

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 18 DECEMBER 2019

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



Peter Robinson
Executive Manager Development Assessment

Panel Members

Peter Biscoe	Chair
Brian Kirk	Town Planner
Graham Brown	Town Planner
Phil Jacombs	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 18 December 2019
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1.00pm**

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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 11 DECEMBER 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 11 December 2019 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	DA2019/0748 - 19 BUNGAN STREET, MONA VALE - DEMOLITION OF ALL EXISTING STRUCTURES AND THE CONSTRUCTION OF A FOUR STOREY SHOP TOP HOUSING DEVELOPMENT OVER BASEMENT CAR PARKING
REPORTING OFFICER	ANNA WILLIAMS
TRIM FILE REF	2019/712362
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is development to which *State Environmental Planning Policy No 65 – Design Quality of Residential. Apartment Development* applies and is 4 or more storeys in height and the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 of Pittwater Local Environmental Plan 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives of the zone.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0748 for demolition of all existing structures and the construction of a four storey shop top housing development over basement car parking at Lot 200 DP 746507, 19 Bungan Street, Mona Vale subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0748
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Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 200 DP 746507, 19 Bungan Street MONA VALE NSW 2103
Proposed Development:	Demolition of all existing structures and the construction of a four storey shop top housing development over basement car parking
Zoning:	B4 Mixed Use
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Mona Vale Developments Pty Ltd
Applicant:	Mona Vale Developments Pty Ltd

Application Lodged:	15/07/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	27/07/2019 to 24/08/2019
Advertised:	27/07/2019
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 15%
Recommendation:	Approval

Estimated Cost of Works:	\$ 14,114,100.00
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Executive Summary:

The proposed development seeks consent to demolition and construction of a four (4) storey shop top housing development over basement car parking. The majority of the proposed development is below the 13m height limit, with the non-complying elements, including the lift overruns and the projecting roof forms being set back from the street frontages. The non-complying elements do not compromise the development when viewed from the streetscape or result in adverse amenity impacts, such as overshadowing, on surrounding properties. The Clause 4.6 variation demonstrates that there are sufficient grounds to justifying the 15% variation to the building height development standard.

The proposed development generally complies with SEPP 65 Design (Quality for Residential

Development) and the Apartment Design Guide (ADG) and the Pittwater DCP. The non-compliances with the ADG and the Pittwater DCP relate primarily to open space (landscaping), building separation, set backs and privacy.

The proposal includes 15.6% open space incorporating a large 209sqm central courtyard which provides access to daylight, natural ventilation and outlook to the apartments on the periphery of the courtyard. In addition, all apartments have access to private open space which generally exceed the requirements of the ADG and PDCP.

The proposed set backs are generally consistent with the set backs in the streets and the architectural elements that breach the front set back controls in the DCP include planter bed, awnings and terraces which provide articulation, interest and variation to the facade. Further, the modulation of the facade helps reduce the perceived bulk and scale of the development.

In relation to issues with visual privacy to neighbouring apartments at 24 Waratah Street, conditions are recommended requiring fixed privacy screens to the terraces and windows in the apartments located in the south-west corner.

Three (3) submissions received raised issues in respect of excessive height, density, impacts on privacy, ventilation and outlook, design issues, construction management and property value. These issues have either been address by conditions or amendments or have been assessed as not warranting the refusal of the application.

The application is referred to the Northern Beaches Local Planning Panel (LPP) for review and determination, as SEPP 65 applies and the variation to height is greater than 10%.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site. Accordingly, it is recommended that the NBLPP, as the determining authority, approve the application subject to conditions and reasons detailed within this report.

PROPOSED DEVELOPMENT IN DETAIL

The Proposed Development

The proposal seeks consent for demolition work and construction of 'Shop top Housing', comprising the following:

- Site clearance, demolition of all existing structures and removal of 7 trees;
- Excavation to a maximum depth of 8.8m;
- Construction of 2 levels of basement parking for 112 car parking spaces, 2 motorcycle spaces, 16 bicycle parking spaces and storage space;
- Vehicular access via a new driveway from Waratah Street;
- Nine (9) x ground floor retail tenancies comprising a total of 930sqm of retail floor space. All tenancies address either a public streets or the retail arcade;
- Thirty-six (36) residential apartments comprising 3 x 1 bedroom units, 29 x 2 bedroom units and 4 x 3 bedroom units, and include eight (8) *Silver Level Living* (adaptable) apartments. All apartments have private terraces ranging from 9.9sqm to 34sqm;
- All apartments are designed around a central landscaped courtyard. Additional planting is provided within retail level, the retail arcade and the frontages of the site;
- Waste and recycling storage areas are located within the Waratah Street frontage, adjacent to the basement car park and the entrance to the residential units.

Amended Plans

After a preliminary review of the proposal, Council met with the applicant to resolve issues relating to height, setbacks, trees / landscaping, parking and waste.

An amended design was submitted in 21 October 2019, which included a reduction in the height of the roof, an increase in the size of the tree pit / introduction of a new pit to allow the retention of the street trees. Amendments to the car park layout, driveway and waste storage area. Modification to the glass shop fronts to the retail arcade and re-location of entry doors, additional tree planting to retail arcade and an increase in the size of the voids to the colonnade above the retail arcade. Modification of the layout of the north-east corner apartments (units 8, 20 and 32) including an increase in the setback of the units to the northern boundary and a change in the external treatment of the apartments to the north (retail arcade) elevation.

The amendments generally address issues raised in the pre-lodgement meeting and issues raised during the preliminary assessment of the subject application. Photomontages of the amended proposal are provided below, plans sections and elevations of the proposal are also contained within this report.



Photomontage of development looking south-west along Bungan Street.



Photomontage of development looking west along Bungan Street.



Photomontage of development looking north along Waratah Street.

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 - 4.6 Exceptions to development standards
 Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
 Pittwater 21 Development Control Plan - B2.6 Dwelling Density and Subdivision - Shop Top Housing
 Pittwater 21 Development Control Plan - B6.8 Access Driveways and Works on the Public Road
 Reserves on or Adjacent to a Commercial Centre Primary Road
 Pittwater 21 Development Control Plan - C1.1 Landscaping
 Pittwater 21 Development Control Plan - C1.3 View Sharing
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - C1.23 Eaves
 Pittwater 21 Development Control Plan - C2.11 Signage
 Pittwater 21 Development Control Plan - C2.22 Plant, Equipment Boxes and Lift Over-Run
 Pittwater 21 Development Control Plan - D9.3 Building colours and materials
 Pittwater 21 Development Control Plan - D9.6 Front building line

SITE DESCRIPTION

Property Description:	Lot 200 DP 746507 , 19 Bungan Street MONA VALE NSW 2103
Detailed Site Description:	The subject site is a rectangular shape with an area of 1,927 square meters (sqm). The site has a primary frontage to Bungan Street to the east measuring 44.96 meters (m) in width and a secondary frontage to Waratah Street to the south measuring 31.16 meters (m) in depth. The land slopes approximately 1.6 metres across its surface in an easterly direction. The site currently contains a two storey and a one and two storey commercial development known as "Pittwater Plaza" which occupy the eastern portion of the site fronting Bungan Road. An open car park area is located on the western portion of the site. A publicly accessible retail arcade is located along the northern boundary of the site providing a pedestrian link between Bungan Street and Akuna Lane. Ground floor retail and commercial properties are located either side of the retail arcade. Four trees are located along the western boundary within the existing open car park area, additional non-native trees are located within the southern boundary and street trees are located along the Bungan Street and Waratah Street frontage. Adjacent development consists of a three / four storey shop top housing development to the west at No 24 Waratah Road on the corner of Waratah Road and Akuna Lane. A Wollworths Supermarket is located on the western side of

Akuna Lane. Two storey commercial development development is located to the north at 9 - 17 Bungan Street, further to the north is a four storey shop top housing development at 5 Bungan Street. A three storey mixed use building known as "Mona Vale Court" is located on the southern side of Bungan Road and Mona Vale Primary School is located on the southern side of Waratah Street.

Map:



SITE HISTORY

There are no heritage items on the land and the site will be completely cleared of all structures for the proposal, therefore the history of previous development on the land is not relevant, except for the ensuring the appropriate demolition and safe handling of waste materials will be removed.

Pre-lodgement meeting PLM2018/0087

A pre-lodgement meeting was held with Council and the applicant on 17 May 2018 to discuss the current proposal. Relevant comments provided in the notes includes:

- Minor architectural elements such as planter framework and day beds may be supported forward of the 3.5m setback;
- The non-compliant upper floor will be most apparent adjacent to the development to the west at 24 Waratah Street.
- The reduced setbacks along the south-eastern façade are more consistent with the established building line of Bungan Street.
- The scale of the development is most apparent at the corner of Bungan Street and Waratah Street, where the proposed upper levels meet the boundary splay with a nil setback.
- Overall, whilst the efforts to have a more "fine-grain" presentation to the street are appreciated, the extent of front setback non-compliance is not supported, and the proposal presents as a slight overdevelopment of the site.
- The four-storey height of the development is generally supported, however, Council's Urban Designers do not support the projecting roof forms (which attribute to the height exceedance).

- Urban Design support the design with a 3.5m setback for the first three storeys (approx. 1.5m above 8.5m). However would prefer the top storey aligning with the 6m setback required in order to address outcomes of the Mona Vale Locality plan; desired future character, solar amenity to the street, encourage attractive street frontage whilst ensuring new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.
- The proposed development needs to demonstrate the separation distance of 6-12 metres for buildings up to four storeys and ensure 6m at NE boundary/retail arcade to terraces of the proposed development.
- The proposal should be amended to comply with the minimum requirements of clause B6.3 (parking) of P21 DCP.
- Concern is raised in relation to the central courtyard and potential acoustic impacts upon existing and proposed residential receivers;
- Concern is raised in relation to the shared access arrangements in the central courtyard. Access to the residential lifts should be separate from the commercial open space.
- The zero lot alignment addressing the existing retail arcade should be coordinated to achieve level on grade through access between the existing retail arcade of the adjacent property and the proposed arcade of the development. This will assist to provide mutual activation in this zone, being a major thoroughfare to Akuna Lane.
- The Paperbark tree in Bungan Street shall be protected within the public domain area.

The proposal, as amended, and subject to conditions satisfactorily addressed the matters raised in the pre-lodgement meeting.

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 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional

Section 4.15 Matters for Consideration'	Comments
	information was requested in relation to height, setbacks, trees, parking and waste. <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. <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. <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. <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. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would

Section 4.15 Matters for Consideration'	Comments
	justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Withheld	MANLY NSW 2095
Ms Sharene Maree Tailford	13 / 24 Waratah Street MONA VALE NSW 2103
Mr Alan Mackenzie Wood	7 / 24 Waratah Street MONA VALE NSW 2103

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

- Height of Building;
- Density is excessive;
- Shadow impacts;
- Visual and acoustic privacy impacts;
- Loss of views;
- Cross ventilation issues;
- The external design is not appropriate;
- Insufficient 'green' space;
- Security impacts;
- Construction management issues;
- No notice of the DA being exhibited, and
- Devalue property.

The matters raised within the submissions are addressed as follows:

Non-compliance with the Pittwater LEP and DCP provisions including the 13m height limit. The development has a height of 15.78m. The eastern and western elevation exceed the 13m height limit and concern is raised regarding the height of the roof over units 25, 26, 35 and 36.

Comment:

As a result of the design changes, the breaches in the height standard has been reduced to a maximum

of 2m (a 15.38% variation reduced from a 22% variation). The majority of the building sits below the 13m height limit. The elements that breach the 13m height limit include the lift over-run and the clearstory windows which are set back from the street frontages. The application has been amended to change the roof design (in part) from a pitched skillion roof to a flat roof. The roof height over apartments 26, 27, 35 and 36 has been reduced. The roof feature on the Waratah and Bungan Street corner has been deleted. With the exception of a minor breach of the 13m height limit as a result of the pitch of the roofs over 2 apartments, the eastern elevation generally sits within the 13m height limit. The elements of the roof pitch that breach the 13m height limit are set back from the eastern frontage to Bungan Street and the roof projections that breach the 13m height limit on the western elevation extend over the the apartments that front the retail arcade and the central courtyard. The roof projections provide shade to the terraces below and are unlikely to impact neighbouring residential amenity. Refer to the elevations below.



East elevation to Bungan Street



The non-complying elements will not result in amenity impacts to surrounding properties in terms of overshadowing or visual impacts on the streetscape. The proposal has been assessed as meeting the objectives of the height control and the mixed use zone and the clause 4.3 variation to the height of buildings development standard has been assessed as acceptable. Refer to discussion under the Heading *Clause 4.3 variation*.

The building density is excessive

Comment:

The four storey built form is generally compliant with the 13m height of buildings development standard. The scale, height and density is generally consistent with the desired future character for Mona Vale which allows for increased height to support the economy. The proposal also complies with the design quality principles (including density) of SEPP 65 as demonstrated in respect of compliance

with the Apartment Design Guide (ADG). Refer to discussion under the heading *SEPP 65*.

Impacts on the amenity of neighbouring apartments at No 24 Warratah Street, including shadow impacts to terraces, living rooms and bedrooms resulting in a loss of natural light / sunlight /thermal comfort and cross ventilation. No shadow diagrams have been submitted for summer. Only 72% of the proposed apartments receive the minimum amount of sunlight, therefore 10 apartments do not comply with C1.4 solar access.

Comment:

Due to the orientation of the site, the development will not cast any new shadow to the existing shop top housing development to the west at No 24 Waratah Street between 9am and 3pm mid-winter. Certified shadow diagrams have been submitted in accordance with Part 4 of SEPP 65 and Clause C1.4 of the Pittwater DCP which requires an assessment of sunlight access between 9am and 3pm mid-winter. The shadow diagrams demonstrate that the new shadow will fall on Bungan Street and Waratah Road and will not impact on the residential development to the west. In terms of solar access to the proposed apartments, information has been submitted which demonstrates that the proposal fully complies with tSEPP 65 requiring 70% of apartments to receive 2 hours of sunlight between 9am and 3pm mid winter, which takes precedents over the DCP controls. It is noted that the living areas to the upper floor apartments within No 24 Waratah Street benefit from balconies facing both east and west. As such, these apartments enjoy good cross ventilation. The proposed siting and design of the subject development provides a central courtyard to respond to the setback of the adjoining development at No 24 Waratah Street. The east facing apartments at No 24 Waratah Street will continue to enjoy access to daylight, sunlight and cross ventilation.

Loss of privacy with units directly overlooking neighbouring bedrooms. The proposal does not comply with clause C1.4 (visual privacy) of the Pittwater DCP. The proposal has not submitted information to address clause C1.6 of the Pittwater DCP in respect of acoustic privacy.

Comment:

Pursuant to clause C1.5 private open space, recreation areas and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking by building layout, landscaping, screening devices, including privacy screens and blade walls to boundaries. The building layout helps protect against issues relating to direct overlooking. Terraces have generally been orientated to the street frontages and retail arcade with particular consideration given to maintaining privacy to the apartments within No. 24 Waratah Street. The proposed internalised courtyard aligns with the courtyard of No 24 Waratah Street providing for a cohesive built form and positive amenity outcome between properties.

Apartments No.1, 13 and 25 on the Waratah Street frontage (south-west corner) that directly adjoin No 24 Waratah Street have private terraces that are recessed and living room windows that are positioned at an oblique angle to the western boundary to the balconies at 24 Waratah Street. The separation distance between these windows and balconies is approximately 10m. The existing privacy screens to these balconies will help protect direct overlooking between the proposed development and the neighbouring site. Notwithstanding this, a condition requires fixed and angled louvered privacy screens to be attached to the terraces and windows to maintain appropriate levels of visual privacy

without compromising solar access.

A 2m blade wall is proposed along the common boundary to 24 Waratah Street which will provide a privacy screen between the bedroom windows to apartments 12, 24 and 36 in the north-west corner and the adjoining property.

In terms of acoustic privacy the applicant has submitted an acoustic report which has been assessed by Council's Health Unit as acceptable. Conditions are recommended requiring compliance with the acoustic report. It is also noted that the central courtyard has been designed not be accessible in order to protect the apartments that face the space from potential acoustic impacts from the communal use of the space. Conditions also require separate DAs to be submitted for the use and fitout of the ground floor tenancies at which time acoustic issues relating to the future use of these tenancies will be fully considered.

Loss of views to Mona Vale headland.

Comment:

Having inspected the site from apartments within No 24 it is confirmed some units have a distant view of the Mona Vale headland. These views are observed from a standing position looking in a north-east direction across the side boundary of the subject site. While the proposed development is likely to result in a loss of this view the proposal, as amended, is generally compliant with the 13m height along the north elevation. In summary, the proposed development has been assessed as acceptable given the proposal sits predominantly within the 13m height limit and the minor elements that breach the height will not change the impact on loss of view. The view loss is not in themselves cause any impacts on view loss as it is anticipated that a fully compliant development will result in the same view loss. A discussion on the view loss impacts to adjoining properties is provided under clause C1.3 of this report.

The proposed wall on the western boundary extend past balconies at No 24 Waratah Street resulting in increased loss of amenity (light, privacy and views). This is particularly problematic on the western frontage to units 25 and 36.

Comment:

As noted above, the 2m long blade wall has been included as a screening device to maintain visual and acoustic privacy between the subject site and neighbouring residential apartments. The wall is proposed adjacent to units 12, 24 and 26 located in the north-west corner. The wall will not result in shadow impacts to the neighbour or view loss to the neighbouring property.

The external design is not appropriate and insufficient information submitted including perspectives from neighbouring apartments.

Comment:

The external design provides a considered response to the context of the site and the desired future character of Mona Vale. The facades are well modulated and the proportions and articulation contributes to the streetscape. Sufficient information, including various perspectives and photomontages have been submitted to make an informed decision on the proposed external design.

There is not enough 'green' design.

Comment:

The existing site has no significant trees or open space. The proposal is designed around a 209sqm centralised landscaped courtyard with additional planting proposed to the within the ground floor retail level and around the frontage of the site. In addition, the proposal has been amended to retain street trees. Conditions require the submission of a landscape plan and native planting. Given the location of the site within the built up urban centre of Mona Vale the quantity and quality of the proposed landscaping has been assessed as acceptable.

Security Impacts.

Comment:

The proposed development has been designed to provide easily identifiable separate entrances to the residential and commercial floor space areas which will be appropriately lit. Internal living areas overlook public places and communal areas to maximise casual surveillance in accordance with clause C1.2 of the Pittwater DCP and Part 6 of SEPP 65.

Building rules and standards need to be applies during the construction process.

Comment:

Should the development be approved, conditions will be imposed to require compliance with the geotechnical report, codes of practice / standards, hours of construction and compliance with noise dust and other measures to protect neighbouring properties and amenity during the construction phase.

No notice of the DA being exhibited.

Comment:

The applicant has submitted photographic evidence of the notice being exhibited.

