel.</p> <p>Item I2 - All stone kerbs <u>Statement of significance:</u> Stone kerbs are heritage listed.</p> <p><u>Physical description:</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.</p> <table border="1" data-bbox="563 1055 1332 1541"> <thead> <tr> <th colspan="3" data-bbox="563 1055 1332 1081">Other relevant heritage listings</th> </tr> </thead> <tbody> <tr> <td data-bbox="563 1081 847 1205">Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td> <td data-bbox="847 1081 922 1205">No</td> <td data-bbox="922 1081 1332 1205"></td> </tr> <tr> <td data-bbox="563 1205 847 1267">Australian Heritage Register</td> <td data-bbox="847 1205 922 1267">No</td> <td data-bbox="922 1205 1332 1267"></td> </tr> <tr> <td data-bbox="563 1267 847 1330">NSW State Heritage Register</td> <td data-bbox="847 1267 922 1330">No</td> <td data-bbox="922 1267 1332 1330"></td> </tr> <tr> <td data-bbox="563 1330 847 1393">National Trust of Aust (NSW) Register</td> <td data-bbox="847 1330 922 1393">No</td> <td data-bbox="922 1330 1332 1393"></td> </tr> <tr> <td data-bbox="563 1393 847 1485">RAIA Register of 20th Century Buildings of Significance</td> <td data-bbox="847 1393 922 1485">No</td> <td data-bbox="922 1393 1332 1485"></td> </tr> <tr> <td data-bbox="563 1485 847 1541">Other</td> <td data-bbox="847 1485 922 1541">No</td> <td data-bbox="922 1485 1332 1541"></td> </tr> </tbody> </table> <p>Consideration of Application</p> <p>The proposal seeks consent for the demolition of an existing single storey federation cottage (from early 1900s and is not heritage listed but its features are still discernible) and the construction of semi-detached dwellings and the Torrens Title subdivision of the site. The application also proposes the removal of a Norfolk Island Pine at the rear.</p> <p>The site is in a highly distinctive area with predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation such as the heritage listed street trees that contributes the character of the local area. Therefore the bulk and scale, the colours and materials of the proposal should be designed to have minimal impact to the existing streetscape. The colours</p>	Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	No	
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Other	No																					

Internal Referral Body	Comments
	<p>should be dark and recessive. It is recommended that the Norfolk Pine tree at the rear should be retained and protected during the works.</p> <p>The heritage item "stone kerbs" and the heritage listed street trees are located to the south of the property. The proposed driveway crossing for the second carport, will affect the heritage listed stone kerbs. It is recommended that the sandstone kerbs removed at this section to be replaced with the existing concrete sections of the kerb along the street or delivered to Council's depot for storage and reuse elsewhere in the area.</p> <p>In conclusion, the application is acceptable on heritage grounds, subject to the imposition of conditions requiring that a photographic survey to be prepared of the original house, prior to any works commencing; colours and materials should be submitted to Council for heritage advisor's approval prior to construction certificate and it is requested that the Camphor Laurel street trees located in the road reserve outside 8 Pacific Parade be protected at all times during construction works.</p> <p>Consider against the provisions of CL5.10 of MLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p> <p>Further Comments</p> <p>COMPLETED BY: Oya Guner, Heritage Advisor DATE: 25 November 2019</p>
Strategic and Place Planning (Urban Design)	<p>Recommendation - Refusal</p> <p>Please find following Urban Design comments;</p> <p>1 3.1.1 Streetscape (Residential areas) <i>Streetscape is defined (see Dictionary in this plan) and represents the inter-relationship between buildings, landscape and open spaces in the street scene. Local amenity and identity are closely linked to streetscape character. Development should recognise predominant streetscape qualities, such as building form, scale, patterns, materials and colours and vegetation which contributes to the character of the local area.</i></p> <p>COMMENT There is a distinct and recognisable character to the streetscape</p>

Internal Referral Body	Comments
	<p>consisting of well defined low scale and predominantly single storey dwellings.</p> <p>Whilst acknowledging contemporary architecture can sit side by side with architecture of the past, the architectural response to context, character and streetscape would benefit from a more nuanced approach to site context and materiality of the general streetscape. Various materiality selections should be rigorously tested to find an appropriate balance in harmony with the streetscape.</p> <p>The scale and bulk across the site, particularly in terms of site coverage and the placement of the 2 garage structures to the front alignment should be designed so as to have minimal impact to the front address and streetscape; low profiles, slender posts.</p> <p>2 3.1.1.1 Complementary Design and Visual Improvement</p> <p><i>a) Development in the streetscape (including buildings, fences and landscaping) should be designed to:</i></p> <p><i>i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;</i></p> <p>COMMENT</p> <p>The conceptual design of the building utilises abstractions of surrounding roof forms to inform the design of the proposed development; roof separation expressed at the party wall alignment with dormer windows to the front elevation. It seems there are various elements from the surrounding context and building types influencing the overall design response.</p> <p><i>ii) ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land; NA</i></p> <p><i>iii) maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;</i></p> <p>COMMENT</p> <p>Whilst the second storey is permissible and the building is within the building height control the fact of single storey adjacent dwellings adds to the perceived bulk and scale of the development</p> <p><i>(iv) visually improve existing streetscapes through innovative design solutions; and</i></p> <p>COMMENTS</p> <p>The proposal demonstrates a contemporary approach to the design of the building. Contemporary form and abstraction of mass should not be discouraged however this combined with reference to the material context is highly encouraged through rigorous testing of the elements;</p>

Internal Referral Body	Comments
	<p>form, massing, scale and materiality should not be explored in isolation. The bulk is quite dominant and heavy leading to the consideration of material finishes and detailing that is more refined and low profile to lessen the impacts of the building in the streetscape.</p> <p><i>vii) incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.</i></p> <p>COMMENTS Further consideration in terms of achieving a contemporary design whilst remaining sympathetic to the predominant character and materiality is highly encouraged.</p> <p>4 3.1.1.3 Roofs and Dormer Windows <i>See also paragraph 4.1.7.2 Habitable Rooms in the Roof Structure. See also paragraph 3.4.3 Views regarding roof forms to minimise view loss.</i></p> <p><i>a) Roof forms should complement, but not necessarily replicate the predominant form in the locality and in particular those of adjacent buildings.</i></p> <p><i>b) Roofs should be designed to avoid or minimise view loss and reflectivity.</i></p> <p><i>c) Dormer windows and windows in the roof must be designed and placed to compliment the roof structure and reflect the character of the building. In particular, such windows are not permitted on the street frontage of the building where there is no precedent in the streetscape, especially on adjoining dwellings.</i></p> <p>COMMENTS The distinctive form of the proposed development subverts the predominance of the hip, gable and dormer type roof forms of the streetscape and context. However this combined with the materiality as an overall expression of contemporary architecture could be further refined to address the above comments.</p> <p>5 3.1.1.4 Garages, Carports and Hardstand Areas</p> <p><i>a) Garages, carports and hardstand areas must be designed and sited in a manner that does not to dominate the street frontage by:</i></p> <p><i>i) its roof form, material choice and detailing by being subservient to the associated dwelling; and</i></p> <p><i>ii) being compatible with the streetscape and the location in relation to front setback criteria.</i></p> <p>COMMENT The building façade has adequate articulation to warrant the simplest treatment of garage roof forms. Simple proportions and rational forms with slender posts as demonstrated on the drawings will assist to relieve the bulk and perceived mass of the building. The garage structures should sit wholly within the site boundary and should sit in</p>

Internal Referral Body	Comments
	harmony with the building as a whole.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area if the consent authority has considered whether the proposed development is likely to cause an adverse impact on:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and coastal environmental values and natural coastal processes,*
 - (b) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2011) and the cumulative impacts of the proposed development on any of the sensitive coastal lakes or estuaries,*
 - (c) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and foreshores,*
 - (d) *existing public open space and safe access to and along the foreshore, beach, headlands and foreshores,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headlands and foreshores, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment: The proposed development is not considered to have an impact upon the coastal environment area or any of the items specified in (a) - (g).

- (2) *Development consent must not be granted to development on land to which this clause applies that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact relating to the coastal environment,*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to avoid that impact,*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment: The development is considered to be designed, sited and will be managed to avoid adverse impacts to the coastal environment.

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

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

Comment: The proposal is not considered to increase risks of coastal hazards.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (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	Proposed	% Variation	Complies
Minimum subdivision lot size:	250sqm	Lot 1: 222.9sqm Lot 2: 222.9sqm	10.8%	No
Height of Buildings:	8.5m	7.6m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1 (267.42sqm)	FSR: 0.58:1 (261.8sqm)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision—consent requirements	Yes
4.1 Minimum subdivision lot size	No
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	250sqm
Proposed:	222.9sqm
Percentage variation to requirement:	10.8%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v*

Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the

objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

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

Applicants written request

The applicants written request argues, in part:

- *The proposed lot sizes would be consistent with the the prevailing sizes on adjoining properties and properties within the surrounding street block. In addition, it is provided that the design of the dwellings within the subdivision pattern would provide for outcome which is compatible with the streetscape.*

It is agreed that the streetscape consists of a number of similar undersized lots that contain semi-detached dwellings. It is also agreed that semi-detached dwellings are a compatible form of development with other development in the street. As such, it is concluded that the size of the lots would be suitable and appropriate in the street and the locality.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, therefore satisfying cls 1.3 (c) of the EPA Act.

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

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

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

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

Comment:

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

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the MLEP 2013 are:

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

(a) to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping.

Comment:

The proposed subdivision retains the existing subdivision pattern and is able to facilitate a semi-detached dwelling upon each allotment.

(b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns.

Comment:

There are a number of undersized allotments along Pacific Parade which contain semi-detached dwellings and in this regard, the proposed subdivision is not out of character with the prevailing subdivision pattern.

(c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential.

Comment:

The land does not have any particular environmental features that are required to be retained.

(d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.

Comment:

The locality is highly serviced by public transport and in close proximity to surrounding infrastructure of the Manly town centre.

The proposal is therefore considered to be consistent with the objectives of the development standard.

Zone objectives

The underlying Objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*

Comment:

The proposal provides one additional residential dwelling.

- *To provide for a variety of housing types and densities.*

Comment:

The proposal consists of two semi-detached dwellings which provides additional housing choice for future residents.

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

Comment:

Not applicable.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

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

6.1 Acid sulfate soils

The land is identified as being with Acid Sulfate Soils Class 4, whereby development consent is required for works more than 2 metres below the natural ground level, or works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.

The proposed development is situated on a relatively level site within a very minor amount of excavation proposed to facilitate the development, which is less than 2 metres. Therefore, the applicant is not required to provide an acid sulfate soils management plan for the proposal, and Council can be satisfied the proposal complies with the requirements of the clause.

6.2 Earthworks

A minor amount of earthworks are required to facilitate the development. Council has considered the relevant matters (a)-(h) with regard to earthworks associated with the proposal. Council is satisfied that the minor amount of earthworks associated with the development will not cause an adverse impact to the environment or surrounding properties.

6.3 Flood planning

The land is identified as having a 'Low' flood hazard level and is located outside of the area predicted 1% AEP flood extent and flood affected area. The application is accompanied by a Flood Certificate prepared by a suitably qualified engineer advising the proposal will not have a detrimental affect to life or property. Council's flood engineers have reviewed this document and are satisfied that the proposal is consistent with the requirements of Clause 6.3.

6.4 Stormwater management

The proposed development is accompanied by a suitable stormwater management plan which demonstrates the site and proposed development can adequately deal with stormwater and runoff without an adverse impact to the surrounding land. Council's engineers have reviewed the proposal and are satisfied with the proposed stormwater management solution. Therefore, Council is satisfied the proposal complies with the requirements of Clause 6.4.

6.12 Essential services

The proposed development would be readily able to connect to the existing water supply network, electricity network and sewage network which currently services Pacific Parade. The application has demonstrated to the satisfaction of Council the ability to manage stormwater without adverse impacts to surrounding properties. The site has direct vehicular access of Pacific Parade which is suitable for the proposed development.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 222.9sqm each lot	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings/250sqm	1 dwelling/222.9sqm	N/A	No (see comments)
4.1.2.1 Wall Height	East: 6.5m	6.2m	N/A	Yes
	West: 6.6m (based on	6.6m	N/A	Yes

	gradient 1:60)			
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Pitch: maximum 35 degrees	In excess of 35 degrees, however considered part of wall height as per 4.1.2.3(c)	N/A	No - However considered wall due to pitch.
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	Carport is consistent with prevailing carports. Facade setback 6.18m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East: 2.07m (based on wall height)	0m-1.6m	22.7%	No
	West: 2.2m (based on wall height)	0m-1.5m	31.8%	No
	Windows: 3m	0.885m	N/A	No
4.1.4.4 Rear Setbacks	8m	11.138m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	46.2% (103sqm)	N/A	No
	Open space above ground 25% of total open space	1.9% (2sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	83.5% (86sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	18sqm per dwelling	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	44%/5.72m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces or 1 space where 2 spaces would adversely impact on streetscape	1 spaces per dwelling provided (2 spaces likely to impact streetscape)	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	No	No
3.3.1 Landscaping Design	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	No	No
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.1.2 Residential Land Subdivision	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
4.4.8 Subdivision	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The proposal is considered against the controls contained within clause 3.1.1.1 Complementary Design and Visual Improvement. In addition to the below assessment, Council's Urban Designer has undertaken a review of the application against the controls which is detailed earlier within this report.

a) *Development in the streetscape (including buildings, fences and landscaping) should be designed to:*

i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;

Comment:

There is a distinct building character along Pacific Parade which is characterised by dwellings and semi-detached dwellings of an understated nature sitting in harmony through complimentary architectural style and common materiality. The proposed development consists of a design that has a distinctly different character that is not considered to compliment the predominant character in regards to building form and materiality. Although there is evidence of cottages along Pacific Parade comprising colourbond roofing and timber weatherboard cladding, the proposed abstracted roof form consisting of colourbond sheeting presents as the dominant feature when viewed from the south, east and west. The proposed design is therefore considered to be at odds with the predominant building character of the locality and rather than complimentary, as required by the control.

ii) ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;

Comment:

The proposed development is not considered to sit in harmony with the other dwellings along Pacific Parade, which is considered to have a distinct character consisting of modest cottages within a landscaped setting.

iii) maintain building heights at a compatible scale with adjacent development particularly at the street frontage and building alignment, whilst also having regard to the LEP height standard and the controls of this plan concerning wall and roof height and the number of storeys;

Comment:

The proposed development complies with the maximum building height of 8.5m. The proposal has been amended at the street frontage to provide a recessed upper floor which has assisted in reducing the overall bulk and scale of the building.

iv) avoid elevated structures constructed on extended columns that dominate adjoining sites such as elevated open space terraces, pools, driveways and the like. See also paragraph 4.1.8 Development on Sloping Sites and paragraph 4.1.9 Swimming Pools, Spas and Water Features;

Comment:

The proposed development does not consist of elevated structures on columns.

v) address and compliment the built form and style any heritage property in the vicinity to preserve the integrity of the item and its setting. See also paragraph 3.2 Heritage Considerations.