Devalue property

Comment:

This is not a material planning consideration.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	No objections
Environmental Health (Food Premises, Skin Pen.)	General Comments This proposal involves demolition and construction of a combination of residential and retail space. Environmental Health needs to consider in this referral: Noise inside the residential components Noise from the complex including mechanical plant and equipment , and use (food shops) . Food premises can be expected to be incorporated. These will require a DA for fit out incorporating any implications for noise, smoke and odour to be assessed at that time. To deal with the noise related issues(excluding future occupation of commercial premises) an acoustic assessment by Wilkinson Murray Report 18287 has been supplied based on the initial design of the building and general implications for the mixed use. The acoustic report concludes (quote): • Site-specific noise emission criteria have been established for the existing and future residential areas. It is noted that mechanical services and plant have not been selected; however, it is envisaged that compliance with criteria can be achieved. Where necessary standard engineering noise controls can be implemented at design stage. • Apartments facing the central courtyard will require improved glazing on secondary bedrooms to ensure that the acoustic amenity of future residences is protected. Preliminary recommendations provide options for glazing. • No special glazing is required on all other apartments. • Internal noise isolation requirements in accordance with the NCC will be achieved by adopting appropriate constructions. Environmental Health has no objections subject to conditions incorporating the acoustic assessment and review of that assessment upon completion; additionally a separate DA is to be submitted for any food premises or especially restaurants that may operate after 9 pm at night when noise implications would be need to be further assessed. A condition has been added in relation to demolition excavation and construction noise and also dust suppression. Recommendation APPROVAL - subject to conditions

Internal Referral Body	Comments
Landscape Officer	The application seeks approval of a shop top residential housing development. The landscape component of the proposal is acceptable subject to the protection of nominated existing trees within the road reserve footpath, and the completion of landscape works upon the road reserve footpath including paving and street tree planting, and landscaping within the site. Amended Landscape Plans are required to detail the design intent of the landscape works within the site. Public Domain Plans are required to detail the design of all works within the road reserve footpath. Council's Landscape section have assessed the application against the following documents relevant to landscape assessment: • Pittwater 21 DCP amendment 24, including B4.22 and C1.1 • State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development • The Apartment Design Guide
NECC (Development Engineering)	The proposed development requires excavation that necessitates the inclusion of an Geotechnical report to address the requirements of Council's DCP clause B8.1. The submitted report by Crozier Geotechnical Consultants satisfies the requirements of the DCP. The proposed Stormwater Management design by Barrenjoey Consulting Engineers has been reviewed and the proposal meets the requirements of the DCP clauses B5.7 and B5.10. In terms of the water quality design, it is considered that the proposal must be assessed by Council's Coast & Catchment team. The proposed driveway crossing width and grade meet Council's requirements in terms of the DCP Clause B6.1 and B6.8. No objection to approval, subject to conditions as recommended.
NECC (Water Management)	This application was assessed under Pittwater 21 DCP B5.9. The applicant has included a sediment trap and trash screen in the pit placed prior to stormwater being discharged from the land. Conditions apply. Sediment and erosion controls must be installed prior to any demolition on site and maintained until all works are complete and

Internal Referral Body	Comments
	groundcover re-established.
Strategic and Place Planning	The application is in the Mona Vale centre, a nominated strategic centre under the North District Plan. The proposal does not require consideration against the exhibited draft Mona Vale Place Plan, as this exhibited document is not an EPI or deemed a strategic framework document for Mona Vale. The proposal will need to be assessed in accordance with current EPI's and the Pittwater 21 DCP.
Strategic and Place Planning (Urban Design)	CURRENT COMMENTS The revised drawings demonstrate Urban Design comments have been considered in the amended drawings. The proposal is acceptable. PREVIOUS COMMENTS Please find following Urban Design Comments Generally the application can be supported however there are several non-compliances which in light of the quality of the development the following changes are requested to provide further amenity and provide a development that integrates with the location, neighbouring properties and internal amenity. 1. Provision of 3.5m setback at ground level to the northern side boundary of. 2. Setback to level 1 northern boundary being 3.5m is acceptable for garden planter beds only. No habitable rooms (or any external building line of enclosure) should encroach the 3.5m setback zone. 3. Setback to Level 2 at northern boundary ideally would be 6m with the exception of garden beds. The above amendments to the sectional strategy would allow for a cascading garden of plantings to the northern elevation and provide a much more acceptable and aesthetically pleasing interface between the two buildings. As this arcade is a well worn track the opportunity to enhance and provide a bit of green space is highly encouraged. The strategy would also provide adequate separation for future building on the northern property. 4. The above recommendations for increased setbacks to

Internal Referral Body	Comments
	the northern boundary allows for a merit assessment of the southern boundary setback encroachments. Whilst not principally supported the encroachment into the southern boundary setback can be offset against the requirement to provide further setback to the northern boundary. 5. Similarly the encroachment onto the front boundary on Bungan Street can be supported on merit. Considering the adjacent buildings provide a nil setback along this strip, the setbacks at lower and upper levels can be supported. 6. Query the glazed double height corner articulation in that it is a dominant corner. The open glazed nature of the corner verandah enclosure may present privacy issues at night. If anything the expression should be more of a recessive element or treated with a softer expression of material that can provide privacy, ventilation and solar gain.
Traffic Engineer	<u>Traffic comments in response to revised drawings submitted 7/11/2019</u> The revised drawings addresses previous issues raised regarding parking spaces, driveway access, and incorporates traffic calming devices to reduce traffic speeds and minimise vehicular and pedestrian conflict. The proposal is acceptable, subject to conditions as recommended.
Waste Officer	<u>Updated comments 2 December 2019</u> The reconfigured waste storage area as proposed plan attached to the email of 27 November addresses the concerns raised and is acceptable subject to the conditions.

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

Detailed assessment

Pursuant to clause B3.6 Council shall not consent to the carrying out of any development on land unless it has considered the provisions of SEPP No. 55 – Remediation of Land (SEPP 55). In this regard, the likelihood of encountering contaminated soils on the subject site is extremely low given the following:

- The subject site and surrounding properties have not been previously used by any potentially contaminating land uses involving activities that may have posed the threat of contamination, i.e. the properties have not been used for the purposes listed under Table 1 of the contaminated land planning guidelines of SEPP 55;
- The subject site and surrounding land were not previously zoned to allow for any uses or activities listed in Table 1 of the contaminated land planning guidelines of SEPP 55;
- The subject site and surrounding land are not currently zoned to allow for any uses or activities listed in Table 1 of the contaminated land planning guidelines of SEPP 55, and

The subject site does not constitute land declared to be an investigation area by a declaration of force under Division 2 of Part 3 of the Contaminated Land Management Act 1997.

Given the above factors no further investigation of land contamination is warranted. The site is suitable in its present state for the proposed shop top housing development. Therefore, pursuant to the provisions of SEPP 55, Council can consent to the carrying out of development on the land.

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a four storey shop top housing development plus basement car parking.

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

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

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment:

The site is located on a prominent corner at the intersection of Bungan Street and Waratah Street in the Mona Vale town centre. The site is surrounded by educational, commercial, retail and residential development to the south, north, east and west which are predominantly 2/ 3 storeys in height. Four storey developments are interspersed within the surrounding area including the 3/4 storey shop top housing which directly adjoining the site to the west and the four storey developments at 5 Bungan Street to the north, refer to photos below. The proposal has been designed to reflect the desirable future character of Mona Vale including enhancing employment generating uses, with a building height

generally below the canopy of significant street trees. The proposed contemporary building utilises facade modulation and shade elements to create interest and reduce the bulk and massing. The siting of the development responds to the setbacks of the adjoining developments including 24 Waratah Street and the retail arcade to the north.



Three / four storey shop top housing to the west at 24 Waratah Street viewed from the subject site.



Three / four storey shop top housing to the west at 24 Waratah Street viewed from Akuna Lane.



Four storey development at 5-9 Bungan Street to the north.

Principle 2: Built Form and Scale

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

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

Comment:

The scale, bulk and height of the proposal is appropriate for the corner site and contributes to the streetscape. The four storey built form follows the contours of the site in a 'step-wise' manner to reduce the bulk and scale. The use of facade projections such as balconies, day beds, planter boxes and awnings provides articulation and breaks up the bulk and scale. The setbacks reinforce the street alignment. A 1.5 storey brick portal further reduces the perceived scale of the development and helps relate the proposed building to the existing 2 storey commercial buildings along the north of Bungan Street. The parapet height, where it adjoins 24 Waratah Street, has been further reduced to relate to the scale of the adjoining development. The ground floor of the development will provide a high quality activation of the streetscape with shop fronts taking up most of the two street facades and the retail arcade. The activation of all frontages will help define the public domain and improve the strategic centre. In summary, the proposal satisfies this principle.

Principle 3: Density

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

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

Comment:

The proposal is consistent with the density principle as demonstrated in the ADG assessment below and the built form assessment under the heading Pittwater DCP. Each of the proposed apartments

provide a high level of internal amenity while minimising impacts on surrounding uses. In summary, the proposal satisfies this principle.

Principle 4: Sustainability

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

Comment:

The apartments are designed around a large central courtyard and receive access to sunlight, daylight and natural ventilation. The design combines positive environmental, social and economic outcomes and the proposal meets all the BASIX requirements. In summary, the proposal satisfies this principle.

Principle 5: Landscape

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

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

Comment:

As discussed above, the large central internal landscaped courtyard provides access to daylight, natural ventilation and outlook to all apartments. Large private terraces are provided to all apartments, planter boxes are provided to all areas of the public domain and the existing street trees will be retained. The proposal is consistent with the landscape principle as demonstrated in the ADG assessment below and the built form assessment under the heading Pittwater DCP. In summary, the proposal satisfies this principle.

Principle 6: Amenity

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

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

Comment:

As discussed above, the proposal provides a quality design with good internal and external amenity

consistent with the amenity principle as demonstrated in the ADG assessment below and the built form assessment under the heading Pittwater DCP.

Principle 7: Safety

The application does not trigger a referral to NSW Police as the cost of work is less than \$20 million and there are less than 75 dwellings. Nonetheless, the application has been assessed in accordance with principle 7 of SEPP 65, Clause C1.2 of the Pittwater DCP and the Crime Prevention Through Environmental Design (CPTED) principles.

SEPP 65

Principle 7 of SEPP 65 requires good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

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

CPTED

There are four (4) CPTED principles, namely territorial re-enforcement, surveillance, access control and space / activity management.

- *Territorial re-enforcement* requires community ownership of public spaces. The principles notes that: *Effective guardians are often ordinary people who are spatially 'connected' to a place and feel an association with, or responsibility for it.*
- *Surveillance* - The principle refers to three types of surveillance, namely natural, technical and formal surveillance. Natural surveillance is achieved when normal space users can see and be seen by others and highlights the importance of building layout and orientation. Technical surveillance is achieved through electronic measures such as CCTV. Formal surveillance is achieved through the such of in site supervisors such as security guards.
- *Access control* - The principle refers to three types of access control, namely natural, technical and formal access control. Natural access control includes the tactical use of landforms and waterways features, design measures including building configuration; formal and informal pathways, landscaping, fencing and gardens. Technical and formal access control includes the employment of security hardware such as security officers.
- *Space / Activity Management* involves the formal supervision, control and care of the development. All space, even well planned and well-designed areas need to be effectively used and maintained to maximise community safety.

C1.2 of the Pittwater DCP states building design should allow visitors who approach the front door to be seen without the need to open the door. Buildings and the public domain are to be designed to allow occupants to overlook public places and communal areas to maximise casual surveillance. Building entrances are to be clearly visible from the street, easily identifiable and appropriately lit.

Comment:

Safety and security in the proposed development are well considered. The definitions of public and private space are clear in the delineation of facade elements. The balconies and daybeds provide excellent overlooking of the public domain from private spaces to further enhance safety and security to Bungan and Waratah Streets and the retail arcade. Secure access is provided to the pedestrian and

vehicular entrances. Video intercoms and lighting are provided at entry points. Separate retail and residential entrances are clearly defined and secured with the retail entrance located on Bungan Street and the residential entrance located on Waratah Street. In addition, all apartments overlook the internal courtyard and maximise casual surveillance.



View of secure residential and vehicular entries from Waratah Street.

In summary, the proposal is consistent with the safety principle of SEPP 65, Clause C1.2 of the Pittwater DCP and the CPTED. The proposal has been design to ensure territorial re-enforcement, natural and mechanical surveillance and natural access control through the use of building configuration, pathways and landscaping.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

The proposal is consistent with the housing diversity and social interaction principle as demonstrated in the ADG assessment below. All apartments are designed to comply with the minimum size requirements and 20% of the apartment are designed as Silver Living.

Principle 9: Aesthetics

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

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

Comment:

The proposal is consistent with the aesthetics principle as demonstrated in the ADG assessment below

and the built form assessment under the heading Pittwater DCP. The proposed development responds aesthetically to the environment and context of the site, contributing positively to the desired future character of the area. The proposal satisfies this principle.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Complies: The proposed development responds to the context and is sited appropriately to allow for good internal amenity to the proposed apartments while minimising impacts on surrounding neighbours.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Complies: The layout generally responds to the streetscape and the shadow falls primarily on the public road.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Complies: The ground floor will be activated with the retail units on all frontages. A 4m set back is proposed to the northern boundary to create a 7.2m wide level lane which will enhance the existing informal retail arcade which connects the site and Bundgan Street to Akuna Lane. The lane is enhanced with new planting, a colonnade and public seating. The colonnade wraps around the building facade to the Bungan Street and Waratah Street frontage. A satisfactory level transition is proposed between the private and public domain and the proposal has been amended to retain all street

		trees.
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	Assessed as satisfactory: A 209sqm internal landscaped courtyard is proposed at level 1. An additional 69sqm of communal landscaping is proposed within the centre of the site to the ground floor retail and 23.4sqm is provided at ground floor level street frontages in the form of planter beds. The total amount of open space is 300sqm, which equates to 15% of the site area. The courtyard is not accessible to the residents and will be overshadowed by the proposed development. The non-compliance has been assessed as acceptable for the following reasons: The courtyard will provide daylight, natural ventilation and a landscape outlook from all apartments. The courtyard has purposely been designed not to be accessible so as to protect the acoustic privacy of the apartments. The courtyard responds to the existing pattern of the neighbouring property to the west at 24 Waratah Street. Future residents have reasonable access to public open space with Kitchener Park being within a short walking distance from the subject site. Each apartment has access to private open space in the form of

		compliant terraces which comply or exceed the minimum size requirements. The courtyard is cast in shadow due to orientation of the site combined with existing development to the west at 24 Waratah Street. A detailed assessment of open space and landscaping is provided under Clause C.1 of the Pittwater DCP. In summary, the landscaping has been assessed as acceptable. Council Landscape Officer has assessed the proposal, in accordance with the ADG and has no objections to the non-compliance with the communal open space provisions.												
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	Complies: The central courtyard has a soil depth of 800mm, the planter beds have a depth of between 1m to 2m. In addition, the proposal has been amended to include tree pits / deep soil zones to retain the existing significant street trees. The deep soil zones exceed 7% of the site area.
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td></td><td></td><td></td></tr> </tbody> </table>	Building height	Habitable rooms and	Non-habitable rooms				Assessed as satisfactory: The landscaped courtyard generally allows for compliant separation distance between the						
Building height	Habitable rooms and	Non-habitable rooms												

	balconies	
Up to 12m (4 storeys)	6m	3m
Up to 25m (5-8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.

residential apartments in the subject blocks. It is acknowledged that there is a minor breach in the separation between the circulation space adjacent to the lifts communal corridor where it is reduced to 8.3m (9m is required). This minor breach has been assessed as acceptable especially given that planter boxes are proposed adjacent to the communal corridors which will minimise any visual privacy issues.

The layout of the units on the north-east corner (units 8, 20 and 32) have been amended to delete non-compliant north facing terraces. An ensuite window and bedroom window are proposed on the elevation which are set back 3.4m from the northern boundary. Given that the windows are not to a main living room they have been assessed on merit as acceptable.

Private terraces to four (4) north facing units remain to be positioned 3.4m from the boundary. 3.4m wide planter beds are located adjacent to 3 of these terraces which will help protect privacy. In addition, roller privacy blinds are proposed along the terraces. The privacy treatment to the north facing units has been assessed as acceptable and it is considered that the proposal will not prejudice the development potential of the property to the north at No 17 Bungan

Street.

It is noted that there are existing non-compliant balconies in the adjoining development to the west at No 24 Warath Street. These balconies are located between 1m and 4m to the common boundary. A 2m long blade wall is proposed along the (rear) common boundary to help protect the visual privacy between the proposed south facing bedroom window to unit 12, 24 and 36 and No 24 Warath Street. This combined with the existing privacy screens to the upper floor balconies to No 24 Waratah Street will ensure visual privacy is protected between the proposed development and adjoining residential development.

The proposal includes north facing windows to habitable rooms and terraces within the proposed units in the south-west corner of the subject site (units 1, 13 and 25). The windows are located at a distance which is less than 6m from the west boundary measured at a 45 degree oblique angle.

The terraces are recessed and the windows are located at a distance of approximately 10m from the east facing balconies in the neighbouring development at No 24 Waratah Street measured at an oblique angle. The windows do not allow for

		direct overlooking and the separation distance between the windows / existing balconies ensures that visual privacy is maintained. Notwithstanding this, in order to address concerns from neighbours within 24 Waratah Street a condition requires that the terraces and living room windows to units 1, 13 and 25 to be fixed with privacy screens to ensure visual privacy is maintained. Windows to habitable rooms are also located directly adjacent to the common access corridor. Planter boxes are proposed to help protect visual privacy to these rooms. In summary, while the proposal results in a numerical non-compliance with the 6m set back requirement, the design response provides suitable building separation and visual privacy for the adjacent sites to the north and west while retaining suitable access to light and ventilation for the subject site. As such, subject to conditions it is unlikely that the proposal will prejudice the future development potential of the commercial sites to the north or the existing residential units to the west.
Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	Complies: Separate legible, equitable building entrances are proposed for the residential apartments and the retail tenancies. The design of the entries define the

		public and private space. The proposal also enhances the informal link between Bungan Street to Akuna Lane with a 7.2m wide lane and retail uses fronting the lane to activate the public domain. A condition requires the submission of a public domain plan.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Complies: The proposal provides clear vehicular access separate from the pedestrian entry. Vehicular and pedestrian access points are suitably located and designed so as to provide high quality streetscape presentation.
Bicycle and Car Parking	For development in the following locations: - On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	This clause is not applicable: The subject site is not located within 80m of a railway station or light rail stop in the Sydney Metropolitan Area and not on land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use. or equivalent in a nominated regional centre. In this case the parking requirements under the P21 DCP apply as follows: Residential: 1 space per 1 bedroom apartment: 3 x 1 bed apartments are proposed and 3 spaces have been provided in compliance with the control. 2 spaces per 2 or more bedroom apartments: 29 x 2 bedroom units and 4 x 3 bedroom units are proposed and 66 spaces

		have been provided in compliance with the control. A total of 36 residential apartments are provided and a total of 69 car parking spaces are provided in compliance with the control. Visitor: 1 space per 3 dwellings: 36 units are proposed and 12 visitor spaces have been provided in compliance with the control. Retail: 1 space per 30sqm of gross leasable area: 930sqm of retail space is proposed and 31 spaces are provided in compliance with the control. The application has been amended to ensure that the dimensions of the car parking spaces comply with the control. Motorbike: 1 motor bike space per 200sqm of business GFA, 4 motor bikes spaces are provided in compliance with the control. Bicycle parking: 1 bicycle rack per 3 dwellings. A total of 36 units and 14 racks are provided for the residents and 4 racks are provided for the retail tenants in compliance with the control.
Part 4 Designing the Building		
Amenity		
Solar and Daylight	To optimise the number of apartments receiving	Complies:

Access	sunlight to habitable rooms, primary windows and private open space:	72% (26 out of 36 units) receive the required solar access.													
	Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.														
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	Complies: All of the apartments received at least some direct sunlight between 9am and 3pm at midwinter.													
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:	Complies: All apartments are cross ventilated.													
	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.														
	Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Complies													
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	Assessed as satisfactory: All residential units have a compliant 2.7m floor to ceiling level. Due to the inclusion of clerestory windows some of the units on level 3 have a floor to ceiling height that exceeds the 2.7m height limit.													
	<table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>		Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	The floor to ceiling height of the ground floor retail units range between 2.7m to 3.7m and have been assessed as acceptable.
	Minimum ceiling height														
	Habitable rooms	2.7m													
	Non-habitable	2.4m													
	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use														
Apartment Size and Layout	Apartments are required to have the following minimum internal areas:	Assessed as satisfactory: The one 3 bedroom unit on level 3 measures													

Apartment type	Minimum internal area	
Studio	35m ²	
1 bedroom	50m ²	
2 bedroom	70m ²	
3 bedroom	90m ²	
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.		88.85sqm which is 1.15sqm less than the minimum 90sqm requirement. The minor non-compliance has been assessed as acceptable.
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.		Satisfactory:
Habitable room depths are limited to a maximum of 2.5 x the ceiling height.		Assessed as satisfactory: The proposed ceiling height is 2.7m therefore the max habitable room depth is 6.75m. The control allows the depth to be increased x 3 ceiling height with open plan layouts. As such, the subject development allows for a max depth of 8.1m. The design of the apartment layout includes open plan kitchen, dining and living areas which measure 8.3m in depth. The minor (0.2m) breach in the control has been assessed as acceptable.
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.		Assessed as satisfactory: Four (4) north facing units on each floor have open plan layouts which are 8.3m in depth measured from the back wall of the kitchen. It is noted that the applicant has taken the measurement from the front of the kitchen unit which equates to a compliant 5.3m. The minor (0.3m) non compliance is assessed as acceptable.

	Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space).	Assessed as satisfactory: The master bedroom have a minimum dimension of 9.9sqm which is acceptable. All other bedrooms have a compliant minimum 9sqm area.															
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Complies															
	Living rooms or combined living/dining rooms have a minimum width of: 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments	Complies															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Complies: The width of the cross-over apartments are 7m.															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Assessed as satisfactory: Three (3) x 2 bedroom units have balconies that measure 9.9sqm (10sqm required). The minor (0.1sqm) non-compliance has been assessed as acceptable. The majority of balconies exceed the control.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m ²	-														
	1 bedroom apartments	8m ²	2m														
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	The minimum balcony depth to be counted as contributing to the balcony area is 1m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	N/A															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Complies: Six (6) apartments are accessed via the circulation core.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td></td><td></td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²			Complies: Storage is provided to each apartment at basement level and within each unit in compliance with the control.									
	Dwelling Type	Storage size volume															
	Studio apartments	4m ²															

	<table><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	
1 bedroom apartments	6m ²							
2 bedroom apartments	8m ²							
3+ bedroom apartments	10m ²							
	At least 50% of the required storage is to be located within the apartment.							
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Satisfactory: The central courtyard has been designed not to be accessible in order to protect the acoustic privacy of the units that are located along the periphery of the courtyard. Bedrooms are located adjacent to the circulation corridor. 800mm wide planter beds are located in the front of the bedrooms which has been assessed as an acceptable screening to the windows. In addition, an acoustic report has been submitted and the recommendations of the report are included as conditions of consent. The recommendation include a requirement for acoustic glazing to the windows facing the internal courtyard.						
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Satisfactory: Subject to compliance with the recommendations of the acoustic report.						
Configuration								
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Satisfactory: The proposed development includes the following mix which has been assessed as acceptable: 3 x 1 bedroom units 29 x 2 bed units and 3 x 3 bed units.						
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	Not applicable. Retail units are provided at						

		ground level which will activate the streets.
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Satisfactory: The design includes modulation of the facade which will reduce the perceived depth and bulk of the development. The facade provides visual interest consistent with the existing character of the streetscape.
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Satisfactory: The ADG notes <i>that the Standard Instrument (Local Environmental Plans) Order 2006 allows for architectural roof features that can exceed the maximum building height. This is an important tool for achieving high quality roof design and articulation.</i> The proposal has been amended to reduce the height of the roof although some elements breach the 13m height limit including the clerestory windows which provide design and articulation to the development and enhanced amenity to apartments in terms of solar access. The lift shaft overruns are set back from the boundaries of the site to reduce visual and amenity impacts. Similarly, the pitch of the clerestory windows that breaches 13m height limit is set back approximately between 5.9m and 11m from Waratah Street frontages. The roof design is considered acceptable and it is unlikely that the pitch of the clearstory roof will be visible from surrounding

		streets. The roof is not used for communal open space, as this would result in significant non-compliance with the height of building development standard																																			
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Satisfactory: The landscape details are integrated into the floor plans. A condition requires a separate landscape plan to be approved prior to the issue of a Construction Certificate.																																			
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes: <table> <tr> <th>Plant type</th> <th>Definition</th> <th>Soil Volume</th> <th>Soil Depth</th> <th>Soil Area</th> </tr> <tr> <td>Large Trees</td> <td>12-18m high, up to 16m crown spread at maturity</td> <td>150m³</td> <td>1,200mm</td> <td>10m x 10m or equivalent</td> </tr> <tr> <td>Medium Trees</td> <td>8-12m high, up to 8m crown spread at maturity</td> <td>35m³</td> <td>1,000mm</td> <td>6m x 6m or equivalent</td> </tr> <tr> <td>Small trees</td> <td>6-8m high, up to 4m crown spread at maturity</td> <td>9m³</td> <td>800mm</td> <td>3.5m x 3.5m or equivalent</td> </tr> <tr> <td>Shrubs</td> <td></td> <td></td> <td>500-600mm</td> <td></td> </tr> <tr> <td>Ground Cover</td> <td></td> <td></td> <td>300-450mm</td> <td></td> </tr> <tr> <td>Turf</td> <td></td> <td></td> <td>200mm</td> <td></td> </tr> </table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		Satisfactory: The soil depth of the landscaped courtyards is generally 800mm which will allow for the planting of small trees and shrubs The soil depth for the ground level planter beds varies but includes depths of up to 2m and minimum dimension of 3.5m which will allow for medium trees to a height of 8 - 12m to be planted In summary, the proposal includes planting areas that achieve the minimum soil depths and areas.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																																	
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Shrubs			500-600mm																																		
Ground Cover			300-450mm																																		
Turf			200mm																																		
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features	Complies: The proposal include 8 silver level apartments equating to a compliant																																			

		20% of the apartments.
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	N/A
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Complies: The proposal is accessible to public transport including access to the B line bus services.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	Complies: The development includes an awning and colonnade to Waratah Street and Bungan Street, both streets have high pedestrian activity and active frontages. The awning / colonnade will provide protection for pedestrians and contribute to the buildings design and identity. Signage zones have been identified for the ground floor retail units which are generally acceptable. A condition requires a separate DA for the fitout and use of the retail tenancies and any signage which is not exempt under the Exempt and Development Comply Code.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Complies: The proposed development is supported by a BASIX Certificate and a set of plans with BASIX stamp attached.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Complies: The proposal is supported by suitable water management plans and is acceptable subject to conditions.
Waste Management	Has a waste management plan been submitted as	Complies:

	part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	The proposal is supported by suitable waste management plans and is acceptable subject to conditions.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Complies: The proposed development is designed in such a manner that will ensure the longevity and sustainability of the building.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

Comment:

The parking rate specified in Part J of the Apartment Design Guide (as per the Guide to Traffic Generating Developments) does not apply in this case, as the site is not within 800 metres of a railway station or light rail stop and is not zoned or within 400 metres of land zoned B3 Commercial Core, B4 Mixed Use. The proposal complies with the applicable parking rate contained within P21 DCP. The proposed internal areas for each apartment comply with the minimum internal area for the relevant apartment type specified in Part 4D of the ADG. The proposed ceiling heights achieve the recommended minimum ceiling heights specified in Part 4C of the ADG for all apartments. The retail tenancies have 3.7m high floor to ceiling heights with a minor breach in the control to the rear of the three tenancies fronting the arcade. In accordance with Clause 30 (1) of the *SEPP* the application is not being refused in relation to these matters.

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

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

(3) To remove doubt:

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

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

Comment:

The proposal demonstrates that adequate regard has been given to the design quality principles and the objectives of the ADG, as certified by the accompanying Design Verification Statement.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	13m	13m - 15m	15% (reduced from 22%)	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	13m
Proposed:	The majority of the building

	sits below the 13m height limit. The centrally located lift core and north facing celestory windows breach the limit by up to 2m (reduced from 3.3m).
Percentage variation to requirement:	15% (reduced from 22%)



Height control image illustrating the non compliant roof projections and lift overrun above the 13m height limit.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

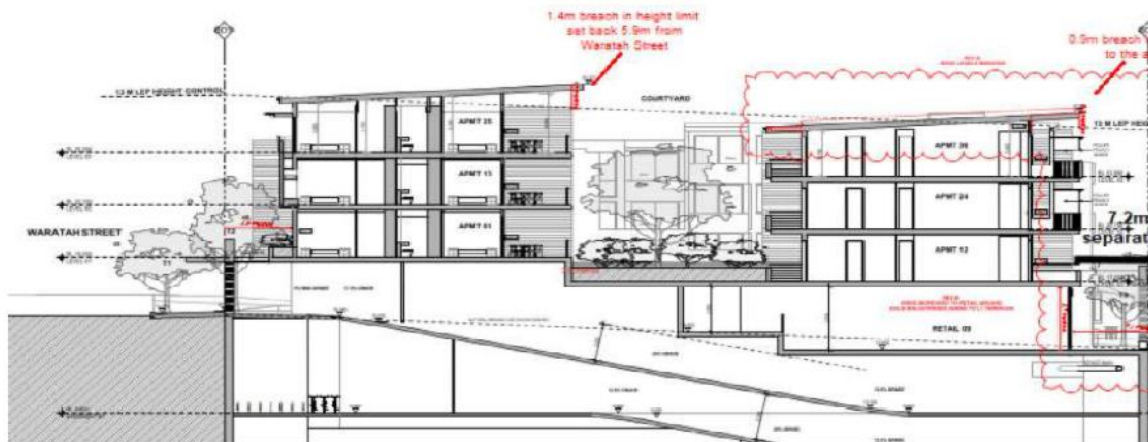
- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social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

The applicants written request argues, in part:

- *The majority of the development sits comfortably below the height control, only the north facing clerestory window elements and centrally located lift overrun breach the standard.*
- *The areas of the development breaching the 13m height limit will not compromise the development performance when assessed against the desired future character statement for Mona Vale.*
- *The height and scale is compatible with that established at No 24 Waratah Street and the 4 storey shop to housing at the northern end of the street block at No 3 -5 Bungan Street.*
- *The proposed development, by virtue of its height and scale is not offensive, jarring or un-sympathetic having regard to the existing and desired future built form characteristics of development within the sites visual catchment.*
- *The shadow diagrams demonstrate that the non-compliant building elements will not cast shadow onto any adjoining residential properties between 9am and 3pm on 21 June.*
- *The building height breach will not give rise to any unacceptable impacts of public or private views.*
- *The topography of the land make strict compliance with the 13m height standard difficult to achieve.*
- *The clerestory windows enables superior amenity with sunlight penetration deep into the upper level apartments. A better planning outcome is achieved as a consequence of the variations sought, namely enhanced amenity.*
- *The contextually responsive development is consistent with the zone objectives,*
- *The contextually responsive development is consistent with the objectives of the building height standard,*

The proposal has been amended to reduce the height of the development with pitched roofs modified to flat roofs and the projecting roof feature at the intersection of Waratah Street and Bungan Street being deleted. The amended proposal reduced the variation of the height development standard from 22% to 15%. It is agreed that the majority of the development sits below the 13m height limit and the elements

that breach in the 13m height limit, the clerestory windows / roof projections and the lift overrun, will not compromise the development performance when viewed from the streetscape or when assessed against the desired future character of Mona Vale town centre. The lift overruns are located within central positions and will not result in any adverse visual or amenity impacts, refer below. The non-compliant clerestory windows will allow for a better planning outcome in terms enhance amenity to the upper floor apartments which will receive excellent access to sunlight. Due to the orientation of the site the breaching element will not give rise to any adverse impact on neighbouring residential amenity in terms of solar access between 9am and 3pm on 21 June.



Section showing roof projections which breach the 13m height limit.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B4 Mixed Use zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The breach to the height of buildings development standard relates to the lift overruns, which are located in a central position within the site, and the north facing clerestory window elements that are set back from the street frontages. Notwithstanding the breach in height, the proposal is generally consistent with the desired future character statement for Mona Vale town Centre as defined in clause 4.2.1 of the Pittwater DCP which includes the following objectives in relation to height:

"The permissible building height limit is increased to promote economic growth within the centre. Future development will maintain a building height limit below the tree canopy and minimise bulk and scale.

The design, scale and treatment of future development within the Mona Vale commercial centre will reflect principles of good urban design."

The statement acknowledges that the height limit is increased to promote economic growth in the centre. The proposal is generally consistent with the 13m height limit and the development will promote the economic growth of Mona Vale providing job opportunities and quality apartments. The area of the development breaching the 13 m height limit of the development standard will not compromise the developments performance when assessed against the desired future character statement. The building by virtue of its height and scale is contextually appropriate. The street trees will be retained and the development will sit below the tree canopy of the significant street trees. The modulation of the development helps reduce visual impacts on the streetscape of the perceived bulk and scale.

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

Comment:

The proposed development presents four storeys to the street which is generally consistent with the three / four storey development to the west and the four storey shop top housing development is located at 5-9 Bungan Street to the north. Two storey commercial development are located to the immediate north and a three storey commercial development is located on the opposite side of Bungan Street to the east. The two and three storey developments surrounding the site predate the current Pittwater LEP 2014. Both the PLEP 2014 and the P21 DCP anticipate four storeys and 13m of building height at this location. The proposed height and scale of the development is therefore compatible with the anticipated height and scale of development in this locality and surrounding sites have the opportunity to be redeveloped to this additional height in the future.



Three storey development to the east on the opposite side of Bungan Street.



Two storey development to the north along Bungan Street.

The majority of the proposed building sits below the 13m height limit. The elements that breach the 13m height limit are set back from the site boundaries and will it is unlikely that these elements will be perceived from the surrounding streets. As such the minor breach in the 13m height limit has been assessed as acceptable and the development continues to comply with the the objective.

c) to minimise any overshadowing of neighbouring properties,

Comment:

Shadow diagrams have been submitted which illustrate that the non-compliant building height elements will not cast shadow onto any adjoining residential properties between 9am and 3pm on 21 June. It is noted that the additional shadow created by the development primarily falls on the public streets.

d) to allow for the reasonable sharing of views,

Comment:

The proposed development is designed and sited so as not to result in any unreasonable view loss. There are no significant views or vistas unreasonably impacted by the building height breach, refer to discussion under section *Clause C1.3 View sharing below*.

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

Comment:

The development has been designed to respond sensitively to the natural topography including stepping of the built form. The elements that breach the building height do not impact on compliance with this objective.

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

Comment:

The subject site and surrounds do not contain any items or areas of heritage significance. The proposal has been amended to retain street trees.

Zone objectives

The underlying objectives of the B4 Mixed Use zone are addressed as follows:

- *To provide a mixture of compatible land uses.*

Comment:

The proposed shop top housing contributes to the range of retail, business and residential uses which are compatible with existing mixed uses within the Mona Vale town centre. The proposed development is therefore consistent with this objective.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

Comment:

The subject site provides a range of business, residential and retail uses in an accessible location in Mona Vale town centre. The site is located within walking distance of bus services, including the B-Line bus stops and proposed development accommodates bicycle parking in compliance with the DCP.

- *To strengthen the role of Mona Vale as a centre of employment in Pittwater.*

Comment:

The proposed development includes nine (9) ground floor retail tenancies which will strengthen the role of Mona Vale as a centre of employment.

- *To provide healthy, attractive, vibrant and safe mixed use areas.*

Comment:

The proposed development contributes to the existing Mona Vale town centre with the inclusion of additional residential dwellings and retail / commercial tenancies in an accessible location.

- *To provide an active day and evening economy.*

Comment:

As discussed above, the proposal provided nine (9) retail tenancies which will activate Bungan Street, Waratah Street and the retail arcade. The proposed retail tenancies can be used for day and / or evening economy and will support the existing and future residents of the locality. A condition requires a separate DA for the detailed fitout and use of the tenancies.

- *To provide for residential uses above ground level, where they are compatible with the characteristics and uses of the site and its surroundings.*

Comment

The proposal includes 36 residential apartments above the retail tenancies. The upper floor residential uses are compatible with the retail uses at ground level and other uses in the Mixed Use zone. A condition requires the submission of separate DA's for the fitout and use of the retail units. At which time a detailed assessment of issues such as acoustic impacts will be fully assessed.

- *To encourage retail vitality and provide a high level of amenity for pedestrians and cyclists.*

Comment:

The retail tenancies are orientated to all frontages which will help activate the site. It is noted that the current building presents a blank facade to Waratah Street and an open car park to almost half of the site. Through site pedestrian permeability is enhanced with the creation of a 7.2m wide lane to the existing informal arcade which provides a valuable link between Bungan Street and Akuna Lane. The lane will be a local link within private land which will be activated with retail tenancies. The public domain will be enhanced with colonnades and awnings to provide weather protection to the public. Street trees are retained and additional planting is proposed. Compliant bicycle parking is provided to both the retail and residential components.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B4 Mixed Use zone.

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

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

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

7.1 Acid sulfate soils

Detailed Assessment

The objectives Clause 7.1 is to ensure that development does not disturb, expose or drain acid sulfate

soils and cause environmental damage.

Comment:

The site is classified as Class 5 Acid Sulfate Soils Hazard in the Pittwater LEP. A Geotechnical report, prepared by Crozier, has been submitted in support of the application. The Geotechnical report confirms that it is unlikely that there will be acid sulfate soils on the site and that subject to conditions, the proposed development is unlikely to disturb, expose or drain acid sulfate soils and cause environmental damage. Conditions are included in the recommendation including the requirement for an assessment of the water table and the potential for lowering within adjacent Acid Sulfate Soils Class 1 to 4.

As noted above, the site is classified as class 5 in the Acid Sulfate Map. Clause 7.1(2) stated development consent is required for:

Class of land 5 - Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

Comment:

The basement excavation extends to RL 5.69 which is not below RL5 metres AHD as such no further consideration is required pursuant to these provision.

7.2 Earthworks

Detailed Assessment:

The objective of clause 7.2 is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. In deciding whether to grant development consent for 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.

Comment:

The proposal includes bulk excavation of approximately 8.6m depth in the north-west corner of the site reducing to approximately 6.0m depth in the south-east corner to construct the two level basement car park. The application is supported with a geotechnical report which makes recommendations to protect drainage patterns and soil stability in the locality. The recommendations relate to new footings, dilapidation surveys, retaining structures, anchors, drainage and hydrology and design and construction monitoring,

Subject to the recommendations of the geotechnical report and conditions recommended by Council's Engineer it is unlikely that the earthworks will have a detrimental effect on, drainage patterns and soil stability in the locality.

The effect of the development on the likely future use or redevelopment of the land.

Comment:

Earthworks are required to allow for the construction of the basement which is part of the proposal for the shop top housing, the subject application. Subject to the compliance with the recommendations of the geotechnical report and Council's Engineer, the excavation can be completed without impacting on the future mixed use development (the subject of this application).

The quality of the fill or the soil to be excavated, or both.

Comment:

The Geo-technical report describes the geotechnical assessment as including a walk over inspection and database review (including a review of nearby intrusive geotechnical investigations). The assessment indicates that the site is likely to be underlain by a layer of fill (less than 0.5m) under which sandy clay / clayed sand will likely to be encountered. Below depth of approximately 4.0-5.0m extremely weather sandstone / siltstone is anticipated. Further geotechnical investigation is recommended in at least four locations within the site to provide accurate soil and bedrock strength parameters prior to structural design and construction. Conditions are included in the recommendation to this effect.

The effect of the development on the existing and likely amenity of adjoining properties.

Comment:

The geotechnical report notes that "As the excavation is to be taken up to the site boundaries, insufficient space exists for temporary batter slopes to provide perimeter support therefore pre-excavation support will be required to maintain boundary stability including that of adjacent buildings. Temporary batters could be adopted within the site (during construction) where they are constructed an adequate distance from site boundaries (and un-surcharged by adjacent structure loads)".

A condition requires the recommendations of the risk assessment required to manage the hazards identifies in the Geotechnical report to be incorporated into the construction plan and the Geotechnical design must also comply with Council's Geotechnical Risk Management Policy. In addition, Council's Engineer has recommended a number of conditions relating to the excavation to ensure that the earthworks do not impact on the adjoining properties including:

- Structural adequacy and excavation work - The excavation work is to ensure the structural stability of the soil material of adjoining properties, the protection of adjoining buildings, services structures and infrastructure from damage using underpinning, shoring, retaining walls and support where required.
- Protection of adjoining property - The person causing the excavation must preserve and protect adjoining buildings from damage, if necessary by underpinning and support.