Comment:

The proposed development is not located within a heritage conservation area or adjacent to a heritage building. The street trees along Pacific Parade and stone gutters are identified as local heritage items, which have been considered with regard to the new driveway location.

vi) visually improve existing streetscapes through innovative design solutions; and

Comment:

It is acknowledged that there is a place for a contemporary architectural response to a site and context. However, the proposed development presents as bold and dominant in the context of the streetscape due to the material choice and uncharacteristic contemporary roof form/facade. The proposed

development is considered to stand out in the streetscape, rather than represent a complimentary built form through a modern building design. A more modest and sensitive approach to the building design and materiality would need to be explored to achieve the desired outcome whilst sitting in harmony with the context of the site.

vii) incorporate building materials and finishes complementing those dominant in the locality. The use of plantation and/or recycled timbers in construction and finishes is encouraged. See also paragraph 3.5.7 Building Construction and Design.

Comment:

The proposed roof form presents as a dominant feature when viewed from the front and side elevations making up the majority of the first floor element of the building. Due to the steep pitch of the roof, this element also gives the appearance of a first floor wall/facade. As a result, the dominant material element of the building is colourbond roof sheeting. Whilst colourbond sheeting is used for the roof of dwellings within the street, the proposed design incorporates the use of colourbond sheeting as the dominant element for the first floor and is not considered to compliment the predominant material choice for the locality.

In summary, the proposed development is not supported for the reasons outlined above in regards to complimenting the distinct building character of Pacific Parade.

4.1.1.1 Residential Density and Dwelling Size

The proposal would result in 2 allotments which would be non-compliant with the numerical control of 250sqm site area. In this regard, the proposal provides 222.9sqm for each lot.

Merit Consideration

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

Objective 1) To promote a variety of dwelling types, allotment sizes and residential environments in Manly.

Comment:

The proposal would result in two lots with two semi-detached dwellings which is an appropriate type of development for the residential environment. Notwithstanding non-compliance with lot sizing, the lot size is not out of character for the area.

Objective 2) To limit the impact of residential development on existing vegetation, waterways, riparian land and the topography.

Comment:

The proposal provides a compliant landscaped area in accordance with the Manly DCP as well as adequate front and rear setbacks to limit impact on existing vegetation, waterways, riparian land and the topography. Subject to conditions, Council's Stormwater Engineer and Landscape Officer have provided that the proposal is acceptable.

Objective 3) To promote housing diversity and a variety of dwelling sizes to provide an acceptable level of internal amenity for new dwellings.

Comment:

The proposal complies with the control for minimum internal areas under Clause 4.1.1.1(d). This ensures there would be an acceptable level of amenity.

Objective 4) To maintain the character of the locality and streetscape.

Comment:

The proposed subdivision pattern and setback to development is complementary to the streetscape. This includes a similar pattern of lot sizes, dwelling types and subdivision pattern either side of the property as well as across the road to the south-west.

Objective 5) To maximise the use of existing infrastructure.

Comment:

The proposal will maintain the use of existing infrastructure where appropriate, subject to conditions.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objectives of this particular control and therefore, a variation to the residential density control is appropriate in this scenario.

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

Description of Non-compliance

The proposal does not comply with the side setback control (up to 2.07m at the east and 2.2m at the west). In this regard, the proposal involves side setbacks of 0m-1.6m to the east and 0m-1.5m at the west.

The proposal does not comply with the requirement for windows facing side boundaries to be setback 3.0m. In this regard, the proposal provides ground floor windows that are 0.89m from the boundary.

The DCP allows for a variation to the side setback in residential density areas D3 to D9, under clause 4.1.4.3. Walls located within 0.9m of any side boundaries may be considered but must:

- i) contain no windows;*
- ii) be constructed to one side boundary only;*
- iii) limit height to 3m;*
- iv) limit length to 35 percent of the adjoining site boundary;*
- v) submit a standard of finish and materials for external surfaces which complement the external architectural finishes of adjacent properties and/or the townscape character;*
- vi) obtain a right-of-way to provide access for maintenance; and*
- vii) satisfy the objectives for setback in this plan and the applicant can demonstrate no disadvantage to the adjacent allotment through increased overshadowing, or loss of view and no impediment to property maintenance.*

The proposed section of wall constructed to the side boundary adheres to the above requirements, with the exception that the applicant has not obtained a right-of-way to provide access for maintenance.

The proposal is considered against the outcomes of the control.

Merit Consideration

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

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

Comment:

In close vicinity, this section of the streetscape is partly characterised by semi-detached dwellings on narrow allotments with varied side setbacks. The proposed side setbacks include modulation at the top level of the dwelling, being stepped back from lower levels, to provide an outcome which achieves the desired spatial proportions of the street. In addition to this, the area is characterised by landscaping to the front and rear of sites rather than at side boundaries. The proposal matches this pattern and provides landscaped area in the front and rear setback.

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

Comment:

The proposed development does not present an adverse impact with regard to privacy and overlooking, with those windows on the ground floor not providing direct overlooking of adjoining properties. The first floor windows are off-set as to not provide direct overlooking of living rooms or private open space. The upper floor is setback sufficiently to reflect the rhythm of the adjoining semi-detached dwelling developments along the eastern side Pacific Parade.

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

Comment:

The proposal has demonstrated adequate setbacks with regard to the front and rear boundary, which allow for a building without unreasonable amenity impacts upon adjoining properties.

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

Comment:

The proposal provides landscaping to the front and rear of the dwelling. Given the character of the area with narrow allotments, the location of landscaping and natural features in this area is appropriate.

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

Comment:

Not applicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant Objectives of this control. Accordingly, the proposed side setbacks are considered acceptable.

4.1.5 Open Space and Landscaping

Description of Non-compliance

The proposal does not comply with the control for total open space (55%). In this regard, the proposal involves a total open space of 46.2% (103m²).

Merit Consideration

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposal involves gardens and planting to the front and rear of the semi-detached dwelling. Given the narrow nature of the allotment, this provides an appropriate provision for landscape features and vegetation.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The subject site is surrounded by planting and vegetation to contribute adequately to the presentation of the site and to provide soft landscaped area that complies with the control under Manly DCP 2013.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

The application has demonstrated that no unreasonable impacts will arise with regards to overshadowing, privacy or views. The setbacks proposed are considered to be consistent with the prevailing setbacks and spatial separation evident in the street.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

Council's Stormwater Engineer has raised no issues regarding the method of stormwater drainage. This is contributed to by the compliant amount of landscaped area on the site.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

The proposal does not propose any noxious weeds and provides vegetation to surround the site to limit opportunity for weeds to access the site.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The landscaping within the front and rear setback area allows for a potential corridor to every open side of the semi-detached dwelling. This maximises opportunity for potential wildlife corridors.

Having regard to the above assessment, it is concluded that the proposed development is consistent the Objectives of this particular control, and therefore, a variation to the control is reasonable in the circumstances.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

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

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

- Inconsistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- 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 acknowledged that the applicant has undertaken amendments to address the reasons for refusal of DA2019/0478 which has satisfied concerns of the street setback to the first floor and the design of the carport. The proposed carport design consists of a more simplistic form which is consistent with the surrounding carports. The increased upper floor setback has reduced the apparent bulk and scale of the development which is a welcome amendment to the proposal.

However, the proposed building style and materiality remains largely unchanged which was considered to be inconsistent with the requirements of Clause 3.1 Streetscapes and Townscapes of MDCP and Objective 5 'To assist in maintaining the character of the locality' in the determination of the previous

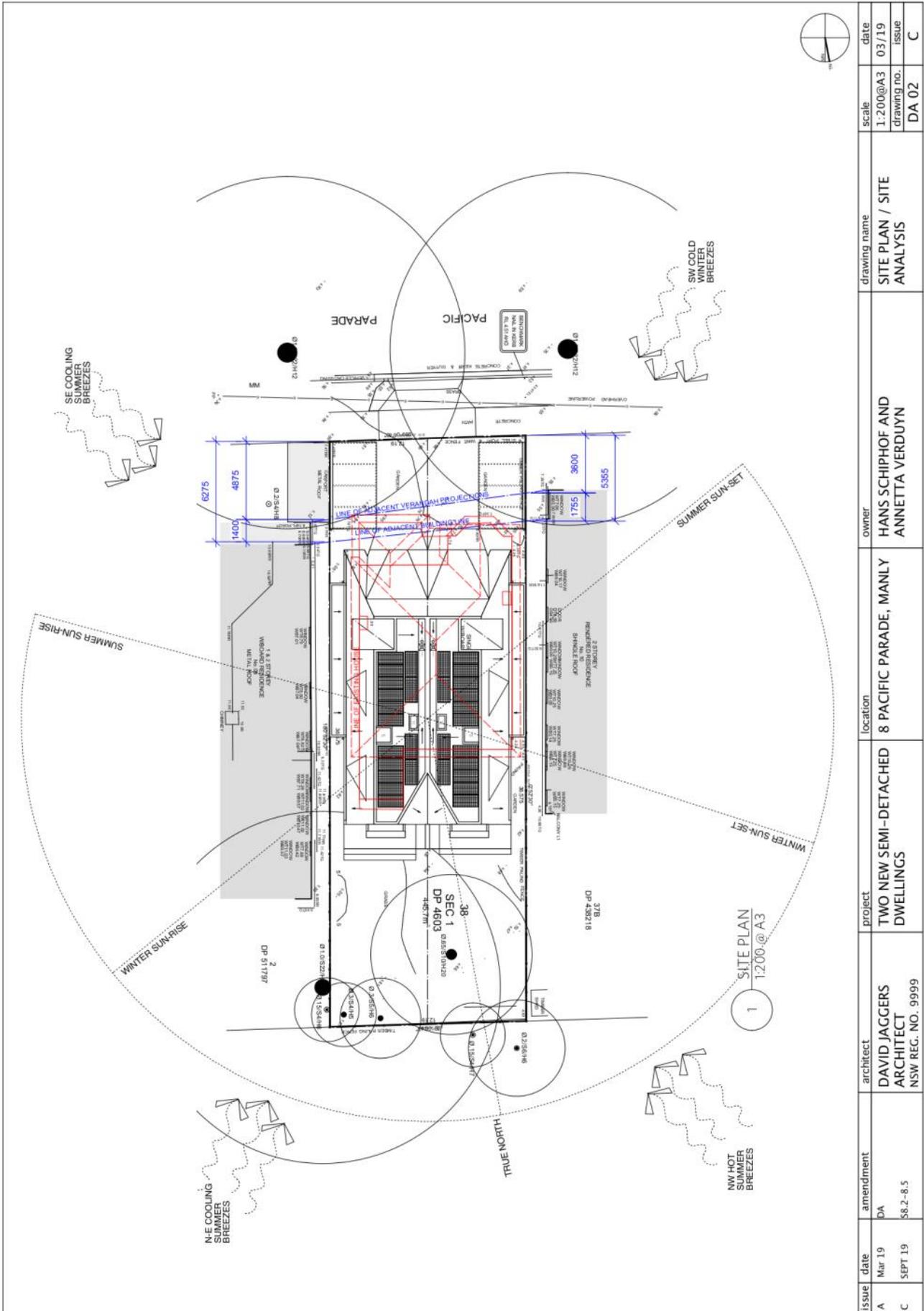
application. Although amendments have addressed some of the concerns, the previous reason for refusal due to inconsistency with the streetscape character due to building form and materiality remains valid.

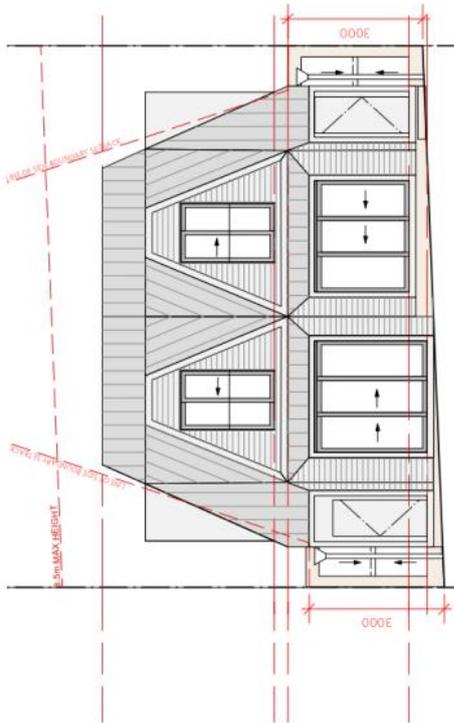
It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

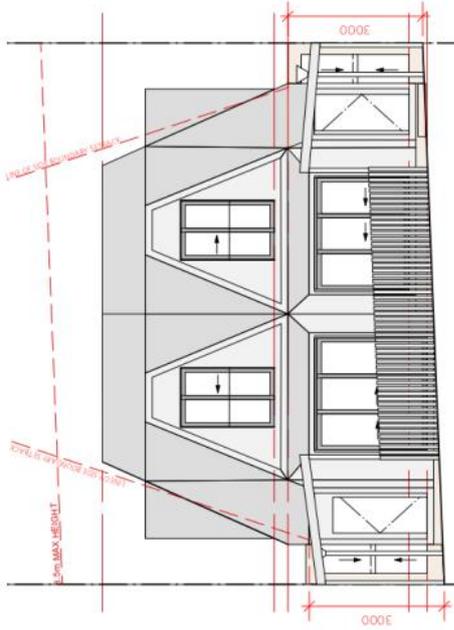
THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No REV2019/0061 for the Review of Determination of Application DA2019/0478 for demolition works, the construction of two semi-detached dwellings and Torrens title subdivision on land at Lot 38 DP 4603,8 Pacific Parade, MANLY, for the reasons outlined as follows:

1. The proposed development is inconsistent with the provisions of Clause 3.1.1.1 Streetscape (Residential areas) of the Manly Development Control Plan. The heavy use of colourbond materials do not compliment those materials used in the locality and contributes to the apparent bulk and scale of the building as viewed from the street. The proposal does not compliment the distinct building character of Pacific Parade or the predominant roof forms used in the vicinity. The proposal does not achieve Objective 5 'To assist in maintaining the character of the locality' within Clause 3.1 Streetscape and Townscapes of the Manly Development Control Plan 2013.





9 SOUTH ELEVATION
1:100 @ A3

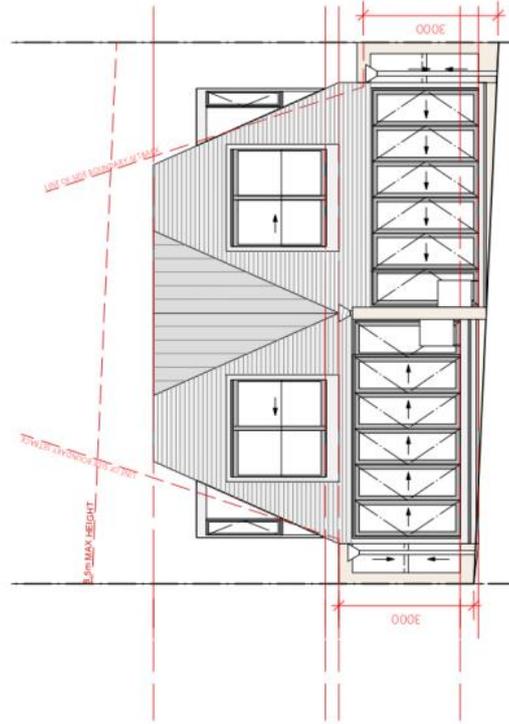


10 SOUTH (STREET) ELEVATION
1:100 @ A3



FINISHES

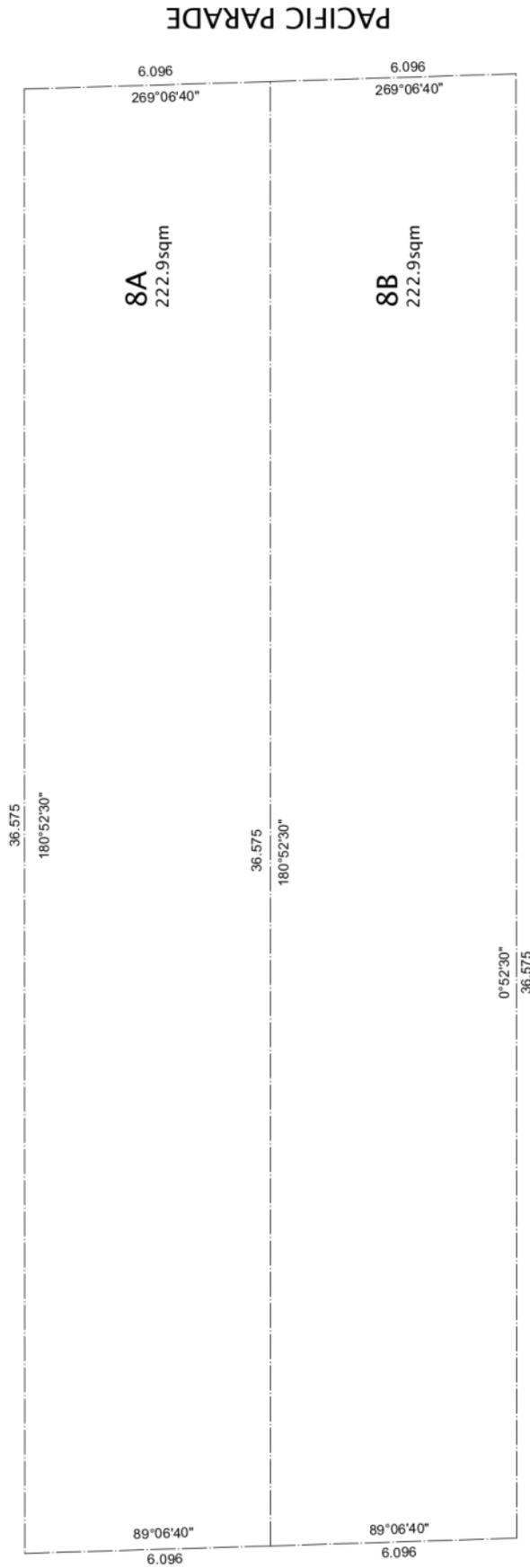
	TIMBER WINDOWS AND DOORS PAINTED
	TIMBER WEATHERBOARDS PAINTED
	MASONRY BAG RENDERED - NATURAL
	COLORBOND CUSTOM ORB ROOFING - "WINDSPRAY"



11 NORTH (REAR) ELEVATION
1:100 @ A3

Issue	date	amendment	architect	project	location	owner	drawing name	scale	date
A	Mar 19	DA	DAVID JAGGERS ARCHITECT	TWO NEW SEMI-DETACHED DWELLINGS	8 PACIFIC PARADE, MANLY	HANS SCHIPHOF AND ANNETTA VERDUYN	NORTH SOUTH ELEVATIONS	1:100@A3	03/19
C	SEPT 19	S8.2-8.5	NSW REG. NO. 9999					DA 08	Issue
									C

PLAN OF PROPOSED SUBDIVISION OF LOT 38 SECTION 1 DP4603



NOTE:
DIMENSIONS AND AREAS ARE SUBJECT TO
SURVEY AND REGISTRATION OF A PLAN AT THE
LAND AND PROPERTY INFORMATION OFFICE



Issue	date	amendment	architect	project	location	owner	drawing name	scale	date
A	Mar 19	DA	DAVID JAGGERS ARCHITECT	TWO NEW SEMI-DETACHED DWELLINGS	8 PACIFIC PARADE, MANLY	HANS SCHIPHOF AND ANNETTA VERDUYN	SUBDIVISION PLAN	1:100@A3	03/19
C	SEPT 19	S8.2-8.5	NSW REG. NO. 9999					DA 12	Issue C

4.0 STATUTORY PLANNING FRAMEWORK

4.1 General

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15(1) of the Act. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential adverse environmental impacts are discussed below.

4.2 Manly Local Environmental Plan 2013

4.2.1 Zone and Zone Objectives

The subject site is zoned R1 General Residential pursuant to the provisions of Manly Local Environmental Plan 2013 (“MLEP”). Semi-detached dwellings are permissible in the zone with the consent of council. The stated objectives of the zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal is permissible and consistent with the stated objectives in it provides for a variety of housing types and densities to meet the housing needs of the community.

Accordingly, there are no statutory zoning or zone objective impediment to the granting of approval to the proposed development.

4.2.2 Minimum Lot Size

Pursuant to clause 4.1 of the MLEP 2013 the minimum lot size development standard is 250m². The objectives of the clause are as follows:

- a) *to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*

- b) *to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*
- c) *to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*
- d) *to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

The existing lot size is 445.7m² and is proposed to be subdivided into 2 lots of 222.9m². This represents a non-compliance of 27.1m² or 10.8%.

Clause 4.6 of MLEP 2013 provides a mechanism by which a development standard can be varied. This clause applies to the clause 4.1 Minimum Lot Size Development Standard.

Claim for Variation

Zone and Zone Objectives

The subject site is zoned R1 General Residential. The proposal is permissible and consistent with the stated objectives in it provides for a variety of housing types and densities to meet the housing needs of the community.

Minimum Lot Size Standard and Objectives

Having regard for the stated objectives it is considered that strict compliance with development standard is unreasonable and unnecessary for the following reasons:

- a) *to retain the existing pattern of subdivision in residential zones and regulate the density of lots in specific locations to ensure lots have a minimum size that would be sufficient to provide a useable area for building and landscaping,*

Comment: As depicted on the accompanying streetscape study (plan DA 11(A)) the proposed allotment size and resultant subdivision pattern is entirely consistent with that established by both adjoining properties and properties generally within the surrounding street blocks.

The accompanying Architectural plans demonstrate that both proposed lots are of adequate size and geometry to accommodate dwelling houses of compliant height, FSR and total open space/ landscaped areas. The proposed Lots sizes provide for a subdivision pattern, built form and landscape outcomes consistent with this objective.

- b) to maintain the character of the locality and streetscape and, in particular, complement the prevailing subdivision patterns,*

Comment: The accompanying Architectural plans demonstrate that both proposed lots are of adequate size and geometry to accommodate dwelling houses displaying a complimentary and compatible built form and streetscape character outcome. The subdivision and built form outcomes compliment the prevailing subdivision pattern consistent with this objective.

- c) to require larger lots where existing vegetation, topography, public views and natural features of land, including the foreshore, limit its subdivision potential,*

Comment: The subject site is generally flat with a slight cross fall in a westerly direction. The topography of the site and existing vegetation do not serve as impediments to the subdivision and development of the proposed lots. The proposal is consistent with this objective.

- d) to ensure that the location of smaller lots maximises the use of existing infrastructure, public transport and pedestrian access to local facilities and services.*

Comment: The proposed lots are located within proximity of a range of transport options including bus and ferry services. The proposal is consistent with this objective.

Sufficient environmental planning grounds exist to justify the variation sought including the consistency of the proposed lot sizes with those prevailing on both adjoining properties and within the surrounding street block and the design quality of the proposed dwellings which provide for a complimentary and compatible streetscape outcome. The proposed lot size variation will not be antipathetic to the objectives of the Act as they relate to orderly an economic use and development of the land and the encouragement of development of good design.

Conclusions

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

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

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

4.2.3 Height of Buildings

Pursuant to Clause 4.3 of MLEP 2013 the height of a building on the subject land is not to exceed 8.5 metres in height.

The objectives of this control are as follows:

- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) *to control the bulk and scale of buildings,*

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2019/0059
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Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 29 DP 3806, 118 Bower Street MANLY NSW 2095
Proposed Development:	Review of Determination of Development Application No.DA2018/1930 for alterations and additions to a dwelling house and the change of use to an attached dual occupancy
Zoning:	Manly LEP2013 - Land zoned E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Jake Seymour Rowe Luke Seymour Rowe
Applicant:	Boston Blyth Fleming Pty Ltd

Application Lodged:	03/10/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	18/10/2019 to 01/11/2019
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 15.4%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 1,650,000.00
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Executive Summary

The application seeks a review of the determination of DA2018/1930, for the alterations and additions to a dwelling house, and change of use to an attached dual occupancy, which was refused by the Northern Beaches Local Planning Panel (NBLPP) on 3 July 2019.

The NBLPP was not satisfied with the the applicant's written request under clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) seeking to justify a contravention of clause 4.4 Floor Space Ratio development standard of the MLEP 2013.

Subsequently, the NBLPP refused the application due to the the non-compliant FSR and further non-

compliance with the Manly Development Control Plans. The non-compliance of the proposal with the FSR proposal contributed to the bulk and scale that the Panel considered inconsistent with E4 Environmental Living zone, the character of the area, and the streetscape. The proposal was also refused due to the impacts on views and privacy of the adjoining neighbours.

In response to the Panel refusal, the applicant has submitted an amended design, including a 0.07sqm reduction in FSR, and changes to the garage height and front setback of the garages.

A review of the original view loss assessment was undertaken and the findings that the proposal would have an adverse impact to adjoining properties, is considered to be correct and is affirmed. The submission concerns in respect to view loss (in the original assessment and in those received for this review application) are hence still valid.

The notification of the review application resulted in two (2) submissions each objecting to the development. A number of concerns each raised in the submissions are concurred with by Councils assessment of the application, particularly those relating to impacts upon the streetscape, privacy levels and views.

Therefore, the proposed amendments made under this review application are not sufficient to satisfactorily address the issues identified in the original assessment report and the Panels reasons for refusal.

Accordingly, the application is referred back to the NBLPP with a re-affirmed recommendation for refusal.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks a review of Northern Beaches Local Planning Panel (NBLPP) refusal of DA2018/1930, for the alterations and additions to the building and change of use to an attached dual occupancy.

The Panel refused the application for the following reasons contained in the Assessment Report:

- 1. The proposed development exceeds the maximum permitted floor space ratio prescribed by clause 4.4 of MLEP 2014. The request to vary this development control is not supported in these circumstances, as the proposal does not meet the objectives of the floor space ratio development standard or the E4 Environmental Living zone, and Council is not satisfied that the applicant's request to vary the development standard satisfactorily meets the provisions of clause 4.6 of MLEP 2013.*
- 2. The design and siting of the proposed driveways, garages and fencing dominates the front setback and is inconsistent with the dominate character of the streetscape, resulting in noncompliance with the requirements and objectives of clauses 3.1.1, 4.1.4, 4.1.6 and 4.1.10 of MDCP 2013.*
- 3. The proposed development is inconsistent with a number of built form controls, including the wall height and number of storeys development controls prescribed by clause 4.1.2 of MDCP 2013 and the side setback controls prescribed by 4.1.4 of MDCP 2013. The non-compliant concentration of development at the north-eastern most portion of the site attributes to unreasonable impacts upon the amenity of adjoining properties, with unresolved overlooking and unacceptable impacts upon views, inconsistent with the provisions of clauses 3.2.2 and 3.4.3 of MDCP 2013.*

The application is accompanied by the following amended plans, including the following:

- Reduction in the floor space ratio of 0.07 sqm, from 565.5sqm to 558.5sqm,



- Increase in the front setback of the garages from 2.1m to 3.8m,
- Reduction in the height of proposed garages by 0.32m and 0.2m;
- Additional landscaping forward of the proposed garages.