Conditions are also included requiring dilapidation reports to be submitted before commencement of work and post construction.

In summary, the proposed earthworks are considered suitable for the site and may be completed with negligible impact on the amenity of adjoining properties provided the recommendations of the Geotechnical report are implemented in the design and construction phases in addition to the conditions recommended by Council Engineer.

The source of any fill material and the destination of any excavated material.

Comment:

As noted above, the fill material only extends to the top 0.5m, the destination of the excavated material will be subject to conditions relating to the construction phase.

The likelihood of disturbing relics.

Comment:

The site is not identified as containing any heritage significance. As such, it is unlikely that the earthwork will disturb relics.

The proximity to, and potential for adverse impacts on any waterway, drinking water catchment or environmentally sensitive area.

Comment:

It is unlikely that the proposed earthworks will impact on waterway, drinking water catchment or environmentally sensitive areas. Conditions are recommended in the geotechnical report requiring an assessment of the groundwater conditions at a depth below the site by the installation of groundwater piezometers. Conditions are included in the recommendation to address this issue.

Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

Appropriate measures are proposed to avoid, minimise or mitigate the impacts of earthworks. In addition to engineering and geotechnical conditions discussed above, conditions are recommended to protect neighbouring residential amenity during construction relating to dust, noise and vibration.

The proximity to and potential for adverse impacts on any heritage item, archaeological site, or heritage conservation area.

Comment:

As noted above the site has not been recorded as having any heritage significance and is not located in close proximity to heritage items, archaeological sites or a heritage conservation area.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	<u>Waratah Street</u> Ground floor- 3.5m with the exception of the entrance to the residential lobby First, second and third floor - 3.5m - 1.2m <u>Bungan Street</u> Ground level - 3.5m with the exception to the corner to Waratah Street. First floor - 3.5m - 1.2m	N/A	Assessed as acceptable

		<u>Waratah and Bungan Street intersection</u> Ground Floor - 2.9m First Floor - 2m Second and third Floor - 0.7m <u>Retail arcade</u> Ground Floor - 4m First, second and third floor - 6m - 3.4m (terraces and planter beds breach the set back)		
Rear building line	Nil	Nil to rear (west)	N/A	Yes
Side building line	Nil	N/A (Note: there is no side boundary as the northern boundary presents as a front boundary to the retail arcade)	N/A	N/A

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - 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
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	No	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B6.8 Access Driveways and Works on the Public Road Reserves on or Adjacent to a Commercial Centre Primary Road	No	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	No	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	Yes	Yes
C1.23 Eaves	No	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C2.1 Landscaping	No	Yes
C2.2 Safety and Security	Yes	Yes
C2.3 Awnings	Yes	Yes
C2.6 Adaptable Housing and Accessibility	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.11 Signage	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D9.1 Character as viewed from a public place	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	No	Yes
D9.16 Character of the Public Domain - Mona Vale Commercial Centre	Yes	Yes

Detailed Assessment

B2.6 Dwelling Density and Subdivision - Shop Top Housing

Clause B2.6 requires a minimum of 25% of the Gross Floor Area (GFA) of the building shall be set aside for commercial / retail purposes. The commercial retail component is to be calculated on the Gross Lettable Area (GLA). A total GFA of 3,825sqm is proposed with 930sqm commercial / retail space which represents 24.3% of the GFA for the site. The 0.7% variation of the control has been assessed as acceptable as the retail component will meet the employment needs of the Pittwater

Community.

B6.8 Access Driveways and Works on the Public Road Reserves on or Adjacent to a Commercial Centre Primary Road

Detailed Assessment:

The Clause does not permit an access driveway from allotments adjoining Waratah Street, and Park Street in the Mona Vale Commercial Precinct onto either Bungan Street or Waratah Street where alternative access to a local road is available or can be made available via a right-of-way or easement.

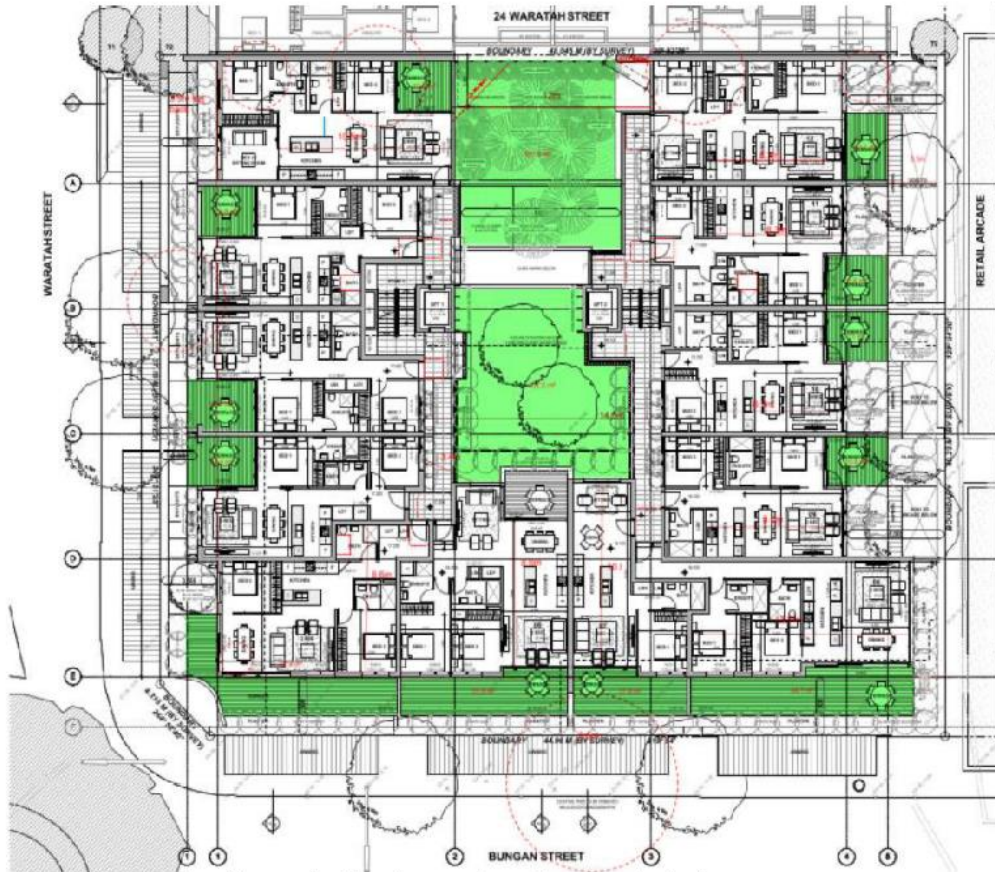
The site bound by two primary roads, Waratah Street and Bungan Road with existing access via Waratah Street. The proposed access is also via Waratah Street and as there is no alternative access to a local road this arrangement has been assessed as acceptable by Council's Transport Unit.

C1.1 Landscaping

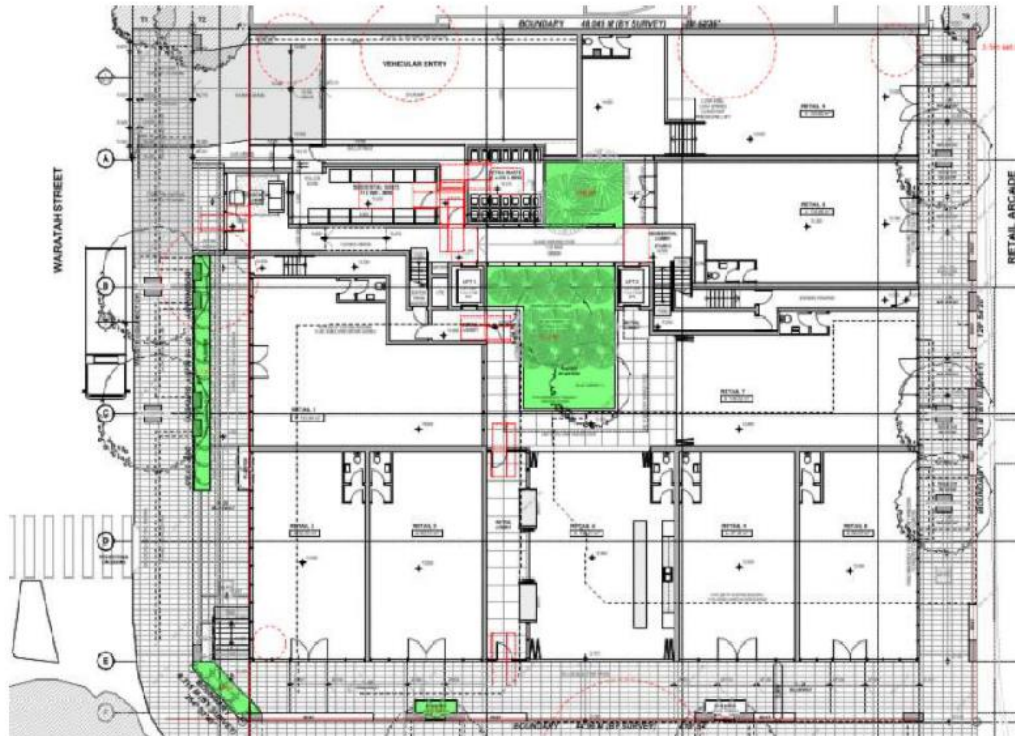
Clause C2.1 Landscaping

Detailed Assessment

For shop top housing, Clause C1 requires a minimum landscaped area of 20% of the site area, or 35m² per dwelling, whichever is the greater. The proposal provides a 209sqm landscaped central courtyard, an additional 69sqm of landscaping is proposed within the centre of the retail arcade and 22.4sqm is provided at ground level in the form of planter beds. The total amount of landscaping (300sqm) equates to 15% of the site area (refer to ground and level 1 plans below which show the proposed landscaped areas). Furthermore, each apartment benefits from having generous private terraces (9.9sqm -34sqm) which exceed the minimum 4sqm requirement. While the amount of landscape area does not meet the 20% minimum landscape area requirement the proposal meets the relevant outcomes of the control, as discussed below:



Level 1 plan showing the central landscaped courtyard and private open space.



Ground level plan showing areas of landscaping.

A built form softened and complemented by landscaping.

Comment:

The built form is softened and complemented by landscaping along all three public frontage including planter beds and new planting. In addition, new trees are proposed within the retail arcade and planter beds are also proposed above the retail arcade which will also soften and complement the northern elevation, refer to image below.



Aerial view illustrating the voids above the retail arcade and multi layer landscaping in the form of planer beds and planting of new trees.

Landscaping reflects the scale and form of development.

Comment:

The site is located within the Mona Vale town centre in an urban built up environment. The quantity of landscaping reflects the scale and form of the proposed development and the existing and desired character of the area. It is also noted that there is no significant landscaping on the current site, as such the proposed landscaping has the potential to enhance the site and surrounding area.

Retention of canopy trees by encouraging the use of pier and beam footings.

Comment:

The proposed development has been amended to provide for the reasonable retention and protection of existing significant street trees which are located adjacent to the property boundaries. Tree pits are provided within the basement and Council's Landscape Unit support the proposal subject to conditions, refer to discussion within the *Referrals* section.

Development results in retention of existing native vegetation.

Comment:

As discussed above, the proposal has been amended to retain the existing native vegetation / street trees.

Landscaping results in the long-term retention of Pittwater's locally native tree canopy.

Comment:

As discussed above, the proposal has been amended to retain the existing native tree canopy.

Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species

Comment:

A condition requires the planting of native species to enhance Pittwater's biodiversity.

Landscaping enhances habitat and amenity value.

Comment:

The proposed landscaping has the potential to enhance habitat and amenity value to future residents, works and the public.

Landscaping results in reduced risk of landslide.

Comment:

The site is not identified as being at risk of landslide.

Landscaping results in low watering requirement.

Comment:

The species selection will ensure landscaping results in low watering requirement.

On merit the proposed quality and quantity of landscaping has been assessed as acceptable in the context of the urban environment and with respect to the future desired character of the area. Council's Landscape Unit has no objections to the development subject to conditions.

C1.3 View Sharing

Detailed Assessment:

A submission has been received from the neighbouring property at No. 24 Waratah Street with concerns relating to the potential view loss associated with the proposed works, in particular the view of Mona Vale headland. In regards to C1.3 View Sharing of P21 DCP any concerns relating to view loss will consider the Planning Principle for view sharing *Tenacity Consulting v Warringah Council* [2004] 140. It is a requirement of this Planning Principle that a four-part test be undertaken to consider the extent of views potentially impacted by development. An assessment of view loss has also been undertaken with the reference to the Views Principle established by the NSW Land and Environment Court as follows:

Step One

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.

Comment:

Units 7 (level 1) and unit 13 (level 2), 24 Waratah Street were inspected on 29 November 2019 with owners of No 7 present. The occupants of these apartments currently enjoy district views across Mona Vale town centre looking north-east towards the headland in the distance, there is no water view. Refer to the images below which depict the balconies in question and the views:



Image 1: Rear elevation of 24 Waratah Street showing the balconies to level 1 and 2 where view loss has been assessed.

Image 2: Balconies to No 24 Waratah Street.

Step Two

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 far more difficult than the protection of views from the 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 occupants obtain distant views of the headland from the east facing balconies looking in a north-east direct obliquely across the side boundary of the subject site. The immediate view from the balconies looking east is toward the car park and the rear of commercial building on the subject site. Tree tops can be observed beyond the commercial building and beyond this distant district views can be observed looking east and south east. Generally, due to the solid wall of the balcony the views are

observed from a standing position. Refer to images below:



Image 3: Standing view from level 1 balcony looking north-east across the side boundary of the subject site.

Image 4: Sitting view from level 1 balcony (note the view is obscured by the solid balcony walls).

Image 5: Standing view from kitchen, across the level 1 balcony looking north-east.



Image 6: Standing view from level 1 balcony to bedroom looking north west.



Image 7 : Standing view from level 2 balcony looking east.



Image 8: Standing view from level 2 balcony looking north-east.



Image 9: Standing view from balcony to level 2 bedroom looking north-west.

Step Three

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 value 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:

It is likely that the proposed four storey development will result in a loss of the distant views to the headland currently observed from a standing position from the balconies / windows of apartments within 24 Waratah Street. The views being impacted by the development are located across the side boundary of the subject site looking in a north-east direction. The application has been amended to reduce the height of the development with pitched roofs being replaced with flat roofs and the roof feature on the south-west corner has been deleted. The modification will help limit the impacts on view sharing to a degree, however, it is anticipated that a fully compliant development would also result in

impacts on distant views to the headland to the north-east.

Due to the topography of the site the height of the development steps down the site from west to east and the built form which fronts Bungan Street will be lower. As such, it is anticipated that the views to the tops of the mature street trees will be retained from the upper floor apartments of No 24 Waratah Street..

Considering the nature of the view impacted, namely a distant view across the side of the subject site to the headland, the extent of view loss best described in this instance is considered moderate.

Step Four

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

As discussed above the majority of the building, as amended, sits below the 13m height limit. The projecting roof forms and elements of the proposed development that breach the 13m building height control limit will not in themselves cause any impacts on view loss as it is anticipated that a fully compliant development will result in the same view loss.

The development has been considered against the underlying outcomes and controls within C1.3 View Sharing of P21 DCP as outlined below:

Outcomes

A reasonable sharing of views amongst dwellings.

Comment:

Given the urban context of the site and the fact that the proposed development generally complies with the height control it is unreasonable to maintain the distant view of the headland observed from the rear east facing upper floor apartments at No 24 Waratah Street. The development has been assessed above with regard to the planning principals established by the Land and Environment Court and on balance the proposal is considered to be acceptable.

Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and, where possible, enhanced.

Comment:

The proposed development will not impact upon views and vistas from roads and public places.

Canopy trees take priority over views.

Comment:

The proposed development has been amended to retain the street trees / canopy trees adjoining the site.

C1.5 Visual Privacy

Detailed Assessment:

The Clause requires:

Private open space areas and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level). Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building. Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.

The development is assessed against the outcomes of the control:

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design.

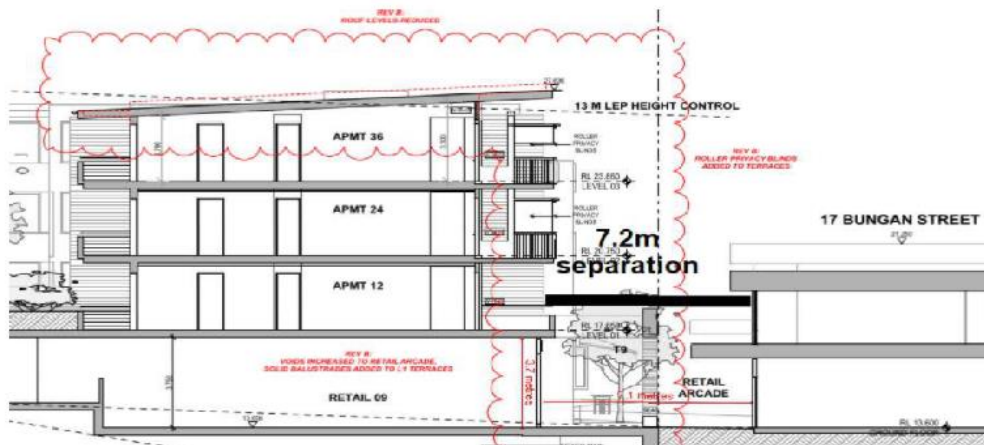
Northern boundary:

Private terraces to four (4) apartments are located 3.4m from the northern boundary on all three levels (refer to section below). A two storey commercial building is located to the north at No 17 Bungan Street which has first floor windows in the northern elevation, see image below.



View from first floor commercial unit at 17 Bungan Street towards the northern end of the lane.

In order to help protect visual privacy of the existing commercial building and the future development potential of this site, the proposal includes screen planting (in a planter box) along the northern edge of the three of the terraces. In addition, roller privacy blinds are proposed to all private terraces. A 7.2m minimum separation distance is provided between the proposed terraces at level 1 and the first floor side windows within the two storey commercial building at No 17 Bungan Street, refer to image below. The proposed north facing terraces on levels 2 and 3 will over look the roof of the commercial building.



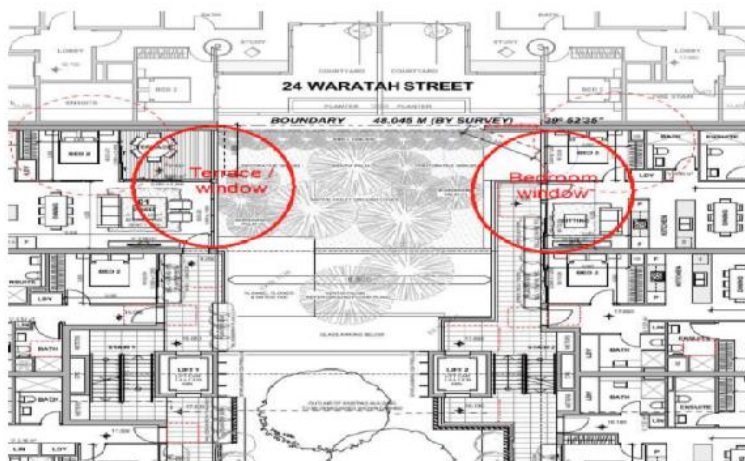
Section showing the 7.2m separation between terraces and the first floor windows to the commercial building at 17 Bungan Street.

The corner apartments, units 8,20 and 32 have an ensuite and bedroom window which are sited within 3.4m of the northern boundary. The ensuite window will have obscure glazing and the bedroom window is a secondary window to a room that will not be frequently occupied, as such the windows have been assessed as acceptable.

In summary, the setback of the terraces and windows to the northern boundary will not result in unreasonable privacy impacts to the commercial development to the north and it is not expected that the development will prejudice the development potential of the neighbouring commercial buildings to the north.

West (rear) boundary

The south facing bedroom windows to unit 12, 24 and 36 are located 3m (measured at an angle of 45 degrees) from the rear boundary to No 24 Waratah Street. A 2m blade wall projects along this boundary which will ensure privacy is protected and the windows are assessed as acceptable. Refer to plan below.



Extract from level 1 plan showing the relationship of proposed windows and terraces to the west (rear) boundary and 24 Waratah Street.

The north facing terraces to unit 1, 13 and 25 are recessed behind the common wall with No 24 Waratah Street. The north facing living room windows are off-set and set back (at an oblique angle) approximately 10m from the balconies to the neighbouring residential apartments at 24 Waratah Street. As such, the proposal is not deemed to result in unreasonable impacts on visual privacy. Despite the fact that there is no direct overlooking between windows in the subject site and the adjoining development, a condition requires fixed privacy screens to be installed to the terrace and windows of these units to ensure that visual privacy is maintained.

A sense of territory and safety is provided for residents.

Subject to conditions, the non-compliance with the 9m setback has been assessed as acceptable on merit and the proposal will ensure that a sense of territory and safety is provided for residents.

C1.23 Eaves

Detailed Assessment:

Clause C1.23 requires eaves be a minimum of 450mm in width. In accordance with the prescribed variation to the control Council can allow an exception to this for shop top housing.

C2.11 Signage

Detailed Assessment:

The proposal includes indicative signage details / zones for the ground floor retail tenancies. A condition requires a separate development for any signage which is not exempt under the Exempt and Development Comply Code.

C2.22 Plant, Equipment Boxes and Lift Over-Run

Detailed Assessment:

The lift overruns are integrated into the design of the development and is set back from the site boundaries and away from the neighbouring shop top housing development to the west.

Indicative details of the ventilation have been submitted which show discharge points on the roof with a minimum clearance of 6m from the site boundaries. The air conditioning units for the residential apartments will be located within the basement. The details have been referred to Council's Health Unit who offer no objections in principle to the indicative details. Conditions are recommended requiring compliance with the acoustic report and the requirement for separate DAs for the use and fitout of the ground floor retail tenancies as a food use.

D9.3 Building colours and materials

Detailed Assessment:

External colours and materials generally comprise dark and earthy tones including: basalt colourbond roof, awnings with metal deck and steel fascia in cliff face grey, recycled brickwork, weatherboard painted in bokra grey, vertical batten louvre powdercoat screens and bifold screens in wood grain finish.

V-joint fiber cement soffits, operable roof louvres, weatherboards and metal vertical rail balustrade which are all proposed to be painted half black white. (which is an off white / light grey colour). The materials and colours are generally consistent with those in the streetscape and have been assessed

as acceptable.

D9.6 Front building line

Detailed Assessment:

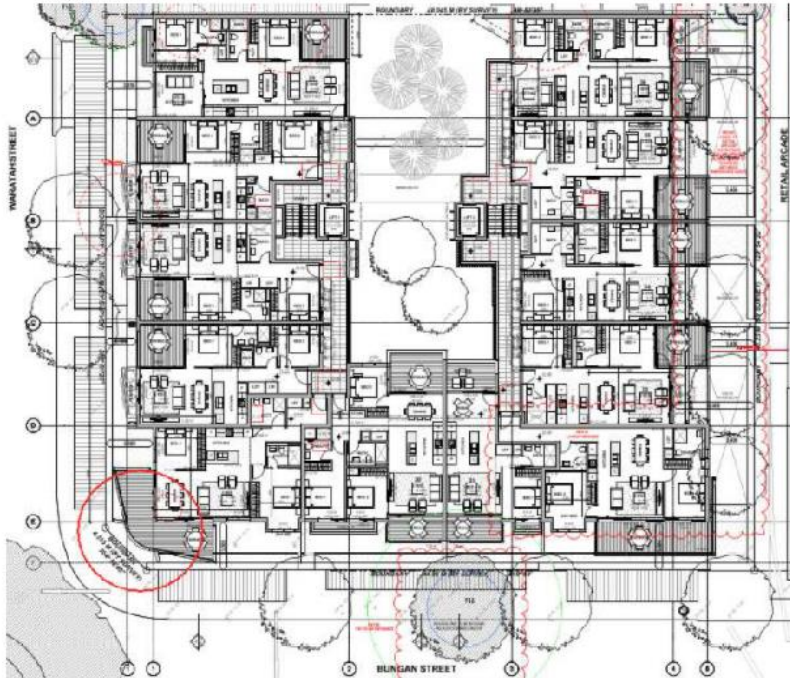
Clause D9.6 requires a 3.5m setback up to a height of 8.49m from the front property boundary, then 6m above a height of 8.5m. The proposed development is inconsistent with the minimum front building line as detailed below.

Waratah Street

The proposal has a compliant 3.5m setback at ground level with the exception of the residential lobby and the corner to Bungan Street where the setback is reduced to 2.9m. The proposal is non-compliant with recommended 3.5m setback on the level 1 and the recommended 6m set back on levels 2 and 3. The set back of the upper floors vary from a max of 3.5m to 0.9m with bedrooms, terraces, planters extending beyond the required setback. The setback to Waratah Street generally conforms with the setback of the adjoining shop top housing development to the immediate west. However elements such as the corner balcony to level 2 and 3 have a limited set back to the corner.



Elements that breach the 3.5m and 6m set back to intersection of Waratah Street and Bungan Street.



Level 3 plan showing the terrace on the corner to Waratah Street and Bungan Street.

Bungan Street:

The proposal is compliant with the 3.5m set back at ground level. Private terraces breach the 3.5m set back at level 1. Level 2 and 3 are generally set back 3.5m therefore breaching the 6m setback. The reduced setbacks along the eastern façade are generally consistent with the established building line of Bungan Street, where existing development has a nil setback to the street frontage.

Retail Arcade

A 4m set back is provided at ground level along the frontage to the retail arcade along the northern boundary. The set back to level 1, 2 and 3 vary between 6m and 3.4m.

The clause allows for minor architectural elements such as planter framework and day beds may be supported forward of the required 3.5m and 6m setbacks. Although the variation does not reference terraces / balconies an exception to the clause has been assessed on merit as acceptable as the breaching elements provide articulation, interest and variation to the facade. The non-complying elements will not have result in adverse impacts on the streetscape or neighbouring amenity and the proposal satisfies the outcomes of the control, as discussed below:

Merit consideration

The development is considered against the outcomes of the clause:

Achieve the desired future character of the Locality.

Comment:

The proposal is consistent with the desired future character of Mona Vale and the non-complying elements to the street frontages provide articulation, interest and expression of the facade.

Equitable preservation of views and vistas to and/or from public/private places.

Comment

The elements that breach the front set back will not impacts on views and vistas

The amenity of residential development adjoining a main road is maintained.

Comment

The elements that breach the front set back will not impact on residential amenity. Subject to conditions requiring compliance with the recommendation contained within the acoustic report prepared by Wilkinson Murray the minor breach of the front set back control will not impact on the amenity of the proposed apartments.

Vegetation is retained and enhanced to visually reduce the built form.

Comment:

The proposal has been amended to retain the street trees.

Vehicle manoeuvring in a forward direction is facilitated.

Comment:

Vehicles can enter and exit the basement car park in a forward direction.

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

Comment:

The development enhances the streetscape providing a well considered contextually appropriate development that is consistent with the desired future character of the Mona Vale town Centre. The modulation and articulation of the development with elements such as day beds, terraces and planter beds reduces the massing, scale and density of the development. The street trees are retained and the height of the development is in keeping with the height of significant tree canopy.



Existing view looking north-west to the site.



Photomontage of development from the Waratah and Bungan Street roundabout looking north-west

To encourage attractive street frontages and improve pedestrian amenity.

Comment:

The proposal presents an attractive active street presents to all three public frontages. Conditions require the submission of a public domain plan and paving and detailed treatment of the public domain to comply with Council's Policy.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.

Comment:

The development respond to, reinforces and relates to the spacial characteristics within the surrounding urban environment. The development is centred around an internal courtyard which mirrors the courtyard to the adjoining development to the east. The retail arcade is enhanced and activated. Council's Urban Designer has no objections to the proposal, as amended and the non-compliance with the front set back will not impact on compliance with this objective.

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 \$141,141 is required for the provision of new and augmented public

infrastructure. The contribution is calculated as 1% of the total development cost of \$14,114,100.

CONCLUSION

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

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

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

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

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

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

Height of buildings

The proposed development includes minor elements that breach the maximum height. The proposed development is consistent with the objectives of the zone and does not create view loss impacts. The clause 4.6 variation is acceptable on merit.

Communal open space / landscaping

The proposed development does not provide the required amount of open space. Given the location of the site in the Mona Vale town centre and the fact that the private open space to most apartments exceed the minimum size requirements, the quantity and quality of the open space / landscaping has been assessed as acceptable. The proposed development is consistent with the objectives of the landscape provisions in the ADG and the PDCP and the variation is acceptable on merit.

Front set backs

The proposed development does not provide the minimum front set backs required in the PDCP. The setbacks are generally consistent with the street and the elements that breach the set back provide articulation and will not result in adverse impacts on the streetscape or surrounding properties.

Building separation

The proposed development does not provide the minimum 6m separation to side boundaries required under the ADG. Terraces breach the setback on the northern boundary. A 7.2m separation is retained to the first floor windows in the commercial property and screen planting will ensure that there will be no

adverse impacts on privacy or the future development potential of the neighbouring site.

Visual privacy

The proposed development does not provide the minimum 9m separation between windows and private open space. Private terraces and windows are located within 9m of the rear boundary measured at an oblique angle. Conditions are recommended requiring fixed privacy screens to be installed to the private terraces and living room windows in the apartments within the south-west corner to protect visual privacy.

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

RECOMMENDATION

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- 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 standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/0748 for Demolition of all existing structures and the construction of a four storey shop top housing development over basement car parking on land at Lot 200 DP 746507, 19 Bungan Street, MONA VALE, 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 Sheet DA00	3 July 2019	Gartner Trovato Architects
Site Analysis Plan DA-01 Rev B	17 October 2019	Gartner Trovato Architects
Basement B2 Plan DA-02 Rev C	1 November 2019	Gartner Trovato Architects
Basement B1 Plan DA-03 Rev C	1 November 2019	Gartner Trovato Architects
Ground Floor Plan DA-04 Rev E	27 November 2019	Gartner Trovato Architects
Level 1 Floor Plan DA-05 Rev B	17 October 2019	Gartner Trovato Architects
Level 2 Plan DA-06 Rev B	17 October 2019	Gartner Trovato Architects
Level 3 Plan DA-07 Rev B	17 October 2019	Gartner Trovato Architects
Roof Plan Lower DA-08 Rev B	17 October 2019	Gartner Trovato

		Architects
Roof Plan Upper DA-09 Rev B	17 October 2019	Gartner Trovato Architects
North and south elevation DA-10 Rev B	17 October 2019	Gartner Trovato Architects
East and west elevation DA-11 Rev B	17 October 2019	Gartner Trovato Architects
Section A DA-12 Rev B	17 October 2019	Gartner Trovato Architects
Section B DA-13 Rev B	17 October 2019	Gartner Trovato Architects
Section C DA-14 Rev B	17 October 2019	Gartner Trovato Architects
Section 1 DA-15 Rev B	17 October 2019	Gartner Trovato Architects
Section 2 DA-16 Rev B	17 October 2019	Gartner Trovato Architects
Schedule of colours and materials DA-23 Rev A	3 July 2019	Gartner Trovato Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
Stormwater Management Plan SW1	7 June 2019	Barrenjoey Consulting Engineers
Stormwater Management Plan SW2	7 June 2019	Barrenjoey Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Report Ref 109775-Access-r1	6 June 2019	BCA Logic Access
Noise Assessment Ref 18287 Version A	July 2019	BCA Logic Access
BCA Assessment Report Ref 109775-BCA-r1	6 June 2019	BCA Logic Access
Arboricultural Impact Assessment	June 2019	Urban Forestry Australia
NatHERS Report 0003995920	2 July 2019	NatHERS nad BASIX Solutions
Traffic and Parking report ref 18051	27 June 2019	Terraffic Pty Ltd
Geotechnical Report R ef 2018-132.1 Issue 1	June 2019	Crozier Geotechnical Consultants

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

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

Waste Management Report		
Drawing No/Title.	Dated	Prepared By
Waste Management Report	10 July 2019	Anthony Westwood

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

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

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

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

Reason: Legislative Requirement

3. **General requirements (Demolition):**

- (a) Unless authorised by Council:
Demolition and excavation works are restricted to:
- o 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 a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. 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) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(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.

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

4. **Staff and Contractor Parking**

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity (DACTRBOC1)

5. **Existing Bus Stop**

Location of existing bus stop along frontage of the site must remain in its current location.

Approval of STA is required to relocate any Bus Stops.

Reason: To ensure certain services are not relocated at any stage during the project (DACTRBOC2)

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$141,141.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$14,114,100.00.

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

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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the

provision of new or augmented local infrastructure and services.

7. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

8. **Construction, Excavation and Associated Works Bond (Drainage)**

A Bond of \$5,000 as security against any damage to Council's stormwater drainage infrastructure as part of this consent.

Reason: Protection of Council's Infrastructure.

9. **Construction, Excavation and Associated Works Bond (Crossing / Kerb)**

A Bond of \$30,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

Reason: Protection of Council's Infrastructure.

10. **Construction, Excavation and Associated Works Bond (Failure to Remove Waste)**

A bond of \$10,000 as security against damage to Council's road(s) fronting the site caused by the transport and disposal of materials and equipment to and from the site.

Reason: Protection of Council's Infrastructure.

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

11. **Public Domain Plan**

A Public Domain Plan shall be submitted to the Certifying Authority, with sufficient detail design information including the following:

- Alignment levels showing existing and proposed levels for altered driveway crossovers, kerbs and gutters,
- Details of any utility alignment and level changes,
- Finished pavement gradients shall achieve a minimum 2.5% fall from building openings to

- top of kerb, and match existing levels to adjoining properties,
- o The public domain pavement from building to kerb shall be granite paving 'Sesame Green' 600 x 300 x 40mm set onto a 30mm sand cement bed, set onto a 75mm unreinforced concrete slab, and set perpendicular to the kerb and building alignment,
- o Tactile ground surface indicators at the pedestrian crossings in accordance with AS1428.4.1,
- o Existing utility pit lids are to be altered to paver infill types to accommodate the granite paving 'Sesame Green' 600 x 300 paver,
- o Street tree planting in accordance with Northern Beaches Standard Drawing 1300 - Tree Pit Details, Plan and Section, including 4600 x 2200 strata cell system, 1600 x 1400 tree pit opening finished with porous paving sitting on a cast iron perforated grate. The perforated grate shall sit over the strata cell system,
- o Two (2) Brushbox street trees to be planted along Bungan Street, in consideration of existing street lighting and utilities, at a container size of 200 litres, with a caliper of 50mm and at least 3 metres in height at installation,
- o Two (2) Eumundi Quandong street trees to be planted along Bungan Street, in consideration of existing street lighting and utilities, at a container size of 200 litres, with a caliper of 50mm and at least 3 metres in height at installation,
- o Street trees shall include tree guard TG6 'Silva Guard', black in colour, manufactured by Street Furniture Australia,
- o Retention of existing street trees T1 along Waratah Street, and T10 along Bungan Street, with nominated tree pit clearances from any slab for paving, including:
 - i) a minimum 5m length along the kerb x 1.5m width unobstructed natural ground area for T10, sut
 - ii) a minimum 2.5m length along the kerb x 1.0m width unobstructed natural ground area for T1, both

Any work carried out upon public land shall have all the necessary prior approvals and permits from Council in place prior to commencement to conduct such works.

Reason: enhance the public domain amenity

12. On slab landscape planting and associated works

- a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided,
- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule,
- c) The following soil depths are required to support landscaping as proposed:
 - o 300mm for lawn
 - o 600mm for shrubs
 - o 1m for small trees

d) Design certification shall be submitted to the Certifying Authority by a structural engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: to ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system.

13. **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 Geotechnical Report prepared by Crozier Geotechnical Consultants dated 3 June 2019 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.

Specific reference is given to the following recommendations:

- An assessment of the water table and the potential for lowering the water table within adjacent Acid Sulfate Soils Class 1 to 4.
- Further geotechnical investigation in at least four locations within the site to provide accurate soil and bedrock strength parameters prior to structural design and construction.
- Confirming of the groundwater conditions at depth below the site by the installation (and potentially monitoring) of groundwater piezometers to confirm the requirement for tanking or dewatering.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

14. **Pump-Out System Design for Stormwater Disposal**

The design of the pump-out system for Stormwater disposal will be permitted for drainage of hard surfaces areas such as driveways and basement pavement areas only, and must be designed in accordance with AS/NZS 3500. Engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for the discharge of Stormwater from the excavated parts of the site.
Shot

15. **Submission Roads Act Application for Civil Works in the Public Road**

An Application for Works to be approved within Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the

design of the kerb and gutter and footpath for the entire frontage of the site, the driveway crossing and the stormwater connections into the existing Council drainage pits fronting the site which are to be generally in accordance with the Development Application, Council's specification for engineering works - AUS-SPEC #1 and Council's Design Guidelines. The plans shall be prepared by a qualified Civil Engineer. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure infrastructure works are in accordance with Council's specifications.

16. **Utilities Services**

Prior to the issue of the Construction Certificate, evidence is to be submitted to the Certifying Authority that

- (a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
- (b) Evidence that notification has been received from a utility provider, requirements for the development can be provided.

Reason: To ensure that service have been provided as required by this Consent

17. **On-site Stormwater Detention**

An On-site Stormwater Detention system must be designed and constructed in accordance with Northern Beaches Council's current PITTWATER DCP21 Clause B5.7 and generally in accordance with the concept drainage plans prepared by Barrenjoey Consulting Engineers, drawing number 190302 SW1DA and SW2DA, dated 07/06/2019.

Detailed drainage plans are to be prepared by a qualified experienced practicing Civil Engineer, with Corporate membership of the Institute of Engineers Australia (M.I.E.) or who is eligible to become a Corporate member and has appropriate experience and competence in the related field.

The drainage plans must address the following:

- i) A second access pit to the detention tank
- ii) Services plan for the outlet pipes in the road reserve

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's requirements, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of storm water and storm water management arising from the development.

18. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

19. **Sub-Soil Seepage**

All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line being [INSERT] and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

- o Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- o Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.)

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

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

20. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings.

Council approval is required if temporary ground anchors are to be used within Council land. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

21. **Construction Management Program**

An application for Traffic Management Plan is to be submitted to Council for approval. The Traffic Management Plan shall be prepared to RMS standard by an appropriately certified person. An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

22. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours

- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls
- North point and scale.

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

Reason: Protection of the receiving environment

23. **Water Quality Management**

The applicant must install a filtration device (such as a silt arrestor pit with trash screen or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment

24. **Engineering Details**

Civil engineering details of the proposed excavation/landfill are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who has corporate membership of the Institution of Engineers Australia (M.I.E) or who is eligible to become a corporate member and has appropriate experience and competence in the related field.

Reason: To ensure excavation and landfill are completed to an appropriate standard and conducted in a safe manner.

25. **Noise Management -Design**

The recommendations contained in the noise assessment by Wilkinson Murray Pty Ltd Report 18287 relating to design shall be incorporated in plans and specifications prior to the issue of a Construction Certificate.

Reason: To ensure compliant acoustic measures are included in the building design before work commences.

26. **Tree Protection Plan**

In order to protect and enhance trees worthy of retention within the road reserve footpath (T10 Paperbark along Bungan Street and T1 Water Gum along Waratah Street) and within adjoining property (T2 Coast Banksia), the following applies to the development site:

- a) A Tree Protection Plan prepared by a AQF Level 5 Arborist with qualifications in arboriculture/horticulture shall be provided, in accordance with AS4970-2009 Protection of trees on development sites, demonstrating as a minimum, the following:
 - o Layout of the approved development,
 - o Extent of permitted basement,
 - o Location of trees including trunk, structural root zone and tree protection zone,
 - o Location of tree protection fencing / barriers,
 - o General tree protection measures, including ground and trunk protection.
- b) A schedule of site inspections, hold points and related certification of construction works near T1, T2 and T10.
- c) The Tree Protection Plan is to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate.
- d) Tree protection measures identified on the plan are to be in place prior to commencement of works.