These amended changes are highlighted in green below.



Figure 1. Reduction in the FSR of the ground floor level shown in green



Figure 2. Reduction in the FSR of the first floor level shown in green

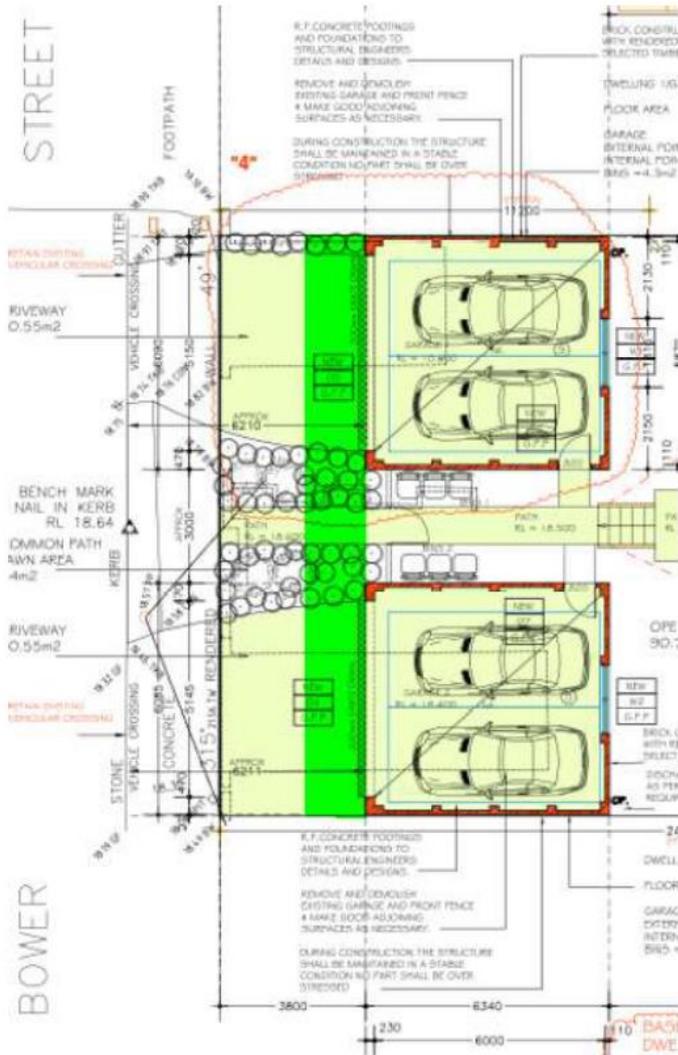


Figure 3. Increase in the front setback distance to the garages shown in green.



Figure 4. Reduction in Garage 1 and Garage 2 overall height shown in green.

Section 8.3(3) of the EP&A Act, 1979 provides that the applicant may amend the proposal, however the

consent authority must be satisfied that the amended proposal remains substantially the same as that considered in the original development application.

Council is satisfied that the amended proposal is substantially the same, and as such the application is referred to the NBLPP for determination.

Therefore, in summary, the revised proposal comprises of the following works:

- A new dual occupancy dwelling on the site
- A new top floor addition,
- Alterations and additions to the existing ground and lower ground floors, and
- Demolition of the two (2) existing single garages and the construction of two (2) double garages.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 8.3 -
Manly Local Environmental Plan 2013 - Zone E4 Environmental Living
Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
Manly Local Environmental Plan 2013 - 6.8 Landslide risk
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
Manly Local Environmental Plan 2013 - 6.12 Essential services
Manly Development Control Plan - 3.1 Streetscapes and Townscapes
Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
Manly Development Control Plan - 3.4.2 Privacy and Security
Manly Development Control Plan - 3.4.3 Maintenance of Views
Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of

Storeys & Roof Height)

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

Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 29 DP 3806 , 118 Bower Street MANLY NSW 2095
Detailed Site Description:	<p>The subject property is legally described as Lot 29, within Deposited Plan 3806, and known as 118 Bower Street, Manly. The property is located within the E4 Environmental Living zone, under the Manly Local Environmental Plan 2013 (MLEP 2013).</p> <p>The property is located on the the low side of Bower street, and is rectangular in shape with a total size area of 806sqm. The front boundary to Bower Street (south-west) measures 15.24m, the frontage to Marine Parade (north-east) is 15.3m, and the side boundaries (north-west and south-east) measure 53.57m.</p> <p>The site has a slight fall of 5.72m across the length of the property, and also contains an easement for sewer line that dissects the front area of the subject site.</p> <p>As the subject site is located fronting Marine Parade, significant views of oceans, beaches and headlands are obtained from the subject site and surrounding properties.</p> <p>The site currently contains an existing two storey dwelling house, with two detached single garages. Vehicle access is to the existing garages from Bower Street. The primary pedestrian access is obtained via Bower Street, with access stairs from the subject site to the public walkway along Marine Parade.</p> <p>Existing canopy trees are located within the courtyard area that separates the existing garages from the primary dwelling.</p> <p>The site is surrounded by an eclectic range of residential development, from single storey dwelling houses to 8+ storey residential flat buildings of varying ages.</p>

Map:



SITE HISTORY

On 6 December 2018, Development Application No. DA2018/1930 for alterations and additions to the dwelling house and a change of use to an attached dual occupancy was lodged with Council.

On 3 July 2019, the application was presented to the Northern Beaches Local Planning Panel for determination, with a recommendation of refusal. The NBLPP endorsed the recommendation for refusal for the following reasons:

1. *The proposed development exceeds the maximum permitted floor space ratio prescribed by clause 4.4 of MLEP 2014. The request to vary this development control is not supported in these circumstances, as the proposal does not meet the objectives of the floor space ratio development standard or the E4 Environmental Living zone, and Council is not satisfied that the applicant's request to vary the development standard satisfactorily meets the provisions of clause 4.6 of MLEP 2013.*

2. *The design and siting of the proposed driveways, garages and fencing dominates the front setback and is inconsistent with the dominate character of the streetscape, resulting in noncompliance with the requirements and objectives of clauses 3.1.1, 4.1.4, 4.1.6 and 4.1.10 of MDCP 2013.*

3. *The proposed development is inconsistent with a number of built form controls, including the wall height and number of storeys development controls prescribed by clause 4.1.2 of MDCP 2013 and the side setback controls prescribed by 4.1.4 of MDCP 2013. The non-compliant concentration of development at the north-eastern most portion of the site attributes to unreasonable impacts upon the amenity of adjoining properties, with unresolved overlooking and unacceptable impacts upon views, inconsistent with the provisions of clauses 3.2.2 and 3.4.3 of MDCP 2013.*

The Panel made the following decision in relation to the variation to the Floor Spare Ratio development standard:

A. *The Panel is not satisfied that:*

1) *the applicant's written request under clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of clause 4.4 Floor Space Ratio development standard has adequately*

addressed and demonstrated that:

- a) compliance with the standard is unreasonable or unnecessary in the circumstances of the case
- b) there are sufficient environmental planning grounds to justify the contravention.

2) the proposed development will be in the public interest because it is consistent with the objectives of the standards and the objectives for development within the zone in which the development is proposed to be carried out.

Subsequently, the current application was lodged with Council on the 3 October 2019, with an amended design to seek a review of the original determination.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>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 of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered unsuitable for the proposed development, in so far as the proposal represents an inappropriate and overdevelopment of the site.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>This assessment has found the proposal to be contrary to the relevant planning controls and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.</p>

Environmental Planning and Assessment Act 1979 - Section 8.3

In accordance with Section 8.3 of the Act, an applicant may request a review of a determination of a development application. The review must be lodged and determined within 6 months of the date of determination of the development application. To meet this requirement, noting that the application was determined on 3 July 2019, the subject review application must be determined before 3 January 2019.

Section 8.3(3) provides that the applicant may amend the proposal, however the consent authority must be satisfied that the amended proposal presented in the review application remains substantially the same as that considered in the original development application.

In this regard, the applicant has made amendments to the proposal, in an attempt to address the reasons of refusal as outlined in the Notice of Determination for the original development application. The changes are outlined in the 'Detailed Description of Works' section of this report.

Upon review of these amendments, the assessment reveals that the amended proposal remains

essentially and materially the same as that proposed in the original application at the time of determination.

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

Overall, the review application is considered to be consistent with the provisions of section 8.3 of the EP&A Act, subject to the matter being determined before 3 January 2019.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Symons Goodyer Pty Ltd	PO Box 673 BALGOWLAH NSW 2093

A total of two (2) submissions were received as a result of the notification. The two (2) submissions have been submitted by a planning consultant representing the two adjoining properties, being 3/114 Bower Street and No.120 Bower Street.

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

- **View Loss**
- **Bulk and Scale**
- **Privacy Impacts**

The matters raised within the submissions are addressed as follows:

- **There is concern that the proposed development will continue to result in the adverse loss of views to No.3/114 Bower Street.**

Comment:

A discussion on the view loss impacts to adjoining properties is provided in this report. In summary, the proposed first floor addition will result in unacceptable view loss impacts and consequently the proposal is not supported.

This view loss concern is concurred with and the matter continues to warrant refusal of the application.

- ***There is concern that the bulk and scale of the proposal will have a negative impact on the adjoining neighbours.***

Comment:

The amended proposal does not include any significant design changes that address the FSR, wall heights or side setbacks non-compliances to reflect a more low-impact residential development. The amended proposal does not minimise the visual impacts and the review concludes that there continues to be unreasonable bulk and scale that will have a negative impact on the character of the immediate area.

Therefore, the amended proposal has not been amended to sufficiently minimise bulk and scale, or lessen the visual impact of the proposed development as viewed from Bower Street or adjoining properties.

Therefore, the bulk and scale concern is concurred with and the matter continues to warrant the refusal of the application.

- ***There is concern in regards to the direct overlooking from the proposed rear first floor balcony into the neighbouring north-western approved residential flat building.***

Comment:

As discussed within this report, there is no amendment to the design or addition of any architectural devices to address the unreasonable impacts associated with visual privacy between the proposed development and the neighbouring existing and yet to be built properties.

The privacy concerns are concurred with and the matter continues to warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application for Review of DA2018/1930 has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department.</p> <p>If the proposal is to be approved conditions will apply.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>The Arborist's Report indicates removal of 5 trees of low retention value to accommodate the proposed works. Of these, 2 are exempt species under MDCP.</p>

Internal Referral Body	Comments
	<p>The landscape plans provided indicate replanting of 3 trees 8-10 m in height, along with other supplementary shrub and ground-cover planting.</p> <p>In view of the above, no objections are raised to the application. If the application is to be approved conditions will be recommended.</p>
NECC (Bushland and Biodiversity)	<p>The proposed development has been assessed against the following provisions:</p> <ul style="list-style-type: none"> - NSW Biodiversity Conservation Act 2016 - MLEP Section 6.5 (Terrestrial Biodiversity) - MDCP Section 5.4.2 (Threatened Species and Critical Habitat) <p>The proposed development will have a minor impact on existing soft open space, with the exception of the removal of three Broad-leaved Paperbark Trees (<i>Melaleuca quinquinervia</i>) as identified on the Proposed Site Plan (Sammy Fedele, 30 September 2018). Replanting in compensation for the removal of these trees will enable the proposal to achieve consistency with relevant zoning (Environmental Living) and tree protection provisions.</p> <p>Submission of a five-part test for the endangered population of Long-nosed Bandicoots satisfies requirements under Section 7.3 of the Biodiversity Conservation Act 2016 and Section 5.4.2 of the Manly DCP.</p> <p>The submitted flora and fauna report recommends exclusion of bandicoot access to existing habitat within the subject site on account of the current occupation of the site by a domestic cat. However, the 'Environmental Impact Assessment Guidelines for the Endangered Long-nosed Bandicoot Population at North Head' (NPWS, 2004) identifies exclusion from habitat and the effective fragmentation of habitat which results from this as a key threat to the population:</p> <p><i>"Development proposals must assess direct and indirect impacts on the bandicoot population and its habitat. Direct impacts can include harm to individual bandicoots, loss, fragmentation of habitat and restriction of access to shelter and foraging areas through barriers/fences.... Major threats to the North Head population include the loss, modification, degradation and/or fragmentation of suitable habitat and direct impacts to individuals".</i></p> <p>Permanent exclusion of bandicoots from on-site habitat due to current occupation by a cat is not consistent with these guidelines and is therefore not considered to be appropriate for this development. Conditions of consent to maintain bandicoot access within and through the site are therefore proposed, in accordance with existing standards for development in North Head bandicoot habitat.</p>

Internal Referral Body	Comments
	It is considered that, the proposal can achieve consistency with the relevant controls. If the application is to be approved conditions of consent will be recommended.
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018. It has also been assessed against requirements of the Manly LEP 2013 and DCP 2013.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>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.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). As such Clauses 13 (coastal environment area) and 14 (coastal use area) and Clause 15 of the CM SEPP apply for this DA.</p> <p><u>Comment:</u></p> <p>As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Boston Blyth Fleming Town Planner dated 1/5/19, and as such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Manly LEP 2013 and Manly DCP</p> <p>The subject site is also shown to be as "Landslide risk" on Council's Landslide Risk Map in Manly LEP 2013. As such, Clause 6.8 (Landslide Risk) of the Manly LEP 2013 and Part 4, section 4.1.8 Development on Sloping Sites of the Manly DCP 2013 will apply to proposed development on the site.</p> <p>Landslide/ Landslip Hazard Management</p> <p>If the proposal is approved a geotechnical assessment will be</p>