Reason: to ensure compliance with the requirement to retain and protect significant planting on the site.

27. Amended Landscape Plan

Amended Landscape Plans, with sufficient detail design information as listed in the Northern Beaches Council DA Lodgement requirements including hardscape elements layout and details, as well as planting layout and schedules, shall be issued to the Certifying Authority at Construction Certificate stage.

The Amended Landscape Plans shall be in accordance with the landscape concepts prepared by Gartner Trovato Architects on drawing numbers DA-04 Ground Floor Plan, DA-05 Level 1 Plan, DA-06 Level 2 Plan, and DA-07 Level 3 Plan, except where modified by conditions, and shall demonstrate the following:

- o Proposed surface treatments and materials, including but not limited to structures, features, walling, pavements, planters, on slab and at grade gardens, drainage and irrigation,
- o Location, height and materiality of proposed walling and planters,
- o Irrigation for all on slab planters,
- o Layout of planting scheme including species selection, quantities and pot sizes, with the following to be detailed on the drawings:
 - i) Four (4) Eumundi Quandong trees to be planted as shown on the plans, at a container size of 200 litres, with a caliper of 50mm and at least 3 metres in height at installation,

- ii) Garden planting along the proposed driveway shall not be taller than 1m at maturity and shall be maintained to ensure growth is limited to such height,
- iii) The planting scheme shall utilise long-term planting species to ensure the continued presence of planting, with the use of hardy urban species replacing shrubs and groundcovers as nominated, as follows:
 - a. Ground Level: Shell Ginger within planters along Waratah Street boundary to be replaced with a suitable long life species, including the following consideration - Rhaps Palm or other selected similar species,
 - b. Ground Level: White Correa within planters along Bungan Street boundary to be replaced with a suitable long life species, including the following considerations - Acmena or Syzygium 'dwarf varieties', Abelia 'dwarf varieties', Buxus or Metrosideros 'dwarf varieties', or other selected similar species,
 - c. Level 1: Gristle Fern within planters to be replaced with a suitable long life species, including the following considerations - Birds Nest Fern, or other selected similar species,
 - d. Level 1: Coast Rosemary and White Alba within planters along Bungan Street to be replaced with a suitable long life species, including the following considerations - Acmena or Syzygium 'dwarf varieties', Abelia 'dwarf varieties', Buxus or Metrosideros 'dwarf varieties', or other selected similar species,
 - e. All planting within planters on Levels 1, 2, and 3 shall be selected to be easily accessed and maintained by residents / landscape maintenance contractors.

Reason: provide landscape amenity to soften the built form

28. **Pre-commencement Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

Reason: Protection of Council's and Private Party's Infrastructure during construction.

29. **Compliance with Standards**

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

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

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**

- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'**
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 - 2009* Design for access and mobility - General requirements for access - New building work**
- (m) AS 1428.2 - 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website [www.hreoc.gov.au/disability rights /buildings/good.htm](http://www.hreoc.gov.au/disability%20rights%20/buildings/good.htm). <www.hreoc.gov.au/disability%20rights%20/buildings/good.htm>

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

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

30. **Compliance with standards (Demolition):**

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 Council prior to the commencement of demolition works.

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

31. **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Certifying Authority prior to issue of any Construction Certificate.

The CTMP must address following:-

- The proposed phases of construction works on the site, and the expected duration of each construction phase;
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored on site, at all times;
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;

- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.

For use when near a school zone

- Specify that, due to the proximity of the site adjacent to Mona Vale Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- Proposed protection for Council and adjoining properties;
- The location and operation of any on site crane; and

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a

manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site. (DACTRCPC1)

32. On-street Work Zone

The applicant shall lodge an application for a work zone for the frontage of the site to Council for consideration and approval. The provision of a work zone will require approval from Northern Beaches Local Traffic Committee. Application forms for work zones are available on Council's website or at the Customer Service section at Council's administration building. Applications shall be lodged at least 4 weeks prior to work commencing.

Reason: To ensure works vehicles do not impact on parking, traffic flows and pedestrian thoroughfares.(DACTRCPC2)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

33. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

34. Tree removal within the Property

The following trees within the property are approved for removal:

- Group 3: Brush Cherry (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building)
- Tree 4: Willow Bottlebrush (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building)
- Tree 5: Bottlebrush (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building)
- Group 6: Group of Brush Cherry shrubs
- Tree 7: Willow Bottlebrush (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building)
- Tree 8: Willow Bottlebrush (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building and less than 5m in height)
- Tree 11: Paperbark (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building)
- Tree 12: White Sallow Willow (exempt under Pittwater DCP 21 due to height less than 5m)

35. Demolition Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the certifying authority prior to commencing any demolition work.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Specify that, due to the proximity of the site adjacent to Mona Vale Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – "Manual of Uniform Traffic Control Devices", RMS' Manual – "Traffic Control at Work Sites".

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site. (DACTRDPC1)

36. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site. Separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane. A Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure works vehicles do not impact on parking, traffic flows and pedestrian thoroughfares. (DACTRDPC2)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

37. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- o Work Health and Safety Act
- o Work Health and Safety Regulation
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)] and
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)]
- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005.
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

38. **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.

39. **Property Boundary Levels**

The property boundary levels shall match the existing levels except where modified for the vehicular crossing. The applicant shall design and construct having regard for the existing levels. No approval is granted for any change to existing property alignment levels to accommodate the development. Details demonstrating compliance are to be submitted to the Certifying Authority.

Reason: To maintain the existing profile of the nature strip/road reserve.

40. **Stormwater Connection**

Where connection to Council's nearest stormwater drainage system is required, the applicant shall connect the pipeline in accordance with Council's specification for engineering works and shall reconstruct all affected kerb and gutter, bitumen reinstatements, adjust all vehicular crossings for paths, grass verges and household stormwater connections to suit the kerb and gutter levels. All works shall be undertaken at the applicant's cost, and upon completion certified by an appropriately qualified and practicing Civil Engineer.

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

Reason: To ensure compliance of drainage works with Council's specification for engineering works.

41. **Civil Works Supervision**

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practicing Civil Engineer. Details demonstrating compliance are to be submitted to the Certifying Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

42. **Footpath Construction**

The applicant shall reconstruct the footpath paving full width for the entire frontage of the site. The works shall be in accordance with the following:

- (a) All footpath works are to be constructed in accordance with Council's Specification
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's specification for footpath.

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

Reason: To ensure compliance of footpath works with Council's specification for engineering works.

43. **Notification of Inspections**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of stormwater gully pits
- (d) Prior to pouring of kerb and gutter, footpath and driveway crossing
- (e) Subgrade level / basecourse level / subbase
- (f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification

Reason: To ensure new Council infrastructure is constructed to Council's requirements.

44. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

45. **Vehicle Crossings**

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

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

Reason: To facilitate suitable vehicular access to private property.

46. **Maintenance of Road Reserve**

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

Reason: Public Safety.

47. **Safety Fencing of Excavation and/or demolition**

The site must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

Reason: To ensure private and public safety

48. **Cleaning of Vehicles Leaving Site**

Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.

Reason: To reduce sediment being taken offsite

49. **Noise and Vibration**

The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations

Reason: To ensure the amenity of the surrounding area for residents

50. **Protection of Adjoining Property - Excavation**

Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.

Reason: To ensure private and public safety

51. **Kerb and Gutter Construction**

Kerb and gutter is to be constructed along the entire frontage of the site in accordance with Northern Beaches Council Drawing No. A4 2276/A.

Reason: To facilitate the preservation of on street parking spaces.

52. **Community consultation before work commences and during works.**

Before demolition, excavation and rock cutting commences, a meeting (community consultation) or letter of advice to or with likely affected neighbours and businesses, by the builder/applicant shall be carried out. This is to include the intended schedule of works and noise reduction measures.

An (email or phone) electronic notification system for neighbours/businesses at least 24 hours in advance of the noisiest work times (and likewise any no work days) be provided so they have the opportunity where possible of not being present/open or managing noise impacts during these processes.

That neighbours/businesses are to be supplied with a phone number for any enquiries or complaints. A record of all calls to this number must be maintained including the concerns raised and any action taken by owner/builder.

Reason: To minimise the disturbance to the amenity of neighbours and business and reduce complaints to Authorities

53. **Dust**

Dust control measures including best practice, and in accordance with NSW Workplace Health and Safety Regulations and the Protection of the Environment Operations Act 1997, shall be implemented to minimise dust to neighbouring residents and businesses and ensure any airborne substance is kept within the boundaries of the site

Measures may include but not be limited to :

- Water sprays
- Bunker storage
- Limiting size of stockpiles and covering stock piles
- Vertical barriers eg fencing with fine mesh attached
- Exhaust and capture

Reason: To minimise dust to neighbouring residents and businesses and avoid air pollution

54. **Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected in accordance with the approved Tree Protection Plan, the Arboricultural Impact Assessment prepared by Urban Forestry dated June 2019, and AS 4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures, and as follows:

- i) all trees and vegetation located on adjoining properties, including T2, and T9,
- ii) all road reserve trees and vegetation, including T1 (Waratah Street), and T10 (Bungan Street).

b) Tree protection shall be generally undertaken as follows:

i) all tree protection shall be in accordance with AS 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,

ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,

iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,

iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,

v) 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,

vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 Project Arborist on site,

vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,

viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, including advice on root protection measures,

ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

x) 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 works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,

xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree.

Reason: to retain and protect significant planting on development and adjoining sites.

55. Existing Pavers within the road reserve footpath

The existing unit pavers to be removed as part of the new public domain works within the footpaths shall be salvaged, collected and delivered to Council's nominated Depot for re-use by Council. Please contact Parks Operations department for delivery instructions.

56. Project Arborist

a) A Project Arborist with a minimum AQF Level 5 qualification in arboriculture/horticulture is to be appointed prior to commencement of works,

b) The Project Arborist is to oversee all activity including excavation and construction adjacent to the following trees to be protected: T10 Paperbark along Bungan Street, T1 Water Gum along Waratah Street, and T2 Coast Banksia within adjoining property. The Project Arborist shall supervise and certify all recommendations of the Tree Protection Plan, and certify that the works comply with AS 4970-2009 Protection of trees on development sites,

c) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent,

The Project Arborist is to recommend tree protection measures such as tree fencing, trunk protection and ground protection, and supervise all excavation and construction works near all trees, including recommending the construction methods near the existing trees to protect tree roots, trunks, branches and canopy.

Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

The Project Arborist shall provide certification to the Certifying Authority prior to Occupation that all works recommended in the Tree Protection Plan, and any subsequent on-site directions have been satisfied.

Reason: to ensure the protection of the existing landscape amenity.

57. Implementation of Construction Traffic Management Plan.

All works and construction activities are to be undertaken in accordance with the approved

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

Reason: to ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.
(DACTREDW1)

58. **Implementation of Demolition Traffic Management Plan.**

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

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project
(DACTREDW2)

59. **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) and the Erosion and Sediment Control Plan.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment

60. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled [INSERT] and dated [INSERT].

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

61. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling – timber – bricks – tiles – plasterboard – metal – concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible.
(DACWTE02)

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

62. Landscape works

Landscaping is to be implemented in accordance with the approved Amended Landscape Plans.

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

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

63. Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with AQZ Level 5 qualifications in arboriculture/horticulture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- i) compliance to any Arborist recommendations for tree protection and excavation works,
- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

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

64. 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 any interim / final Occupation Certificate.

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

65. **Authorisation of Legal Documentation Required for Onsite Detention**

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

Reason: To create encumbrances on the land.

66. **Registration of Encumbrances for On-site Stormwater Detention**

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

Reason: To identify encumbrances on land.

67. **On-Site Stormwater Detention Compliance Certification**

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

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

68. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**

A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the property title to ensure the on-going maintenance of the stormwater pump-out facilities on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard

69. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**

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

be nominated as the party to release, vary or modify such covenant.

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

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

70. Works as Executed Drawings - Stormwater Treatment Measures

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment

71. Post-Construction Dilapidation Report

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties

Reason: To ensure security against possible damage to Council and private property.

72. 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.

73. Environmental Reports Certification

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

- (a) Access Report Ref 109775 - Access -r1 dated 6 June 2019 prepared by BCA Logic Access
- (b) Noise Assessment Report REf 18287 Version A dated July 2019 prepared by BCA Logic Access
- (c) BCA Assessment Report Ref 109775- BCA -r1 - dated 6 June 2019 prepared by BCA Logic Access
- (d) Arboricultural Impact Assessment dated June 2019, prepared by Urban Forestry Australia.

- (e) (Nathers Report 0003995920, dated 2 July 2019, prepared by NatHERS and BASIX Solutions
- (f) Traffic Report Ref 18051 dated 27 June 2019 prepared by Terraffic Pty Ltd
- (g) Geotechnical Report Ref 2018-132 dated June 2019 prepared by Crozier Geotechnical Consultants.
- (h) BASIX Certificate no 1026565M dated 3 July 2019 prepared by Gartner Travato Architects

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

Reason: To ensure compliance with standards.

74. **Prior to occupation certificate - Food premises**

Separate Development Applications shall be lodged for Food Premises to ensure compliance with fit-out requirements as well as noise, odour and food business notification implications.

Reason: To ensure any food premises will comply with legislation.

75. **Noise Assessment**

A final noise assessment shall be carried out prior to occupation to ensure the findings and recommendations by Acoustic Engineers Wilkinson Murray Pty Ltd Report No 18287 have been complied with.

Reason: To manage noise from use of the development.

76. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To prevent pollution of the environment and to protect the amenity of the area. (DACPLF03)

77. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: Proper identification of buildings.

78. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines (https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

79. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

80. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

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

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

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

81. **Basement Garage Traffic Signal System**

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

The signal system must;

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

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

Reason: To ensure no vehicle conflicts within the basement carpark (DACTRFPOC1)

82. **Shared Zone Bollard**

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with Australian Standards (DACTRFPOC2)

83. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with Warringah Development Control Plan – Part C9 Waste Management

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided. (DACWTF01)

84. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

85. **Positive Covenant for Waste Services**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

86. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation

Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land. (DACWTF04)

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

87. **Landscape Maintenance**

A 12 month establishment period shall apply for all new landscaping within the site and within the road reserve. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. All planting must be maintained for the life of the development, or for their safe useful life expectancy. Planting that may die or is approved for removal must be replaced.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

88. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment

89. **Commercial Waste and Recycling Storage**

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed. (DACPLG19)

90. **Commercial Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 9pm and 8am on any day.

Reason: To ensure the acoustic amenity of surrounding properties. (DACPLG24)

91. **Landscaping adjoining vehicular access**

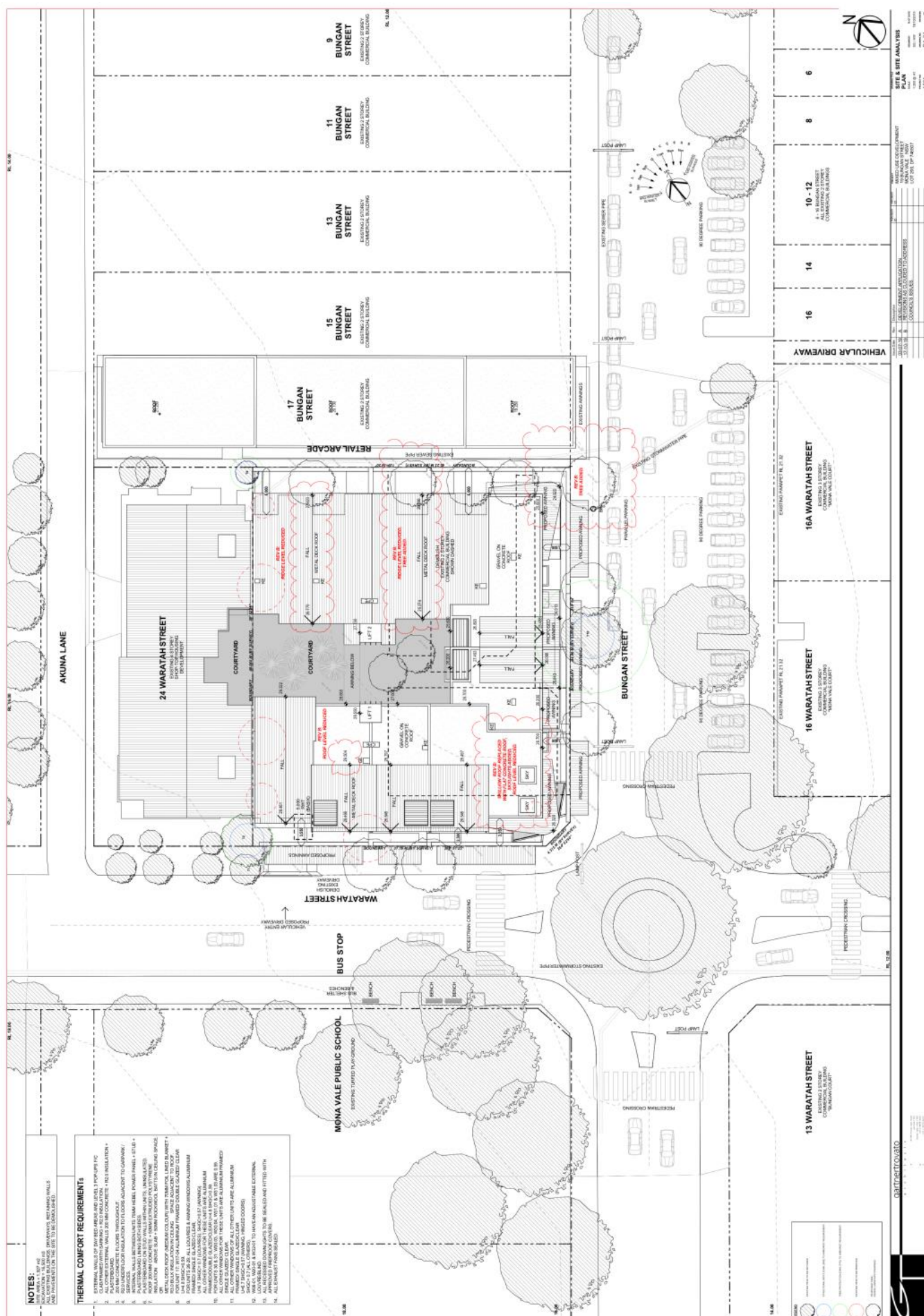
The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1,140mm

Reason: To maintain unobstructed sight distance for motorists (DACTRGOG1)

92. **Sight lines within carparks.**

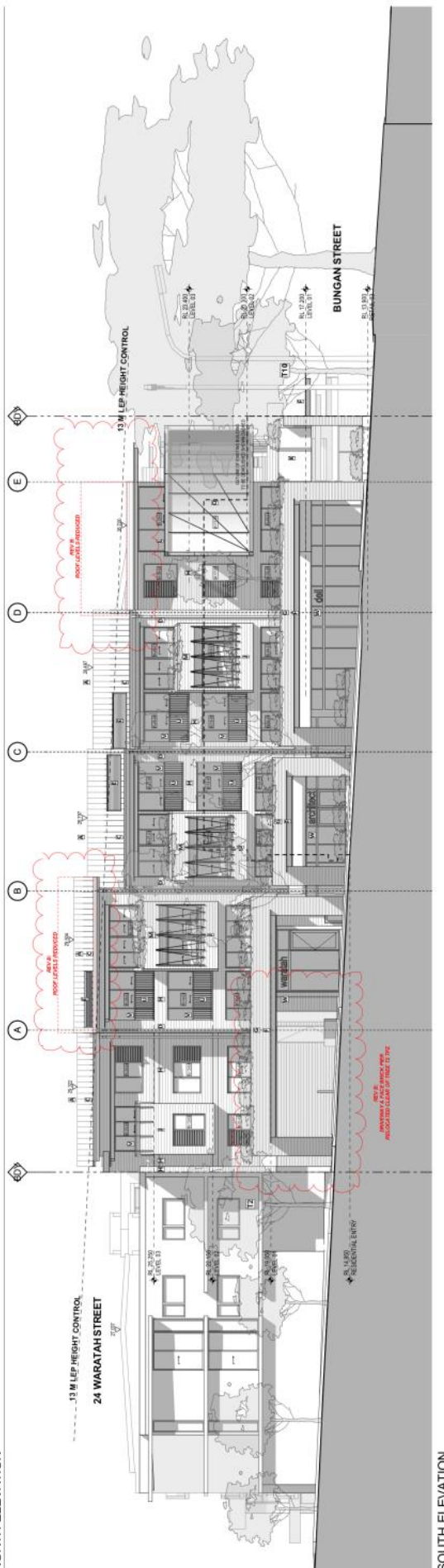
The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) are not to be obstructed by landscaping or signage.