Internal Referral Body	Comments
	<p>conditioned prior to the issue of the construction certificate. Any recommendations of the geotechnical assessment are to be incorporated in the design of the works and implemented. This is to ensure that the proposed works will not have any detrimental impacts within the potential geotechnical landslip hazard area or on environmentally sensitive areas.</p> <p>Therefore, there are no objections to the proposal.</p>
NECC (Development Engineering)	<p>In accordance with the section 4.1.6.1 of Manly DCP 2013, the maximum width of any garage is not to exceed a width equal to 50 percent of the frontage which up to a maximum width of 6.2 m per lot. However, the proposed driveways are approximately 10 m wide when the frontage of the lot is only 15.24. Therefore, the proposal continues to not comply with the MDCP 2013. As such, Development Engineering cannot support the application.</p> <p>However, if the proposal is to be approved conditions of consent are recommended to be applied.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed under Manly LEP 6.4 Stormwater Management, the Manly DCP 3.7 Stormwater Management and the SEPP Coastal Management 2018 - Coastal Environment Zone.</p> <p>As the property is increasing impervious area over the site, the applicant is required to install a sediment control pit prior to stormwater being discharged from the land.</p> <p>It is recommended that permeable surfaces should be maximised on the site.</p> <p>Sediment and erosion controls must be installed prior to the ground being disturbed on site and maintained until all work is complete and groundcover is re-established.</p> <p>Therefore, there is no objection to the proposal, and if approved conditions of consent will be recommended.</p>
Strategic and Place Planning (Heritage Officer)	<p>Further to a review of the available documents and site visit, The site of proposed development is not a listed heritage item in its own right, however, it is located near the coastal area and in vicinity of heritage items, including stone kerbs and trees in the street.</p> <p>Given the nature of the proposal and the items, the impact on heritage values is assessed as acceptable.</p> <p>Based on the above, there are no objections to this proposal from heritage perspective.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is</p>

External Referral Body	Comments
	assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

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

Portions of the site are located within the Coastal Use Area and Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP), and the provisions of this policy are applicable in relation to the proposal. Following detailed assessment of the proposed

development, the consent authority can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP,
- the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP,
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

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?	No

Principal Development Standards

Standard	Requirement	Original Proposal (DA2018/1930)	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5M	8.5m	-	Yes
Floor Space Ratio	FSR: 0.6:1 (483.6sqm)	0.7:1 (565.5sqm)	FSR: 0.69:1 (558.5sqm)	15.4%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	No
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

Zone E4 Environmental Living

The proposed alterations and additions, despite the amendments made, remain inconsistent with the objectives of the E4 Environmental Living zone with regard to both the presentation of bulk and scale to the streetscape and public areas, and the acceptable impacts on the significant coastal views.

Therefore, the proposal continues to be inconsistent with the following objectives:

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

- *To ensure that residential development does not have an adverse effect on those values.*
The amended development will not have the appearance of a "low impact" residential dwelling house in a natural landscaped setting, integrated with the scenic landform and aesthetic values, primarily in that the proposed first floor displays a significant vertical bulk that obscures the views from the adjoining properties. The flat vertical walled presentation of the garages and associated front fence will be visually prominent and will negatively impact on the streetscape and does not reflect the predominant character of residential development in the immediate Bower Street area.

The bulk and scale of the amended development is also inconsistent with the zone objectives in that it is not considered to be a sensitive design solution for this site, especially where significant view lines are obtained across the property. Whilst it is recognised that the proposal is surrounded by a mix of buildings with varying bulk and scale, including residential flat buildings, it cannot be said that the proposed development has been designed to minimise bulk and scale, or lessen the visual impact of the proposed development as viewed from Bower Street, Marine Parade or adjoining properties.

Several submissions have been received in objection to the development, particularly with regard to the bulk and scale of the built form and its inconsistency with the character of the locality. Those concerns are concurred with.

Overall, the proposal (as amended) is inconsistent with the desired objectives and future character of the E4 Environmental Living zone.

4.6 Exceptions to development standards

In response to the Panels reasons for refusal of the Development Application, the proposal was amended to reduce the Floor Space Ratio from 0.7:1 (565.5sqm) to 0.69:1 (558.5sqm), a reduction of 0.07sqm. The amended proposal exceeds the FSR control by 74.9sqm.

An amended written request under clause 4.6 of the Manly Local Environmental Plan 2013 was received seeking to justify the contravention of clause 4.4 Floor Space Ratio development standard was received as part of the review application.

Subsequently, an additional assessment for the FRS (as amended) has been undertaken below.

Description of non-compliance:

Development standard:	Floor Space Ratio
Requirement:	0.6:1 (483.6sqm)
Proposed:	0.69:1 (558.5sqm)
Percentage variation to requirement:	15.4%

Assessment of THE request to vary a development standard:

The following assessment of the variation to Clause 4.4 - **Floor Space Ratio** development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to Development Standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

Comment:

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary, is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

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

The application (as amended) reduces the floor area within the central portion of the south-eastern elevation (reducing the pantry and ensuite), and along the south-western elevation by removing the foyer entrance area. However, these areas of reduction do not significantly or materially improve the bulk and scale of the building that obstructs significant view lines, nor the adverse amenity impacts (i.e. privacy) to the adjoining neighbours.

The applicants submission (as amended), attempts to demonstrate that compliance with the FSR development standard is unreasonable and unnecessary via *Wehbe v Pittwater Council [2007] NSWLEC 827*, being the abandonment of the development standard.

However, the applicant's submission (as amended) includes a previously submitted table of FSR calculations relating to other adjoining and nearby properties. As raised in the original assessment report, the written request provides no additional information relating to the relevant development consents, or any confirmation that the FSR calculations were endorsed after the FSR became a development standard in MLEP 2013.

Consequently, the amended written request does not satisfactorily demonstrate that the FSR development standard has been abandoned. In this regard, the applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

Therefore, the applicant has not satisfied the obligation to demonstrate that strict compliance with the required 0.6:1 FSR is considered unreasonable and unnecessary in the circumstances.

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,

- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request (as amended) argues, in part:

"The variation sought to the FSR and resultant built form outcome is compatible with that established by adjoining development and medium density development generally within the sites visual catchment. The subterranean lower ground storage area attributes to the non-compliance floor space, however this area does not contribute to the actual or perceived building bulk of the proposal. Therefore, there is no unreasonable adverse streetscape and residential amenity consequences and the proposal (as amended) consistent with the character of the area. The written request also argues that the distribution of floor space provides for a reasonable view sharing outcome and the bulk and scale of the proposed works are consistent with the existing and future character in which medium density development displaying a recessive 3rd storey building element are characteristic."

It is not agreed that there are sufficient environmental planning grounds to vary the development standard for the proposed design. Whilst it is recognised that surrounding properties may have non-compliant FSR's, and the proposal (as amended) could be considered consistent in the context of surrounding development, the FSR non-compliance and further non-compliance with Councils policies, including exceeding the two storey limit with the addition of a third floor, creates a development that does not adequately minimise the presentation of bulk and scale to the adjoining properties, on a site which an older existing building will be substantially retained.

The extent of non-compliance results in an unreasonable impact upon the views and privacy levels of adjoining properties. The location of the non-compliant floor area is primarily on the first floor, a non-compliant 3rd floor, within the north-eastern extent of the site obstructing the high value views of ocean, land water interface including valued headlands.

The orientation of the building also does not allow for the additions to be suitably separated from adjoining neighbors to provide an appropriate outcome for privacy, amenity and an appropriate visual presentation.

In this regard, the applicant's written request (as amended) has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

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

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

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

Comment:

Under the provisions of clause 4.6(4)(a) of MLEP 2013, consent must not be granted to an application that contravenes a development standard unless the proposed development (as a whole) will be in the public interest, because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is to be carried out.

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are as follows:

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The existing Bower Street and Marine Parade streetscape character contains a mix of development including several multi storey residential flat building style buildings in close vicinity to the subject site. It is acknowledged that the proposed development is not of a greater scale than other multi-dwelling developments within the visual catchment of the site. However, the development exceeds the FSR development standard and the built form controls as prescribed by MLEP, and the desired character of the area is determined by the planning controls.

The amended proposal remains non-compliant with the FSR development standard and other built form controls that lead to a bulk and scale that is excessive. The additional third storey, is not reflective of the two storey streetscape requirement. Additionally, the third storey does not minimise the presentation of bulk and scale so as to maintain a desirable streetscape character.

Overall, the bulk and scale of the three (3) storey development is not minimised in that the proposal exhibits excessive bulk, scale and mass that is not consistent with the built form of low-impact residential style housing in the surrounding area as shown below.

Consequently, the proposal (as amended) does not satisfy this control.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The proposed additions are primarily within the third storey element of the proposed building envelope. The third storey is mainly contributing to the non-compliance with the FSR development standard, as well as the required wall height. Ultimately the third level, particularly at the north-eastern portion of the building will unreasonably obstruct beach and coastline views currently enjoyed from the adjoining dwellings, particularly No.3/114 Bower Street.

Consequently, the proposal (as amended) does not satisfy this control.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

The amended proposal maintains open space and landscaping to surround the site to maintain an appropriate visual relationship.

Consequently, the proposal (as amended) does satisfy this control.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

The amended design has not removed any floor space or bulk from the north-eastern area of the site, nor increased the side setbacks to the non-compliant third storey. Therefore, the proposal (as amended) continues to significantly impact the privacy and existing view lines from the neighbouring properties. The amended design makes no attempt to minimise these identified adverse impacts to the adjoining properties.

Consequently, the proposal (as amended) does not satisfy this control.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

Not applicable.

The underlying objectives of the E4 Environmental Living Zone

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

Comment:

The proposed development will not have the appearance of a "low impact" residential development in a natural landscaped setting, integrated with the scenic landform and aesthetic values. Particularly, as the proposed first floor displays a significant bulk that obscures the views from the adjoining properties. The flat vertical walled presentation of the garages and associated front fence will be visually prominent and will negatively impact on the streetscape and does not reflect the predominant character of residential development in the immediate Bower Street area.

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

Comment:

As above, the proposal (as amended) will have an adverse impact on the aesthetic value of the area, as currently experienced enjoyed from the adjoining properties.

- *To protect tree canopies and ensure that new development does not dominate the natural*

scenic qualities of the foreshore.

Comment:

The proposal will provide additional canopy trees on the site.

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

Comment:

The proposal does not negatively impact on nearby foreshores, or contribute to a loss of natural vegetation.

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

Comment:

The proposed stormwater management is supported by Councils Development Engineers, and satisfies Council's requirement for disposal of stormwater.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation with the objectives of the zone, the concurrence of the Secretary for the variation to the Floor space ratio Development Standard cannot be assumed by the Local Planning Panel.

Conclusion

Overall, the consent authority cannot be satisfied of the matters prescribed by clause 4.6 of MLEP 2013, and the proposal should not be supported due to the proposed contravention of the FSR development standard.

6.2 Earthworks

The proposal will see very limited excavation of the site. Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal is not likely to cause disruption of, or any detrimental effect on, drainage patterns

- and soil stability in the locality of the development as listed in clause 3(a);
- The proposal is not likely to effect of the development on the likely future use or redevelopment of the land as listed in clause 3(b);
 - The proposal is not likely to cause disruption to the quality, source or destination of the fill or the soil to be excavated, or both as listed in clause 3(c) & (e);
 - The proposal is not likely to effect of the development on the existing and likely amenity of adjoining properties as listed in clause 3(d);
 - There are no relics on the site, therefore clause 3(f) is not applicable;
 - The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(g); and
 - The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(h).

As such, the proposal is considered to be consistent with the provisions and the matters prescribed by sub-clauses 1, 2 and 3 of Clause 6.2 Earthworks within the MLEP 2013.

6.4 Stormwater management

The proposal includes amendments to the stormwater management on the site. Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal is reasonably designed to maximise the use of water permeable surfaces on the land as listed in clause 3(a);
- The proposal includes on-site stormwater retention for use as listed in 3(b); and
- The proposal has been reasonably designed avoid adverse impacts on the matters listed in clause 3(c).

As such, the proposal is considered to be consistent with the matters prescribed by sub-clauses 1, 2 and 3 of Clause 6.4 Stormwater Management within Manly Local Environment Plan 2013.

The application has been referred to Council's Development Engineers who have assessed the proposed provisions for stormwater. Council's Development Engineers are satisfied with the stormwater provisions, subject to conditions of consent.

6.5 Terrestrial biodiversity

A Terrestrial Biodiversity Report and Threatened Species Assessment for the North Head Long-nosed Bandicoot, prepared by ACS Environmental Pty Ltd, dated November 2018, was submitted with the application.

Should the application be approved, the recommendations contained within the report can be included within the conditions of consent to ensure there is no adverse impacts to the surrounding terrestrial biodiversity or the North Head Long-Nosed Bandicoot.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(a)(i-iv);
- The proposal has been designed, sited and will be managed, in accordance with the recommendations of the Terrestrial Biodiversity Report, to avoid adverse impacts on the matters listed in clause 3(b); and

- The proposal has been designed, sited and will be managed, in accordance with the recommendations of the Terrestrial Biodiversity Report, to avoid adverse impacts on the matters listed in clause 4(a)(b) and (c).

As such, the proposal is considered to be consistent with the matters prescribed by sub-clauses 1, 2, 3 and 4 of Clause 6.5 Terrestrial Biodiversity, within Manly Local Environment Plan 2013.

The application has been referred to Council's Biodiversity Officers who have assessed the proposal and have concluded that the proposal satisfies requirements under Section 7.3 of the Biodiversity Conservation Act 2016 and Section 5.4.2 of the Manly DCP.

6.8 Landslide risk

The site is identified as being within the G4 area on the Landslip Hazard Map, and the objectives of this clause are applicable in relation to the proposal.

The proposal (as amended) continues to have limited excavation as a result of the proposed alterations and additions.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal design has taken into account the existing layout and access as listed in clause 3 (a);
- The proposal is not likely to effect unreasonably impact the site or the surrounding sites through the design of the proposal, and the construction methods satisfying the matters as listed in clause 3(b);
- The proposal is not likely to cause disruption to the quality, source or destination of the fill or the soil to be excavated, or both as listed in clause 3(c);
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(d);
- There proposal has reasonably addressed the existing geotechnical constraints of the site as listed in clause 3(e);
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(f); and
- The proposal has been designed, sited and will be managed, to avoid adverse impacts on the matters listed in clause 4(a)(b) & (c).

Whilst the proposal is consistent with the matters prescribed above, if the proposal is approved, a requirement for a geotechnical assessment will be conditioned and any recommendations arising from the geotechnical assessment to be incorporated in the design of the works and implemented. This is to ensure that the proposed works are consistent with the provisions of SEPP Coastal Management 2018.

As such, the proposal is considered to be consistent with the matters prescribed by sub-clauses 1, 2, 3 and 4 of Clause 6.8 Landslide Risk, within the Manly Local Environment Plan 2013.

6.9 Foreshore scenic protection area

The site is identified as being within a Foreshore Scenic Protection Area Map, and the objectives of this clause are applicable in relation to the proposal.

Following detailed assessment of the proposed development, Council is satisfied of the following:

- The proposal is unlikely to have unreasonable impacts to the visual amenity of the harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore, therefore satisfying the matters as listed in clause 3(a);
- The proposal is not likely to cause disruption to the scenic qualities of the foreshore as listed in clause 3(b);
- The proposal has been designed, and sited to avoid adverse impacts on the matters listed in clause 3(c); and
- There is no conflict between the proposal and water based activities as listed in clause 3(d).

As such, whilst the proposal is considered to be inconsistent with the objectives of the E4 Environmental Living zone, the character of the area and presentation to the Bower Street streetscape, it is considered to be consistent with the matters prescribed by sub-clauses 1, 2, and 3 of Clause 6.9 Foreshore Scenic Protection, within the Manly Local Environment Plan 2013.

6.12 Essential services

The proposal will provide essential services as part of the proposal.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal has been designed to provide the services listed in clause 1(a)(b) & (c);
- The proposal has been designed, sited and will be managed stormwater matters listed in clause 3(d); and
- The proposal has been designed, sited to provide reasonable vehicle access as listed in clause 3(e).

As such, the proposal is considered to be consistent with the matters prescribed by sub-clauses 1 and 2 of Clause 6.12 Essential Services, within the Manly Local Environment Plan 2013.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 806sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 3 dwellings (max)	2 dwellings	-	Yes
4.1.2.1 Wall Height	North-West :7m	8m	14%	No
	South-East: 7m	8m	14%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.75m	25%	No
	Pitch: maximum 35 degrees	7 degrees	-	Yes
4.1.4.1 Street Front Setbacks	6m	3.8m	36.7%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	South-East: 2.0m - 2.65m	1.9m - 2.65m	up to 24%	No
	North-West: 2.0m - 2.65m	1.8m	up to 32%	No
	Secondary street	Consistent with	-	Yes

	frontage: Prevailing setback	prevailing setback		
4.1.4.5 Foreshore Building Lines and Foreshore Area	Landward of FSBL	Landward of FSBL	-	Yes
4.1.4.6 Setback for development adjacent to LEP Zones RE1, RE2, E1 and E2	6m	6m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55% of site area	55%	-	Yes
	Open space above ground 40% of total open space	19%	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	63%	-	Yes
	3 native trees	3 trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	40sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	12.1m or 80%	95%	No
Schedule 3 Parking and Access	2 Spaces Per Dwelling	4 spaces	-	Yes

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	No
4.1.3 Floor Space Ratio (FSR)	No	No
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	No
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

The amended proposal makes no significant change to the streetscape outcome for the garages associated with the proposal to enhance the current streetscape, in that the proposal continues to exhibit two (2) double garages dominating the frontage of the proposed development on the subject site.

As stated within the original assessment report, the parking structures within this section of Bower Street are predominately singles garages, with the north-western section of Bower Street generally lacking the presence of garages presenting to the street.

The two double garages dominate the street frontage, which continues to be inconsistent with predominant streetscape in this regard.

Whilst there are design changes in the form of lower parapet heights (a reduction of 0.32m) and an increase in the front setback to 3.8m, there continues to be visual dominance of the proposed car parking structures due to the height of the parapets and oversized width of the garages.

The design seeks to mimic what currently exists, which it is not responsive to the character of the local area or to the visual catchment of the site.

Furthermore, the proposed development is also inconsistent with the provisions of clause 3.1.1.4 of MDCP 2013, which prescribes that garages must be designed and sited in a manner that does not

dominate the street frontage by its roof form, material choice and detailing by being subservient to the associated dwelling, and being compatible with the streetscape and the location in relation to the front setback criteria.

3.1.1 Streetscape (Residential areas)

As mentioned above, the amended proposal makes no change to the number or width of the two (2) proposed garages and therefore continues to be inconsistent with a number of provisions being:

Development in the streetscape (including buildings, fences and landscaping) should be designed to:

- i) complement the predominant building form, distinct building character, building material and finishes and architectural style in the locality;*
- ii) ensure the bulk and design of development does not detract from the scenic amenity of the area (see also paragraph 3.4 Amenity) when viewed from surrounding public and private land;*
- vi) visually improve existing streetscapes through innovative design solutions;*

As stated within the original assessment report, the parking structures within this section of Bower Street are predominately singles garages, with the north-western section of Bower Street generally lacking the presence of garages presenting to the street.

The two double garages dominate the street frontage, which continues to be inconsistent with predominant streetscape character.

Whilst there is design amendments to the parapet heights (a reduction of 0.32m) and an increase distance to the front setback to 3.8m, the design changes do not go far enough to minimise the visual dominance of the proposed car parking structures. Further reductions could be made to the additional parapet height and excess garage width to ensure the bulk and scale of the garage area is not overbearing.

It is acknowledged that the additional landscaping forward of the garages visually improves the streetscape and softens the built form.

However, the design of the garages and the treatment of the front setback continues to be inconsistent with a number of provisions of clause and is not supported.

3.4.2 Privacy and Security

Concern was raised in the assessment of the original scheme in relation to the potential overlooking of adjoining properties. Overlooking was associated with the north-western balcony areas with regard to potential overlooking into No. 120 Bower Street existing and approved developments private open space. See Figure 5 and 7 below.

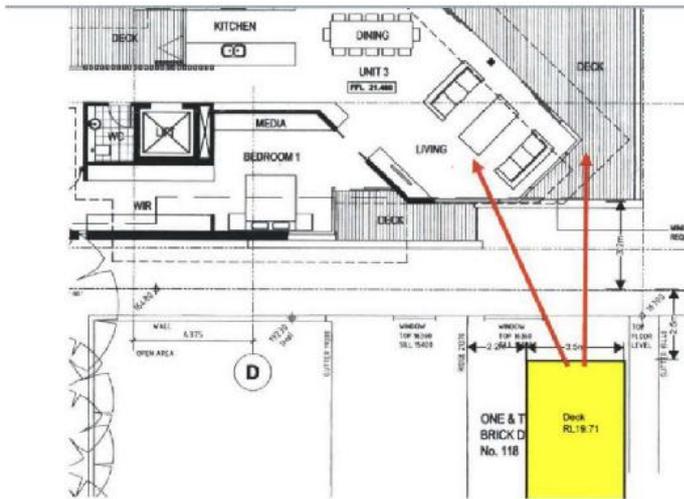


Figure 5. View lines from the proposed First Floor plans to the approved north-western development on behalf of No.120 Bower Street dated 31st May 2019.

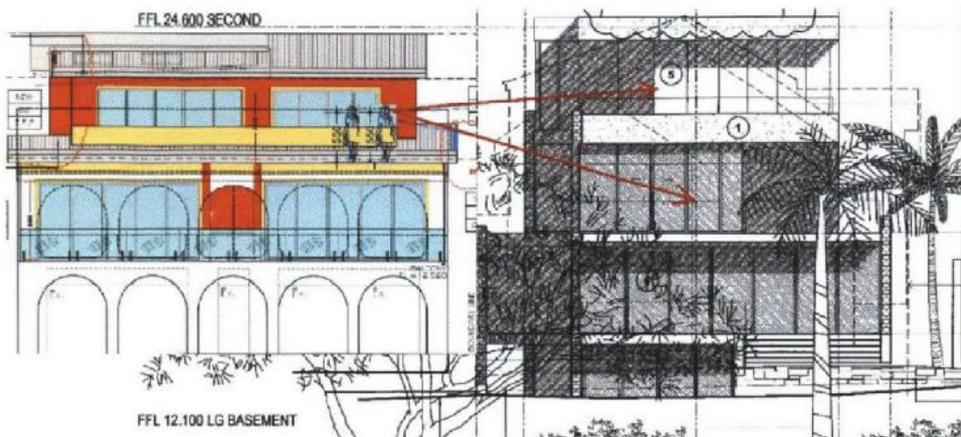


Figure 7. Elevated view lines to the approved north-western development on behalf of No.120 Bower Street dated 31st May 2019.

The amended development has made no attempt to further resolve overlooking of the proposed upper floor balcony to the north-west existing site, or approved development.

It is acknowledged that the general orientation of properties along the waterfront of Marine Parade are towards the north-east to capture the expansive ocean views. Due to existence of these views, there is an absence of privacy screening devices in these areas so as to maintain view lines across the side boundaries, as shown in Photo 1 and 2 below.



Photo 1. Current view lines to the south-east showing an absence of privacy screens.



Photo 2. Current view lines to the north-western properties showing an absence of privacy screens.

However, the direct overlooking into the neighbouring private open space areas is not effectively mitigated by the additional of a privacy screen along the north-western edge, and no additional privacy mitigation measures have been incorporated into the amended design.

As there are no proposed design changes to minimise the potential privacy impacts, there are no grounds to change the assessment and determination in relation to privacy impacts.

3.4.3 Maintenance of Views

In the original assessment of the view loss undertaken for application DA2018/1930, the potential view loss for Unit 3/114 Bower Street was conducted.

The impact upon the entirety of the views from that property was considered to be moderate, with the

determination that the view loss was being exacerbated by the non-compliance with several built form controls. As such, the impact of the proposal on view loss was considered to be unreasonable.

During the notification of the review application, a submission was received from the owner of Unit 3/114 Bower Street raising concern in relation to the view loss from the amended proposal.

The existing height poles that were erected on the site continue to demonstrate the proposed height and the likely impact of the development on the existing view lines.

As part of this review, a full consideration of the potential view loss associated with the application, consistent with the objectives of Section 3.4.3 Maintenance of Views of the MDCP and the the four (4) planning principles outlined within the Land and.4.3 Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, is provided below.

Merit consideration:

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

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

Comment:

The proposed development will result in an unreasonable loss of highly valued and significant views from the adjoining property being Unit No.3/114 Bower Street. Therefore, the impacts upon views which will be exacerbated by the non-compliance with several built form controls, is considered to be unreasonable.

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

Comment:

The proposal results in a disruption of views from neighbouring properties. The level of view loss is unreasonable and has been assessed below with regards to the planning principle established by the NSW Land and Environment Court.

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

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

Comment:

From its elevated position, the property at 3/114 Bower Street enjoys expansive whole views from the north across to the east. These views are highly valued and include land/ocean interface, with views from Queenscliff headland to Long Reef Headland to the north, and Fairy Bower to Shelly Beach to the east. These views are shown in the photos below.



Photo 3. Existing views to the east of Shelly Beach from the rear balcony of Unit 3/114 Bower Street.



Photo 4. Existing views to the north-east of Shelly Beach, ocean and horizon from the rear balcony of Unit 3/114 Bower Street.



Photo 5. Existing views to the north of Queenscliff, Curl Curl, Dee Why and Long Reef Headland from the rear balcony of Unit 3/114 Bower Street.

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

Comment:

The headlands views from Queenscliff to Long Reef Headlands are obtained over a common side boundary and over the roof of the existing dwelling at the subject site.

The views towards the ocean, horizon and sections of Shelly Beach are obtained over the rear boundary and the roof of the existing dwelling at 116 Bower Street.

The views towards the east of Shelly Beach are obtained over a side boundary and the existing dwelling of 112 Bower Street.

All available views are obtained from the kitchen, main living room, master bedroom and rear balcony in both a sitting and standing position.

It is important to note that the view line and the view impact as a result of the development changes as you move across the width of the property.

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

minor, moderate, severe or devastating.

Comment:

The existing surveys height poles demonstrate the full impact on the significant views to the north. The proposal will impact and completely obstruct the views to the Queenscliff, Curl Curl, Dee Why and Long Reef headland as seen from both a sitting and standing position within the living room, kitchen, master bedroom and the rear balcony.



Photo 6. Views impacted from the balcony from the rear balcony of Unit 3/114 Bower Street.



Photo 7. Views impacted from the lounge room from of Unit 3/114 Bower Street.

There is no change to the views to the north-east or to the north.

Due to the nature of the views affected the overall impact upon the existing views is still considered to be moderate.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

As noted in the original assessment, the decision to locate the first floor floor space and additions within the north-eastern area of the subject site has been made for the maximum benefit of the occupants of the proposed development and consequently at the detriment to Unit 3/114 Bower Street.

The justifications put forward to retain the floor space in this area are not considered sufficient to warrant the level of impact. As stated in the original assessment, there is a more skillful design that could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. This original conclusion is concurred with, as part of this review.

The proposal has reduced the FSR by 0.07sqm, but the proposal continues to exceed the FSR standard by 74.9sqm. Whilst there has been a 0.07sqm reduction in the FSR, the areas in which the FRS has been reduced creates no improvement to the view loss of adjoining properties. The non-compliant FSR continues to cause significant and unacceptable view loss.

The view loss is also exacerbated by the non-compliance with several built form controls, including wall height and side setbacks. As such, a more skillful design that redistributes the first floor further back into the site, or increases the side setbacks so to not unreasonably impact the established view lines should be explored.

Therefore, it is considered that the proposal (as amended) does not represent a skillful design that minimises the loss of views from adjoining properties.

Consequently, the initial original view loss is concurred with and the amended development continues to create unreasonable view loss and is not considered to be consistent with the objectives and requirements of this development control.

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

Comment:

Overall, the amended design makes no attempt to minimise the loss of views from adjoining properties, and as such, the proposed development is considered to be unreasonable and inconsistent with the objectives and requirements of the MDCP.

Having regard to the above assessment, it is concluded that the proposed development (as amended) is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal upon review is not supported.

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

The review application does not involve any change to the non-compliant third storey element or the wall heights. As discussed in the original assessment, these non-compliant elements of the proposal contribute to unreasonable impacts upon views currently enjoyed from an adjoining property, and the proposal continues to be inconsistent with the objectives of these controls which aim to *"minimise disruption of views from nearby residential development to public spaces (including the harbour and foreshores)"*.