Reason: To maintain unobstructed sight distance for motorists (DACTRGOG2)



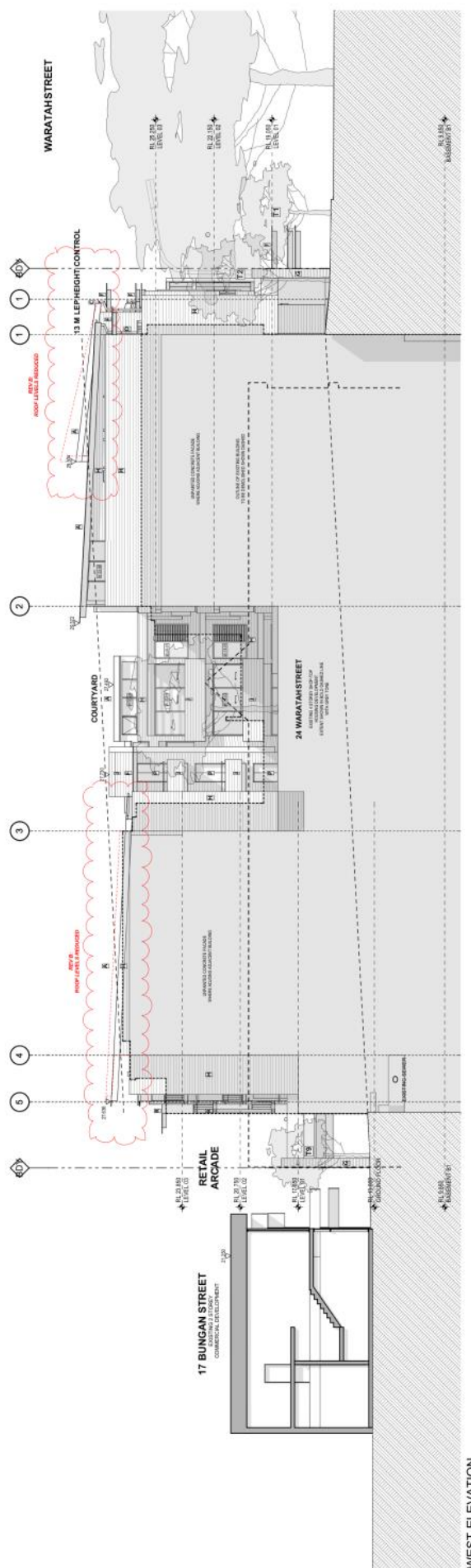
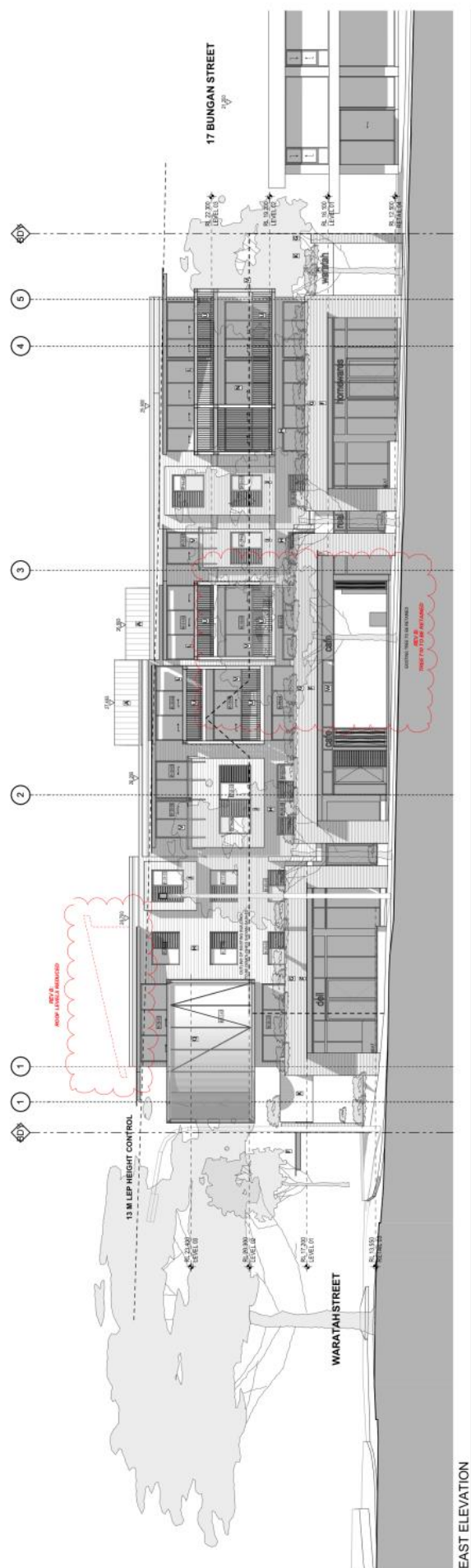


NORTH ELEVATION



SOUTH ELEVATION

EXTERIOR FINISHES LEGEND		WINDOWS		ROOF & SKYLINE DEVELOPMENT	
	METAL DECKING - COLOURS (FRESH COLOUR PAINT)		VERTICAL GLAZING - ALUMINIUM FRAMING, DARK GREY POWDERCOAT FINISH		ROOF LEVELS - DEVELOPMENT
	METAL DECKING - COLOURS (FRESH COLOUR PAINT)		VERTICAL GLAZING - ALUMINIUM FRAMING, DARK GREY POWDERCOAT FINISH		ROOF LEVELS - DEVELOPMENT
	METAL DECKING - COLOURS (FRESH COLOUR PAINT)		VERTICAL GLAZING - ALUMINIUM FRAMING, DARK GREY POWDERCOAT FINISH		ROOF LEVELS - DEVELOPMENT
	METAL DECKING - COLOURS (FRESH COLOUR PAINT)		VERTICAL GLAZING - ALUMINIUM FRAMING, DARK GREY POWDERCOAT FINISH		ROOF LEVELS - DEVELOPMENT

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BostonBlythFleming
Town Planners

8th November 2019

The General Manager
Northern Beaches Council
PO Box 882
Mona Vale NSW 1660

Attention: Ms Anne-Marie Young – Principal Planner

Dear Ms Young,

Development Application DA2019/748
Supplementary Statement of Environmental Effects
Updated Clause 4.6 variation request – Height of buildings
Proposed Shop Top Housing
19 Bungan Street, Mona Vale

This amended clause 4.6 variation request has been prepared having regard to the following amended plans recently submitted to Council:

- DA01 – revised roofs (flat and lowered)
- DA02 – amended car park layout
- DA03 – amended car park layout
- DA04 – ground floor plan, driveway entry shift, garbage revision, foyer
- DA05 – L1 plan, apartment 08 (SE corner) revision, voids to lane
- DA06 – L2 plan, apartment 20 (SE corner) revision, voids to lane
- DA07 – L3 plan, apartment 32 (SE corner) revision, voids to lane
- DA08 – lower roof, apt 29 roof lowered to flat
- DA09 – upper roof, apt 26 roof lowered
- DA10 – elevations, roofs lowered 300mm to north façade (lane) – voluntary, roofs lowered to south façade as requested
- DA11 – elevations, roofs lowered to east façade (Bungan st) at corner as requested and reduced to lane

Clause 4.6 Claim for Variation – Height of buildings

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Pursuant to clause 4.3 of the PLEP the maximum height of development on the site is 13 metres. The stated objectives of this standard are as follows:

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) *to minimise any overshadowing of neighbouring properties,*
- (d) *to allow for the reasonable sharing of views,*
- (e) *to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Building height is defined as follows:

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

Whilst the majority of the development sits comfortably below the height control the north facing clerestory window elements and centrally located lift overruns breach the standard by up to 2 metres or 15.38% with the breaching elements depicted in Figure 1 over page.



Figure 1 – Height blanket diagram showing areas of the development breaching the 13 metre height standard

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

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

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This Clause applies to the Clause 4.3 Height of Buildings Development Standard. Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

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

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

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

Zone and Zone Objectives

The subject property is zoned B4 Mixed Use pursuant to the provisions of Pittwater Local Environmental Plan 2014 (PLEP 2014). The developments performance when assessed against the objectives of the zone is as follow:

- *To provide a mixture of compatible land uses.*

Response: The proposed shop top housing development is permissible in the zone and contains ground level retail and upper level residential uses which are compatible with each other and compatible with the balance of uses permissible in the zone. The proposal is consistent with this objective.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

Response: The proposed shop top housing development is located within the Mona Vale Town centre and within short walking distance of the B-Line bus stops. The proposal accommodates the required quantum of bicycle spaces. The proposal is consistent with this objective.

- *To strengthen the role of Mona Vale as a centre of employment in Pittwater.*

Response: The proposal provides 9 retail tenancies which will collectively strengthen the role of Mona Vale as centre of employment. The proposal is consistent with this objective.

- *To provide healthy, attractive, vibrant and safe mixed use areas.*

Response: The development is of exceptional design quality and will contribute to a healthy, attractive, vibrant and safe mixed use area. The proposal is consistent with this objective.

- *To provide an active day and evening economy.*

Response: The proposal provides 9 retail tenancies which activate both street frontages and the northern arcade between Bungan Street and Akuna Lane. The proposal is consistent with this objective.

- *To provide for residential uses above ground level, where they are compatible with the characteristics and uses of the site and its surroundings.*

Response: The proposed shop top housing development is permissible in the zone and contains ground level retail and upper level residential uses which are compatible with each other and compatible with the balance of uses permissible in the zone. The proposal is consistent with this objective.

- *To encourage retail vitality and provide a high level of amenity for pedestrians and cyclists.*

Response: The project architect has responded to the client brief to design a contextually responsive building of exceptional quality. The design aims to contribute to the village atmosphere of the Mona Vale town centre by orienting entrances, shops and the apartments towards the public domain. This is augmented with the use of day beds, balconies, planter-boxes and various screen devices to create "habitable" facades and to create a fine-grained scale reminiscent of a traditional village. High quality street trees and landscaping are proposed through-out, including a centralised landscaped courtyard, with through site pedestrian permeability enhanced through the retention and visual augmentation of the existing publicly accessible arcade traversing the northern boundary of the property and which provides a link between Bungan Street and Akuna Lane. The development encourages retail vitality and provides a high level of amenity for pedestrians and cyclists. The proposal is consistent with this objective.

Accordingly, the proposal is permissible with consent in the zone and consistent with the zone objectives as outlined.

Building Height Objectives

The standard and associated objectives have previously been identified. Having regard to these objectives, and the considerations in Wehbe, strict compliance with the development standard is both unreasonable and unnecessary in this instance for the following reasons:

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

Response: The desired future character of the Mona Vale Locality, as it relates to the town centre, is identified as follows:

The Mona Vale locality will contain a mix of residential, retail, commercial, industrial, recreational, community, and educational land uses.

.....

Retail, commercial and light industrial land uses will be employment-generating. The Mona Vale commercial centre status will be enhanced to provide a one-stop convenient centre for medical services, retail and commerce, exploiting the crossroads to its fullest advantage and ensuring its growth and prosperity as an economic hub of sub-regional status. The permissible building height limit is increased to promote economic growth within the centre. The Mona Vale Hospital, as a regional facility servicing the Peninsula, is an essential part of the future local economy.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

The design, scale and treatment of future development within the Mona Vale commercial centre will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

.....

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. Improved public transport, pedestrian accessibility and amenity, carparking and an efficient surrounding local network will support the commercial centre, moving people in and out of the locality in the most efficient manner. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Response: The areas of the development breaching the 13 metre height of buildings standard will not compromise the developments performance when assessed against the desired future character statement.

The project architect has responded to the client brief to design a contextually responsive building of exceptional quality which takes advantage of the sites superior locational attributes whilst providing high levels of amenity for future occupants. The design aims to contribute to the village atmosphere of the Mona Vale town centre by orienting entrances, shops and the apartments towards the public domain. This is augmented with the use of day beds, balconies, planter-boxes and various screen devices to create “habitable” facades and to create a fine-grained scale reminiscent of a traditional village. High quality street trees and landscaping are proposed through-out, including a centralised landscaped courtyard, with through site pedestrian permeability enhanced through the retention and visual augmentation of the existing publicly accessible arcade traversing the northern boundary of the property and which provides a link between Bungan Street and Akuna Lane.

We have formed the considered opinion that the building, by virtue of its height and scale, is consistent with the desired character of the locality and therefore consistent with objective (a) as outlined.

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

Response: The scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the development of this prominent corner site having regard to the height, scale, proximity and orientation of adjoining development including the shop top housing development at No. 24 Waratah Street. Particular attention has been given to the minutes arising from formal pre-DA discussions with Council ensuring that the development responds to its immediate built form context and the form of development anticipated within the Mona Vale Town Centre which is slowly undergoing built form regeneration.

The height and scale of the development is compatible with that established at No.24 Waratah Street and entirely consistent with the 4 storey shop top housing development at northern end of the street block (No. 3 - 5 Bungan Street). We consider this development to reflect the desired future built form character within the street block.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council [2005] NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, by virtue of its height or scale offensive, jarring or unsympathetic having regard to the existing and desired future built form characteristics of development within the sites visual catchment. The proposal is consistent with this objective.

- (c) *to minimise any overshadowing of neighbouring properties,*

Response: The accompanying shadow diagrams (DA-17(A)) as depicted over page, demonstrate that the non-compliant building height elements will not cast shadow onto any adjoining residential property between 9am and 3pm on 21st June. Shadowing impacts have been minimised in accordance with this objective.

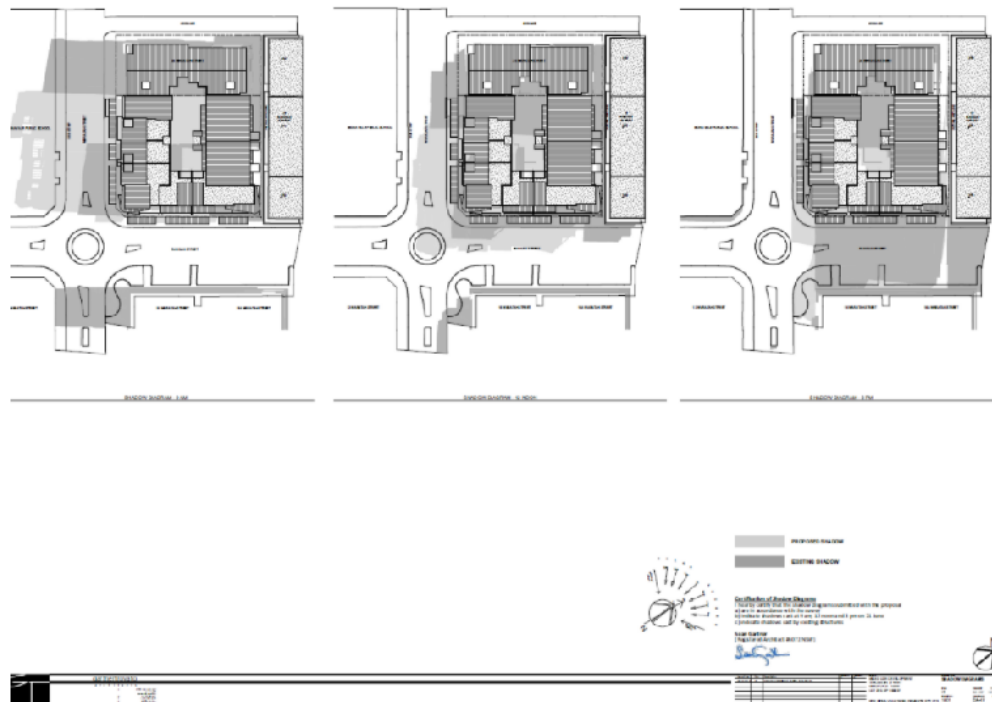


Figure 2 – Shadow diagrams

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

Response: Having inspected the site and its surrounds to identify available view corridors we have formed the considered opinion that the building height breaching elements will not give rise to any unacceptable public or private view affection. The proposal is consistent with this objective.

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

Response: Excavation is limited to the extent necessary to accommodate the basement level carparking. The floor plates have been stepped to respond sensitively to the natural topography. The proposal is consistent with this objective.

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

Response: The building height breaching elements will not give rise to any heritage related impacts nor give rise to any adverse visual impacts on the natural environment. The proposal is consistent with this objective.

The consent authority can be satisfied that the proposal is consistent with the objectives of the height of building standard and accordingly strict compliance is both unreasonable and unnecessary in this instance.

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

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

In this regard, it is considered that there are sufficient environmental planning grounds to justify the variation sought namely the topography of the land which makes strict compliance with the 13 metre/ 4 storey height standard difficult to achieve and the superior amenity afforded through the provision of north facing clerestory windows which enable sunlight penetration deep into the upper level apartments. A better planning outcome is achieved as a consequence of the variations sought namely enhanced amenity.

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 the enhanced amenity afforded by the breaching north facing clerestory windows is consistent with objective 1.3(g) of the Act in that the variation promotes good design and amenity of the built environment. The proposed development will be in the public interest because it is consistent with the objectives of the height development standard and the objectives of the B4 Mixed Use zone.

Conclusions

Having regard to the clause 4.6 variation provisions of the PLEP, we have formed the 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 building height standard, and

- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the developments compliance with the zone and building height 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 building height variation in this instance.

Please do not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

ITEM 3.2	DA2019/0622 - 163-165 PACIFIC PARADE, DEE WHY - CONSTRUCTION OF A RESIDENTIAL FLAT BUILDING AND DEMOLITION WORKS
REPORTING OFFICER	STEVE FINDLAY
TRIM FILE REF	2019/712402
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as it is development to which *State Environmental Planning Policy No 65 – Design Quality of Residential. Apartment Development* applies and is 4 or more storeys in height and is the subject of 10 or more unique submissions by way of objection.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 of Warringah Local Environmental Plan 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives of the zone.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0622 for Construction of a residential flat building and demolition works at Lot 1 DP 1246740 & Lot 2 DP 1246740, 163-165 Pacific Parade, Dee Why subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0622
Responsible Officer:	Lashta Haidari
Land to be developed (Address):	Lot 2 DP 1246740, 165 Pacific Parade DEE WHY NSW 2099 Lot 1 DP 1246740, 163 Pacific Parade DEE WHY NSW 2099
Proposed Development:	Construction of a residential flat building and demolition works
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Joseph Charles Vumbaca
Applicant:	Dilcara Construction
Application Lodged:	18/06/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	07/09/2019 to 21/09/2019
Advertised:	07/09/2019
Submissions Received:	10
Clause 4.6 Variation:	4.3 Height of buildings: up to 12%
Recommendation:	Approval
Estimated Cost of Works:	\$ 5,956,058.00

Executive Summary

The proposal involves demolition works and construction of part 3/part 4 storey residential flat building, comprising 16 apartments and 29 carparking spaces.

The assessment has found that the proposed development is satisfactory in relation to built form, character and streetscape, and internal and external residential amenity.