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

(1) Garages

The amended garage design involves a larger front setback of 3.8m (an increase from 2.1m). However, this continues to be non-compliant with the 6.0m front setback to minimise the visual dominance of the garages. The increased front setback of the garages is more reflective of the existing building line of the adjoining properties and therefore, provides a more visually compatible setback with the streetscape.

However, the garages continue to display non-compliant zero side setbacks which when combined with the excessive garage height and width creates unreasonable visual impact to Bower Street. Therefore, the design (as amended) does not minimise the visual impact and continues to dominate the street frontage.

(2) Additions to the building

The minimal side setbacks of the proposed third storey additions attribute to a proposal that exhibits excessive bulk, scale and mass as viewed from both the street and the neighbouring properties, and does not provide sufficient space to alleviate amenity impacts such as privacy.

Side setbacks in a higher intensity development (dual occupancy) should respond to the local character by providing greater setbacks to maintain more appropriate spatial separation.

There was also no further information provided by the applicant as to the justification for any possible view impact from the non-compliant side setbacks of the dwelling house to properties on the high side of Bower Street No.117 and 119 Bower Street, who currently obtain ocean views over the roof of the existing dwelling.

Therefore, the proposal (as amended) has not sufficiently addressed the view impact and continues to be inconsistent with the objectives of clause 4.1.4 of MDCP 2013, which aim to *"ensure and enhance local amenity by facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public places"*.

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

The proposal (as amended) continues to be inconsistent with the provisions of clause 4.1.6.1 of MDCP 2013, which prescribes that the design and location of garages must minimise their visual impact on the streetscape, and that garages should not dominate the street frontage and that vehicular access and parking for buildings with more than one dwelling are to be consolidated within one location.

Whilst it is recognised that conditions could be used to reduce both the visual impact of the development and the amount of driveway crossings associated with the intensified development, such conditions are not appropriate in the circumstance. The review concludes that the amended design continues to be inconsistent with the objectives of these development controls and is therefore not supported.

4.1.10 Fencing

The proposal has been amended to increase the front setback of the solid fence and gate to Bower Street, located in the central portion of the front facade. However, there has been no significant change to the height, design or materials of the proposed front fence and gate.

Therefore, whilst the concern could be addressed by conditions, for a reduction in height, and change in materials, the use of conditions is not considered appropriate and so, the review concludes that the proposal (as amended) continues to be inconsistent with the provisions of clause 4.1.10 of MDCP 2013, as the fence design provides no relief of the built form and actively attributes to the dominance of the structures along the Bower Street streetscape.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

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

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

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

This Section 8.2 Review Application has been assessed having regard to the reasons for refusal and the previous assessment in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979, the MLEP 2013, MDCP and the relevant codes and policies of Council.

This assessment has taken into consideration the revised plans, revised Statement of Environmental Effects, amended clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of clause 4.4 Floor Space Ratio development standard, other documentation supporting the application and public submissions.

The amendments to the proposal and new documentation have not resolved the built form, character and site suitability issues forming the basis of the reasons for refusal of the Development Application. The applicant's written request under clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of clause 4.4 Floor Space Ratio development standard has not adequately addressed and demonstrated that compliance with the standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds.

The critical concerns relating to the view loss as a result of the non-compliant FSR, the side setback, and building wall height have not been addressed by the very minor 7sqm reduction in the FSR and localised increase in the eastern side setback. With such minor amendments to the floor space/built form at the northern end of the site, the proposal continues to create unacceptable and unreasonable privacy, amenity and view impacts to the adjoining properties.

Two (2) submissions were received in response to the notification of the review application. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report and are concurred with.

The proposal does not display reasonable scale and density compatible with the surrounding development. Therefore, proposed amendments made under this review are not sufficient to address and overcome the issues identified in the previous assessment nor satisfy the reasons for refusal.

Accordingly, the application is referred back to the NB LPP with a re-affirmed recommendation for refusal.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No REV2019/0059 for the Review of Determination of Development Application No.DA2018/1930 for alterations and additions to a dwelling house and the change of use to an attached dual occupancy on land at Lot 29 DP 3806, 118 Bower Street, MANLY, for the reasons outlined as follows:

1. The proposed development exceeds the maximum permitted floor space ratio prescribed by clause 4.4 of Manly Local Environment Plan 2014. The request to vary this development control is not supported in the circumstances, as the proposal does not meet the objectives of the floor space ratio development standard or the objectives of the E4 Environmental Living zone, and Council is not satisfied that the applicant's request to vary the development standard satisfactorily meets the provisions of clause 4.6 of Manly Local Environment Plan 2013.
2. The design and siting of the proposed driveways, garages and fencing dominates the front

setback and is inconsistent with the dominant character of the streetscape, resulting in inconsistency with the requirements and objectives of clauses 3.1.1, 4.1.4, 4.1.6 and 4.1.10 of Manly Development Control Plan 2013.

3. The proposed development is inconsistent with a number of built form controls, including the wall height and number of storeys development controls prescribed by clause 4.1.2 of the Manly Development Control Plan 2013 and the side setback controls prescribed by 4.1.4 of Manly Development Control Plan 2013. The non-compliant siting of the additional floor space at the north-eastern most portion of the site attributes to unreasonable impacts upon the amenity of adjoining properties, with unresolved overlooking and unacceptable impacts upon views, which is inconsistent with the provisions of clauses 3.4.2 and 3.4.3 of MDCP 2013.

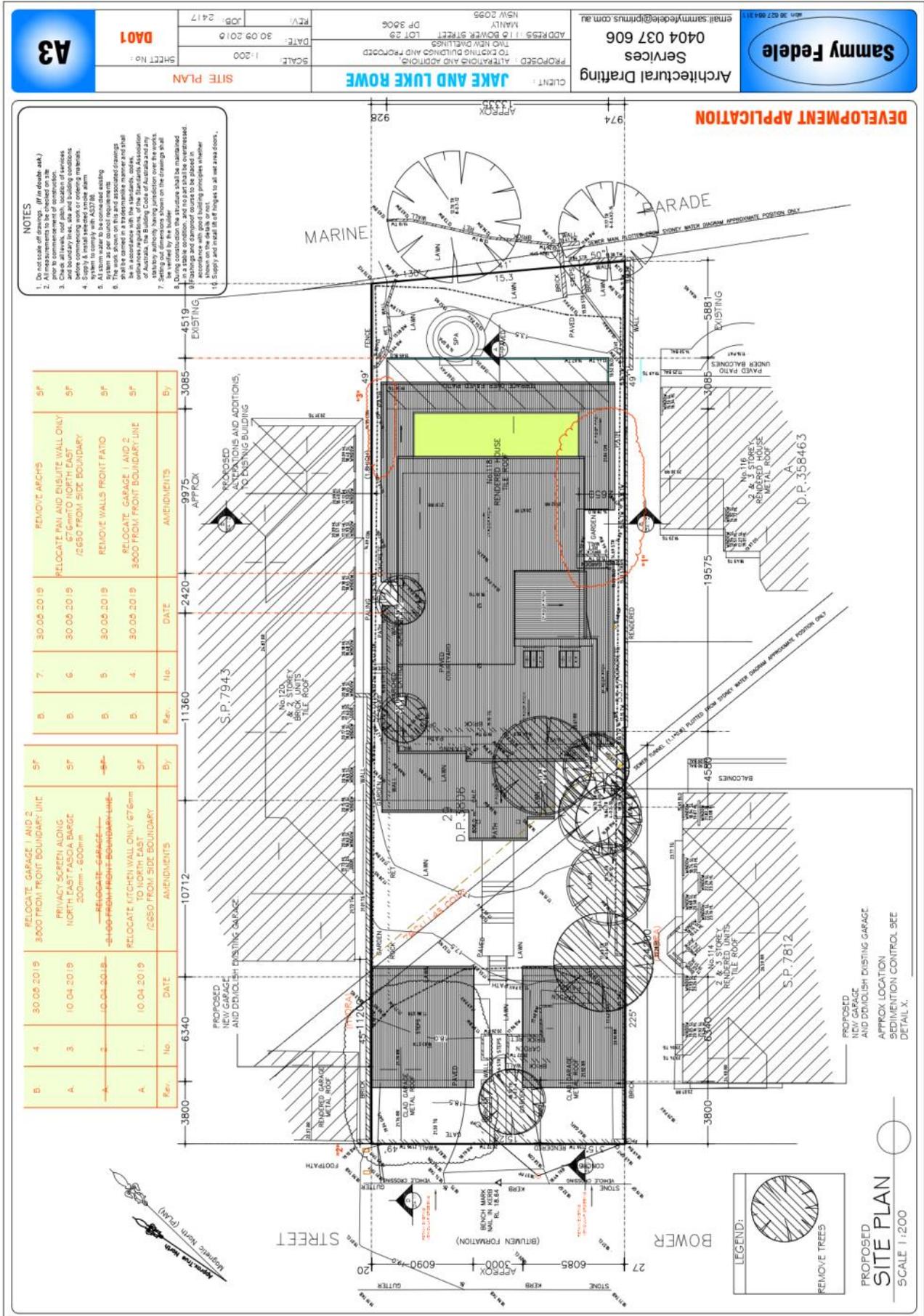
In signing this report, I declare that I do not have a Conflict of Interest.

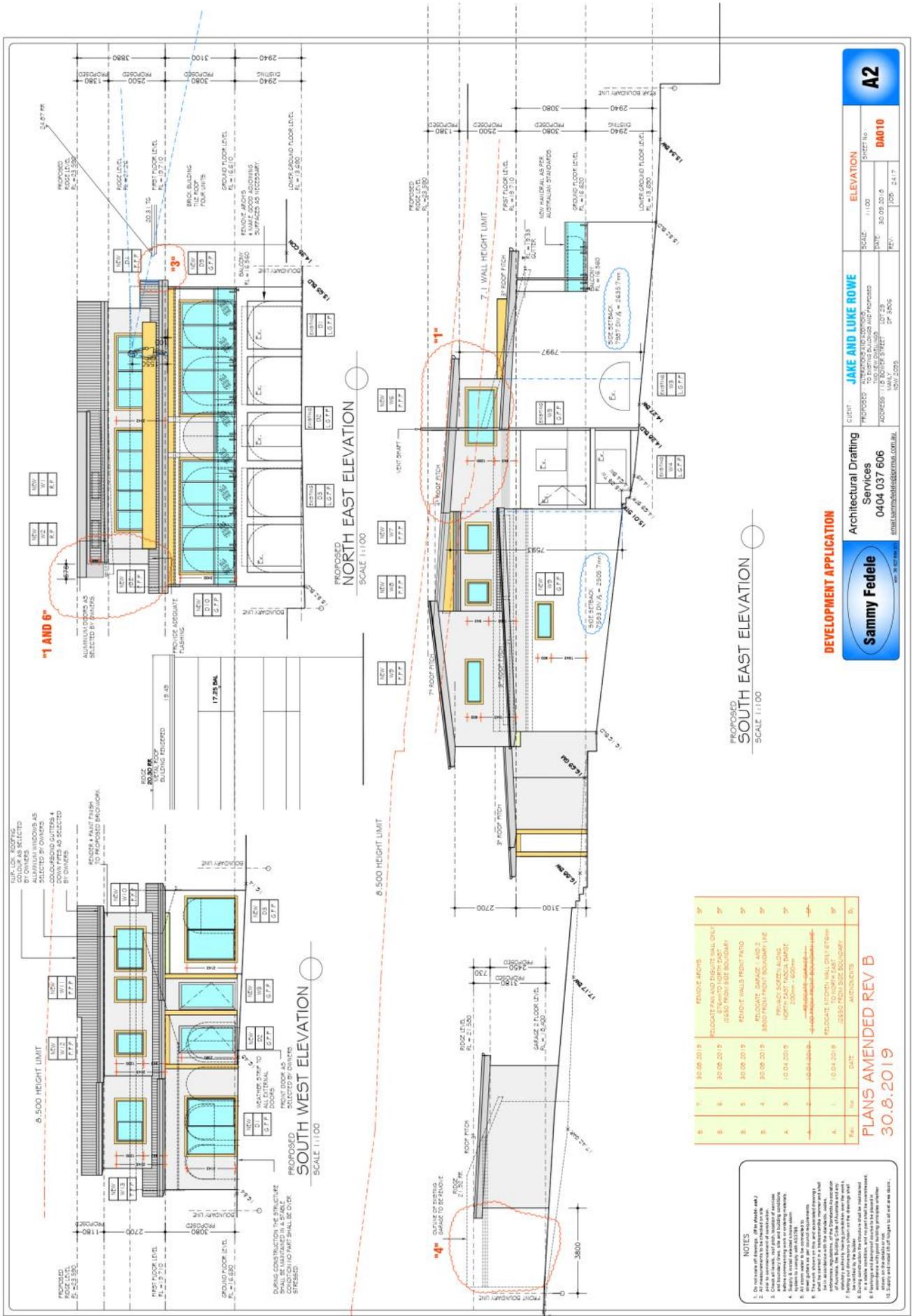
Signed

The application is determined on //, under the delegated authority of:

Steven Findlay, Manager Development Assessments

Peter Robinson, Executive Manager Development Assessment





Sammy Fedele
Architectural Drafting Services
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JAKE AND LUKE ROWE
PROPOSED TO ERUPT BUILDING AND PARKING
ADDRESS: 118 BOWEN STREET, LOT 23
MAY, 2019
REV: 105, 2417
105-2019

ELEVATION
SCALE: 1:100
DATE: 30.08.2019
SHEET NO: **DA010**

A2

Attachment 1**Clause 4.6 variation request – FSR**

Pursuant to Clause 4.4 MLEP 2013 based on the CMS surveyed area of the site being 806 square metre the maximum FSR for development on the site is 0.6:1 representing a gross floor area of 483.6 square metres. The stated objectives of this clause are:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

It has been determined that the amended proposal has a gross floor area of 558.5 square metres, as defined, representing a floor space ratio of 0.69:1 and therefore non-compliant with the FSR standard by 74.9 square metres or 15.4%.

We note that 38 square metres of this non-complaint floor space relates to the existing lower ground floor level storage area which is predominately subterranean in nature and non-habitable in use. Whilst this storage area is GFA as defined, it does not in any discernible manner contribute to actual or perceived building height, bulk or scale. Were this area excluded from the GFA/ FSR calculation the proposal would have a total GFA of 520.5 square metres representing an FSR of 0.64:1 and a non-compliance of 36.9 square metres or 7%.

We note that the plans tabled at formal pre-DA discussion with Council (PLM2018/00402017) proposed a GFA of 580sqm, representing a variation of 20%, with the minutes advising:

The proposal requires a significant variation of the floor space ratio control.

The proposal is consistent with the surrounding development and will maintain an appropriate relationship between the existing and desired streetscape character. The addition of the first floor will result in the floor space ratio non-compliance and is likely to result in the disruption of views.

A comprehensive view loss analysis is to be undertaken and the design amended to ensure no unreasonable loss of views. Providing the development does not result in any unreasonable loss of views the variation to the control could be supported.

We confirm that in the preparation of the original building design particular attention was given to view loss with the GFA/ FSR reduced and the building height lowered to comply with the 8.5 metre height standard to ensure a view sharing outcome with surrounding properties.

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

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

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

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

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

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

Claim for Variation

Zone and Zone Objectives

The subject property is zoned E4 Environmental Living pursuant to Manly Local Environmental Plan 2013 (MLEP 2013) with dual occupancies (attached) permissible in the zone with consent. The stated objectives of the zone are as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

A dual occupancy attached is defined as 2 dwellings on one lot of land that are attached to each other but does not include a secondary dwelling. The proposed development results in 2 dwellings on one lot of land that are attached to each and are accordingly appropriately defined as dual occupancy (attached) and permissible with consent in the zone.

The proposed development is consistent with the relevant zone objectives as follows:

- The development provides for a low-impact residential development in an area with special ecological and aesthetic values and does not have an adverse effect on the values in terms of terrestrial biodiversity and foreshore scenic protection. (1st and 2nd objectives)
- The development does not dominate the natural scenic qualities of the foreshore due to the maintenance of the established foreshore setbacks and adjacent vegetation. (3rd objective).
- The development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation. (4th objective).
- The development incorporates an enhanced site drainage regime in terms of discharge arrangement and stormwater quality. (5th objective).
- The height and bulk of the development has regard to existing vegetation, topography and surrounding land uses and is complimentary and compatible in such context. (6th objective).

The proposal is consistent with the zone objectives as outlined.

Floor Space Ratio Standard and Objectives

This standard and the associated objectives have been previously identified. The spread sheet at Figure 1 over page would appear to reflect an abandonment of the FSR standard along this section of Bower Street and within the immediate precinct generally making strict compliance unreasonable and unnecessary particularly given the relatively modest nature of the FSR variation sought.

Such conclusion is supported by the findings of Handley JA Giles JA Sheppard AJA in the matter of Fast Buck\$ v Byron Shire Council [1999] NSWCA 19 (19 February 1999) where they found that strict compliance could be found to be unreasonable and unnecessary where a modest variation was proposed to a development standard and in circumstances where the underlying objectives of the standard were not defeated.

Address			GFA	Site Area	FSR
1 Bower Lane	Manly	House	300	372	0.806
3 Bower Lane	Manly	House	260	316	0.823
7-9 Marine Parade	Manly	Unit	522	572	0.913
98 Bower Street	Manly	Unit	926	1189	0.779
102 Bower Street	Manly	Unit	1456	1107	1.315
104 Bower Street	Manly	Unit	492	567	0.868
15 Marine Parade	Manly	Unit	1185	520	2.279
108 Bower Street	Manly	Unit	1046	405	2.582
17 Marine Parade	Manly	Unit	390	450	0.867
110 Bower Street	Manly	Other	1085	873	1.243
114 Bower Street	Manly	Unit	300	465	0.645
116 Bower Street	Manly	House	300	354	0.847
118 Bower Street	Manly	House	296	803	0.369
120 Bower Street	Manly	Other	648	784	0.827
122 Bower Street	Manly	Unit	2974	1541	1.930
126 Bower Street	Manly	Unit	922	721	1.279
128-130 Bower Street	Manly	Other	641	702	0.913
132 Bower Street	Manly	Unit	2952	1502	1.965
Average			927	736	1.2

Figure 1 – Spread sheet confirming the GFA/ FSR of surrounding development

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

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Response: The height, bulk and scale of the development, as reflected by floor space, are entirely consistent with the built form characteristics established by adjoining development and development generally along the low side of Bower Street within this particular street block as depicted in Figures 2, 3 and 4 below and over page.

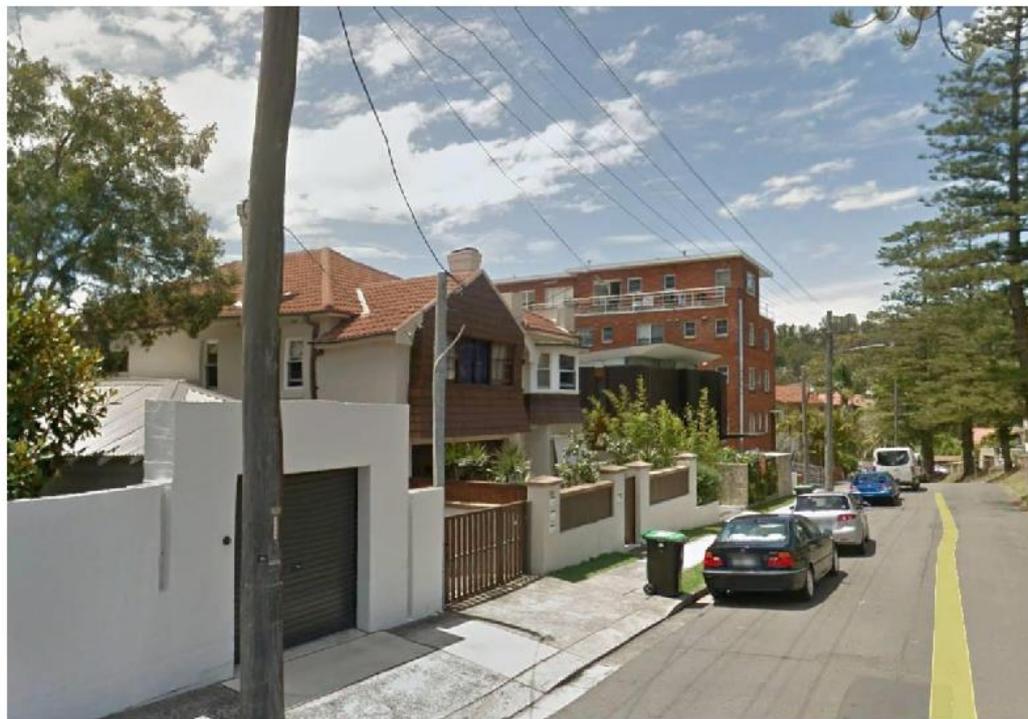


Figure 2 – Aerial photograph showing predominant multi storey residential flat building forms on the low side of Bower Street within this street block



Source: Google Earth

Figure 3 – View looking north west along Bower Street from the subject site



Source: Google Earth

Figure 4 – View looking south east along Bower Street past subject site

In this regard, it is apparent that development within the site visual catchment displays an existing FSR, and in many cases building height, which far exceed the standards with the development clearly consistent with the existing streetscape character. It is reasonably concluded that the building height and FSR standards have effectively been abandoned within this particular street block with the existing character entirely disparate to the desired future character as reflected by the height and FSR standards.

That said, the proposal complies with the applicable 8.5 metre height control ensuring that in terms of building height the proposal is consistent with the desired streetscape character as anticipated by the height standard. A significant area of non-complaint floor space is associated with the existing predominantly subterranean lower ground floor storage area which does not in any manner contribute to actual or perceived building bulk.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development by virtue of its form, massing or scale (as reflected by FSR), offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

Accordingly, we have formed the considered opinion that this objective is satisfied.

- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Response: Having inspected the site and its surrounds we have formed the considered opinion that the development will not obscure any important landscape or townscape features with a compliant landscape area curtilage maintained.

Accordingly, we have formed the considered opinion that this objective is satisfied.

- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Response: As depicted on plan DA09 the proposed development provides a compliant quantum of landscaped area with site landscaping, particularly with the Bower Street setback area, enhanced through implementation of the site landscape regime as depicted on the accompany landscape plan prepared by Conzept Landscape Architects.

The proposed ground floor additions maintain the setbacks established by the existing dwelling house with the upper floor stepped in from both side boundaries to maintain view corridors down both sides of the property. Deep soil landscaped areas at the front and rear of the site provide appropriately for landscaping with the front, side and foreshore setbacks maintaining an appropriate visual relationship between adjoining development.

Accordingly, we have formed the considered opinion that this objective is satisfied.

- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Response: In relation to shadowing impact the application is accompanied by shadow diagrams DA14 and DA15 which show the impact of shadowing on the only affected neighbouring properties to the south east. We note that these adjoining dwellings have elevated living and open space areas orientated to the north east to take advantage of views and ensuring that at least 3 hours of direct solar access will be maintained to the principal living and adjacent open space areas between 9am and 3pm on 21st June. No unacceptable overshadowing will occur to the public domain.

In relation to privacy, we confirm that in the preparation of the current building design particular attention was given to orientating all elevated living rooms and adjacent primary balconies towards Marine Parade with a majority of side boundary facing fenestration highlight in design or off-set from neighbouring windows. The plans nominate the provision of a fixed privacy screen adjacent to the western edge of the first floor terrace to prevent direct downward overlooking into the north facing private open space area of the adjoining property.

Having regard to the view sharing principles established by the Land and Environment Court of NSW in the matter of Tenacity Consulting v Warringah [2004] NSWLEC 140 as they relate to an assessment of view impacts from Unit 3/114 Bower Street we have formed the following opinion:

First Step - Assessment of views to be affected

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

The photographs taken from Unit 3/114 Bower Street as provided by Council staff provide assistance in relation to such analysis. These photographs at Figures 5 and 6 below and over page demonstrate that the views obtained from the principle living room and adjacent balcony of this apartment are sweeping views of the Pacific Ocean and Long Reef over No. 116 Bower Street and across the front portion of the subject site. These more oblique views include the Queenscliff and Freshwater land/ water interface. Views are also available over the roof of No. 116 Bower Street towards the Pacific Ocean with views also available in an easterly direction across No. 112 Bower Street towards Fairy Bower and its land/water interface. Any view loss analysis must have regard to the totality of available views.

We note that Council has confirmed that the tree currently obstructing views towards Long Reef from this property is dangerous and identified for removal.



Figure 5 – Views from Unit 3/114 in a northerly direction across the side boundary and over the subject site



Figure 6 - Views from Unit 3/114 in a northerly direction across the side boundary and over No. 112 Bower Street

Second Step - From what part of the property are the views obtained

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

Comment: These views are available from the living area and adjacent balcony from both a standing and seated position. The views available over the subject site are obtained directly across the side boundary and over the front boundaries of the apartments and over the roof of the existing dwelling located on the subject site as depicted in Figure 7 over page.



Figure 7 – Aerial photograph showing available view lines (Unit 3/ No. 114 Bower Street shown with red star)

Third Step – Assessment of extent of the impact

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

Comment: The proposed upper level roof form will impact on the views obtained from the principle living room and adjacent balcony of this apartment across the side boundary and over the subject site towards Queenscliff and Freshwater and the land/ water interface. The sweeping views of the Pacific Ocean and Long Reef over No. 116 Bower Street will be preserved as are the views available in an easterly direction across No. 112 Bower Street towards Fairy Bower and its land/water interface.

We note that Council has confirmed that the tree currently obstructing views towards Long Reef from this property is dangerous and identified for removal.



Figure 8 - View impact based on survey profiles

Based on an assessment of the totality of the views available from this property, and the vulnerability of views available across site boundaries, we consider the view impact to be appropriately described as moderate.

Fourth Step – Reasonableness of the proposal

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them.

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

The proposed development complies with the 8.5 metre maximum prescribed building height with the setback of the north-western most kitchen, pantry and bedroom 1 ensuite element also compliant with the side boundary setback control. The land/water interface view impact arises from the fully compliant roof form proposed. The variation proposed to the FSR standard has been justified in the clause 4.6 variation request at Attachment 1. Strict compliance is unreasonable and unnecessary under the circumstances including the apparent abandonment of the FSR standard along this section of Bower Street.

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

Comment: N/A

Having reviewed the detail of the application we have formed the considered opinion that a view sharing scenario is maintained between adjoining properties in accordance with the principles established in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC140 and *Davies v Penrith City Council* [2013] NSWLEC 1141.

- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Response: This objective is not applicable.

Strict compliance is unreasonable and unnecessary given the relatively modest nature of the FSR variation sought and the ability of the development to satisfy the associated zone and FSR objectives.

Such conclusion is supported by the findings of Handley JA Giles JA Sheppard AJA in the matter of *Fast Buck\$ v Byron Shire Council* [1999] NSWCA 19 (19 February 1999) where they found that strict compliance could be found to be unreasonable and unnecessary where a modest variation was proposed to a development standard and in circumstances where the underlying objectives of the standard were not defeated.

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

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment and the fact that a significant area of non-complaint floor space is associated with the existing predominantly subterranean lower ground floor storage area which does not in any manner contribute to actual or perceived building bulk.

Further, the floor space proposed promotes/ reflects the orderly and economic use and development of the land, consistent with objectives 1.3(c) and (g) of the Act, in circumstances where the FSR standard has effectively been abandoned within this particular street block and given the desire for the current property owner to realise the reasonable development potential of their property, consistent with that of surrounding development, which are all located in an waterfront iconic area of the Northern Beaches.

The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also give weight to the acceptability of the variation sought.

Conclusions

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

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the floor space ratio standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case, and

- (e) that given the developments ability to comply with the zone and floor space ratio standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

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

Boston Blyth Fleming Pty Limited



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Director