The applicant has lodged a request under Clause 4.6 of the WLEP 2011 for a variation to the

development standard for building height. The height variation is up to 1.0m above the allowable height of 11.0m, representing a variation of 9%. The variation is considered acceptable largely due to the compatibility and is offset throughout the design and configuration of the development. The variation is not considered to result in excessive bulk and scale and does not result in adverse shadow, views or amenity impacts on surrounding properties.

The public exhibition of the application resulted in 10 individual submissions being received, all of which raised concerns with the proposed development. The majority of the submissions raised issues including; additional traffic, non-compliance with building height and number of storeys and amenity impacts on the adjoining development (privacy, views and solar access). The issues raised in the submissions have been addressed in the "Public Notification" section of this report and in summary they do not warrant refusal or re-design of the proposal. Suitable conditions have been imposed where required.

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

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves the demolition of existing structures and construction of a part 3 and part 4 storey residential flat building. The proposed apartment building is depicted on the accompanying architectural plans prepared by PBD Architects. The proposal involves the construction of 16 apartments over 4 levels with basement car parking accessed from Pacific Parade. The composition of the proposed units is as follows:

- 7 x 2 Bedroom apartments
- 9 x 3 Bedroom apartments

Each unit will include a combined living/dining area, kitchen, laundry, a balcony/terrace and storage spaces. Residents will also have access to communal landscaped ground level garden areas. Parking is provided at basement level and part of the ground floor level. Parking is proposed for a total of 29 vehicles comprising:

- 26 resident spaces; and
- 3 visitor spaces which includes a disabled space.

Access to the parking area will be provided via a single driveway. Each residential car space is provided with over bonnet storage with a bulky goods storage area adjacent to the lift lobby. 16 bicycle spaces and 1 visitor bicycle spaces are provided.

The site is to be suitably landscaped.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B2 Number of Storeys
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D19 Site Consolidation in the R3 and IN1 Zone

SITE DESCRIPTION

Property Description:	Lot 2 DP 1246740 , 165 Pacific Parade DEE WHY NSW 2099 Lot 1 DP 1246740 , 163 Pacific Parade DEE WHY NSW 2099
Detailed Site Description:	The development site comprises Lots 1 & 2 in DP 1246740, No's 163 - 165 Pacific Parade, Dee Why. The site has a total area of 1,500sqm. The site is zoned R3 Medium Density Residential under Warringah Local Environmental Plan 2011 as is the land surrounding the subject site. The immediate surrounding area contains a mix of residential development in the form of single dwellings, multi-storey residential flat buildings and townhouses with each building typology varying significantly in terms of height, massing and design.

Neighbouring development consists of a 2 storey brick residential flat building to the west and a single residential dwelling to the east. The properties to the south are occupied by 3 and 4 storey residential flat buildings having frontage and address to Boronia Street and Monash Parade. The properties located on the northern side of Pacific Parade are occupied by residential flat development ranging in height from 3 to 8 storeys.

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 (single dwelling houses) for an extended period of time.

Pre-lodgement Meeting (PLM2019/0020)

A pre-lodgement meeting was held with Council on 26 February 2019 in relation to the current proposal. Council raised concerns with the proposal in relation to non-compliance with the building height development standard under WLEP 2011 and also requested the applicant to consider the option of consolidating with No. 167 Pacific Parade.

The current application is responsive to the issues raised, with the upper level pulled back to be more recessive when viewed from the street and deep soil landscaped area maximised. This submission is also accompanied by documentation confirming the inability to consolidate with No.167 Pacific Parade.

Development Application History

The current application was lodged with Council on 18 June 2019. During the assessment of the application, the applicant amended the plans to address the following concerns raised:

- Response to Waste Referral comments by amending the bin room to improve access for future residents;
- Privacy screens were added to provide privacy protection for adjoining properties at 169 Pacific Parade and 40 Boronia Street;
- The driveway was amended to fit the 5.4m tandem parking spaces and added the passing bay to the driveway entry in response to Council's Traffic Engineers assessment.

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. <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. <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.

Section 4.15 Matters for Consideration'	Comments
	<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. <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 document has been submitted with the application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the residential flat building character of the proposal in an R3 Medium Density zone. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the residential nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Ms Moira McLean	10 / 34 - 38 Boronia Street DEE WHY NSW 2099
Mr Peter Bernard Anthony Clouston	14 / 180 Pacific Parade DEE WHY NSW 2099
Georgia Stenmark	3 / 172 Pacific Parade DEE WHY NSW 2099
Barbara Brown	167 Pacific Parade DEE WHY NSW 2099
Sean Dry	5 / 22 Boronia Street DEE WHY NSW 2099
Mrs Margaret Terese Taylor	18 / 40 Boronia Street DEE WHY NSW 2099
Peter Gregory Williams	4 / 5 Monash Parade DEE WHY NSW 2099
Mrs Michal Robyn Johnson	3 / 34 - 38 Boronia Street DEE WHY NSW 2099
Sebastian Barth	9 / 5 Monash Parade DEE WHY NSW 2099
Mrs Cathryn Anne Barrett	5 / 22 Boronia Street DEE WHY NSW 2099

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

- **Privacy**

Concern is raised that the development will adversely impact upon the privacy of neighbouring dwellings.

Comment:

This matter is discussed under the relevant sections of the detailed assessment under Clause 3F of the Apartment Design Guide (ADG) and Clause D8 (Privacy) of the WDCP 2011.

In summary, Clause 6A of SEPP 65 establishes precedence for visual privacy over the WDCP 2011 and assessment was also conducted against the provisions of Clause D8 where the development was found to be compliant with the building separation provisions and the requirement of Clause D8 - Privacy of WDCP 2011.

This issue does not warrant the refusal of the application.

- **Non-compliant and Excessive Height**

The submissions raised concerns that the height of the proposal is unreasonable and out of context and would result in additional impact when viewed from surrounding residential properties.

Comment:

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

In summary, the development was assessed against the Height of Buildings Development Standard under the WLEP 2011 and has been appropriately considered in relation to the requirements of Clause 4.6 of the WLEP 2011, wherein it was found that the development is consistent with the objectives of the Development Standard and the objectives of the R3 Zone.

This issue does not warrant the refusal of the application.

- **Noise**

Concern is raised that the increased density of the development above the existing situation will have an adverse impact upon the acoustic privacy of neighbouring dwellings.

Comment:

The development accommodates a residential use which is not considered to unreasonably impact upon neighbouring residential properties with regard to noise given the R3 Medium Density zone and nature of surrounding development. The balconies in the development are sufficiently setback and screened from neighbouring residential properties to minimise residential noise emissions and any noise generated by plant such as air conditioning.

This matter does not warrant the refusal of the application.

- **Traffic safety and congestion**

Concerns are raised that the development will increase the number of vehicles on the local road network, thereby exacerbating existing traffic congestion and degrading traffic and pedestrian safety.

Comment:

The provision of carparking and traffic safety have been addressed in the referrals section of this report.

In summary, the proposal complies with the carparking requirements of WDCP 2011 which will minimise the need for occupants and visitors of the development to park on the street.

In terms of traffic congestion and safety, Council's Traffic Engineer has reviewed the application, which includes a review of the applicants traffic report and raises no objection to the development.

Issues raised in relation to the use of Pacific Parade as a means of a through-road for drivers travelling between Pittwater Road and Dee Why Beach is not a matter to be considered as part of this Development Application as is beyond the terms of s.4.15 of the *Environmental Planning and Assessment Act, 1979*.

This matter does not warrant the refusal of the application.

- **Insufficient car parking**

Concern is raised that the development is deficient in its provision of carparking and will result in a loss to the provision of on-street parking.

Comment:

This matter is discussed elsewhere in this report, specifically under Clause C3 (Parking Facilities) of the WDCP 2011).

In summary, the development provides for 26 parking spaces and achieves compliance with the parking requirements of both the ADG and the WDCP 2011.

This issue does not warrant the refusal of the application.

- **View loss**

Concern is raised that the development will have an adverse impact on views.

Comment:

This matter is discussed elsewhere in this report (refer to Clause D7 (Views) of the WDCP 2011).

In summary, the development was found that the development will have a relatively minor impact upon district views to the north from properties to the south of the site and that the extent of view loss was considered to be reasonable under the circumstances.

This issue does not warrant the refusal of the application.

- **Sunlight access**

Concern is raised that the development will have an adverse impact upon access to sunlight.

Comment:

The shadow diagrams were provided indicating the shadowing effects of the development in relation to the neighbouring properties. The shadow diagrams confirm that compliant levels of solar access will continue to be received by all adjoining properties both existing and proposed between 9:00 and 3:00pm on 21st June.

This issue does not warrant the refusal of the application.

- **Impact from excavation and construction works**

Concerns are raised that the excavation and construction of the basement car park will result in damage to adjoining properties.

Comment:

A Geotechnical Engineers Report was submitted with the application addressing excavation and construction and provides recommendations for protecting adjoining properties. Those recommendations will be imposed as conditions of consent. Furthermore, Dilapidation surveys will be required in relation to adjoining properties (prior to the issue of a Construction Certificate) which are located within 20.0m of the excavation perimeter. This requirement is imposed by way of condition.

This matter does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.

Internal Referral Body	Comments
Landscape Officer	The plans indicate removal of several small trees to accommodate the proposed works. The proposed Landscape Plans indicate replanting of 24 trees across the site. No objections to approval subject to conditions, including an additional 2 mature palm trees in the front landscape setback to provide improved streetscape address and some immediate height in planting to assist in the integration of the building bulks and scale into the local area.
NECC (Coast and Catchments)	The proposed development has been assessed to comply with clause 15 of SEPP Coastal Management and is supported without condition. It is not likely to alter coastal processes to the detriment of the environment or other land and is not likely to reduce public amenity or existing access to and use of the foreshore.
NECC (Development Engineering)	15/08/2019 1. The proposed OSD volume seems to be insufficient. Rainwater tank volume cannot be considered as part of the OSD volume. A condition requiring enlargement of the OSD tank can be recommended as a condition of approval. 2. The basement stormwater sump must not be connected to the HED Pit in OSD tank. The basement stormwater sump shall be connected directly to the stormwater pits & pipelines system downstream to the proposed OSD tank before discharging to Pacific Parade to avoid stormwater back flow into the basement stormwater sump, which can also be a condition of approval. 5/12/2019 No objection to approval, subject to conditions as recommended.
Strategic and Place Planning (Urban Design)	The proposal can be supported as it has generally complied with the Urban Design issues raised in the Pre-Lodgement Meeting. The minor breach in built form controls and landscape shortfall of 5% is acceptable and will not be detrimental to neighbouring developments.
Traffic Engineer	The proposal is for demolition of two existing dwellings and construction of 16 residential apartments. The proposal includes the provision of a total of 28 parking spaces over two level of car parking comprising 25 residential spaces and 3 visitor spaces (including a disabled space), and 17 bicycle parking within the site. The number of parking spaces provided within the site is in compliance with the DCP and is considered satisfactory. However, the proposed small car spaces are not supported. The length of all parking spaces allocated to the residential apartments shall be minimum 5.4m to accommodate all standard size vehicles. Referring to the PLM notes in relation to the width of the driveway, it is indicated that: <i>"The driveway width at the boundary is to be narrowed to the</i>

Internal Referral Body	Comments
	<i>minimum width as required by AS 2890.1- Off street car parking, to prevent the loss of on street car parking"</i> Given the number of parking spaces provided in the car parking (28 spaces), the location of the site with close proximity to an intersection and relatively high traffic volume in Pacific Pde, as required in AS2890.1:2004, the provision of a 5.5m passing bay for at least the first 6m of driveway from the property boundary is considered necessary. This is required to prevent any queuing and negative impact on the frontage street. The expected future traffic generation, 9.4 vehicle trip in peak hours, is considered to have minimal impact on the road network and deemed acceptable. <u>Traffic Comments in review of revised plans received on 24/10/2019:</u> The revised traffic comments has to be read in conjunction with the previous traffic comments provided on the DA. The issues raised on the provision of small spaces and lack of passing bay have been satisfactorily addressed in the revised plans. Therefore, the proposal is supported on traffic grounds.
Waste Officer	No objection subject to conditions.
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 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

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

As previously detailed, the proposed development is for the construction of a part 3/part 4 storey residential flat building with basement level car parking. Therefore, the provisions of Clause 4 of SEPP 65 are applicable to the assessment of this application.

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

Clause 28 of SEPP 65 requires:

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

- (a) the advice (if any) obtained from the design review panel, and*
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and*
- (c) the Apartment Design Guide.*

DESIGN REVIEW PANEL

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

SCHEDULE 1: DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment:

The key natural and built form contexts of the local area are undergoing change as remnant single dwellings are re-developed to respond to the increased densities and built form controls of the R3 Medium Density Residential zone.

The R3 Medium Density Residential zone envisages the construction of residential flat buildings, such as the subject development, as a key built element of the desired future character of the zone to provide a variety of housing types to meet the needs of the community within a medium density residential environment.

The development, as proposed is considered to respond to the size, topographical and vegetative constraints of the subject site such that it appropriately addresses and enhances the quality, as well as further establishing the medium density identity of the area.

Through the provision of progressive setbacks, effective articulation and the use of a variety of materials, the development is considered to contribute towards the medium density character of the streetscape and neighbourhood without physically or visually dominating the environment.

The development is considered to be consistent with this objective.

Principle 2: Built Form and Scale

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

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

Comment:

The development involves a scale, bulk and height which is considered to be appropriate to the existing and desired future character of the street and surrounding buildings.

The proposed building includes progressive setbacks and good levels of vertical and horizontal articulation such that the resulting building alignments and proportions are consistent with surrounding development and are complimentary to the zone.

The vertical and horizontal manipulation of the built form provides a high level of amenity to neighbouring properties such that any unreasonable impacts upon sunlight access, privacy and view sharing are minimised.

The proposed built form and scale is considered to define the public domain and contribute to the character of the streetscape which predominantly features medium density residential flat buildings of varying age, scale and style.

The development is considered to be consistent with this objective.

Principle 3: Density

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

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

Comment:

The proposed density is considered to be sustainable given the ongoing redevelopment of the Dee Why Town Centre (located approximately 900m to the west) and the public transport with the Northern Beaches Bus Rapid Transit (BRT) or "B-Line" system, provision of community facilities and the increase in commercial floor space in the Dee Why commercial areas which could result in increased employment opportunities.

The development is considered to be consistent with this objective.

Principle 4: Sustainability

"Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs."

Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation".

Comment:

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

In this regard, a condition of consent has been imposed requiring the submission of a Construction Management Plan (CMP) detailing disposal and recycling of demolition and excavation materials.

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

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

Principle 5: Landscape

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

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

Comment:

Council's Landscape Officer has reviewed the application and accompanying documentation and raises no objection to the proposed development subject to conditions. The landscape design (as prepared by Taylor Brammer) for the development includes a reasonable level of replacement vegetation to contribute towards the architectural scale of the proposed building. The new landscaping will not under-utilise or overcrowd site such that it impacts upon solar access. The new landscaping will contribute towards the landscape character of the streetscape and neighbourhood while providing for acceptable levels of internal and external amenity.

The development is considered to be consistent with this objective.

Principle 6: Amenity

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

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

Comment:

The development provides an acceptable level of internal and external amenity through the appropriate location and configuration of apartments, balconies, windows and habitable room layouts.

The building has been designed to take advantage of an elevated outlook to the north and west which results in living spaces being orientated in that direction which faces a driveway and away from the neighbouring residential property to the east thereby protecting the privacy of surrounding development.

The development is considered to be consistent with this objective.

Principle 7: Safety

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

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

and purpose".

Comment:

The development provides for acceptable levels of safety and security in accordance with the principles of Crime Prevention Through Environmental Design (CPTED).

The elevated and exposed nature of the development enables an improved degree of passive surveillance above what is already achieved from the site and which appropriately fits the intended higher density residential purpose.

The territorial spaces within the site are appropriately defined to identify communal and private areas and includes clearly defined secure and visible access points that could be easily maintained.

The development is considered to be consistent with this objective.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

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

The provision of a mix of apartment sizes in this location is considered desirable due to the site's close proximity to Dee Why Beach and Town Centre which is regarded as a high demand location due to its close proximity to the beach, facilities, social, shopping, transport and community facilities.

The development is considered to be consistent with this objective.

Principle 9: Aesthetics

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

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

Comment:

The proposed building includes progressive setbacks and good levels of vertical and horizontal articulation such that the resulting building alignments and proportions are generally balanced and reflective of the internal layout and structure.

Through the provision of progressive setbacks, articulation and the use of a variety of materials, the development is considered to contribute towards the existing or future local context of the medium density character of the streetscape and neighbourhood.

The development is considered to be consistent with this objective.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
3A Site Analysis	A written statement explaining how the design of the proposed development has responded to the site analysis must accompany the development application. Where relevant, this should include technical advice from landscape architects, contamination specialists, geotechnical engineers and arborists.	Consistent A Site Analysis Plan (in conjunction with the Statement of Environmental Effects) has been submitted with the application. The application also includes the following reports to inform the assessment of the application: • SEPP 65 Design Statement; • Geotechnical Site Investigation; and • Traffic and Parking Assessment.
3B Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Consistent As discussed elsewhere in this report under the Design Quality Principles and within the relevant clauses under the WDCP 2011, the development responds to the streetscape and site characteristics and optimises solar access within the development and to neighbouring properties.
3C Public Domain Interface	Does the development transition well between the private and public domain without compromising	Consistent

	safety and security? Is the amenity of the public domain retained and enhanced?	The development is considered to provide a satisfactory transition between the private and public domains without compromising safety and security. Despite the incorporation of a wider crossover than what is currently in place, the amenity of the public domain is not unreasonably impacted.									
3D Communal and Public Open Space	Appropriate communal open space is to be provided as follows: - Communal open space has a minimum area equal to 25% of the site - Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter). Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should: - provide communal spaces elsewhere such as a landscaped roof top terrace or a common room. - provide larger balconies or increased private open space for apartments. - demonstrate good proximity to public open space and facilities and/or provide contributions to public open space.	Not consistent (acceptable on merit) 168m² (11% of the site area) The proposed development does not provide required amount of communal open space. However, each apartment contains private open space areas that are generous in size which is considered sufficient to address the requirement of this Clause. Communal open space provides paved areas, wide passive seating areas and landscaping on all sides. Communal area is located on western side of the site achieving minimum 2 hours direct sunlight.									
3E Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td></td><td></td></tr> <tr> <td>650m² –</td><td>3m</td><td>7%</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²			650m ² –	3m	7%	Consistent Site Area: 1500m² Required Deep Soil Area 7%: 105m² Proposed Deep Soil Area: 237m² (15.8%) (with a minimum dimension of 3.0m).
Site area	Minimum dimensions	Deep soil zone (% of site area)									
Less than 650m ²											
650m ² –	3m	7%									

	<table><tr><td>1,500m²</td><td></td></tr><tr><td>Greater than 1,500m²</td><td>6m</td></tr><tr><td>Greater than 1,500m²with significant existing tree cover</td><td>6m</td></tr></table>	1,500m ²		Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	Note: This requirement is significantly less than that required under Clause D1 of the WDCP 2011, however the proposal complies with the ADG.						
1,500m ²														
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
3F Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table><tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms. Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	Consistent Note: The Glossary in the ADG defines a Habitable Room as: <i>"a room used for normal domestic activities, and includes a bedroom, living room, lounge room, music room, television room, kitchen, dining room, sewing room, study, playroom, family room and sunroom; but excludes a bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, hallway, lobby, photographic darkroom, clothes-drying room, and other spaces of a specialised nature occupied neither frequently nor for extended periods, as defined by the BCA".</i> The development achieves a height of up to 12.0m and provides the following applicable separation distances to the boundaries that are in accordance with the requirement of this control: • Eastern Boundary -4.5m to blank wall and 6m to Habitable rooms • Western
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												

		Boundary - 5.5m from balcony to western boundary and 6m Habitable room to western boundary. • Southern Boundary -6m to boundary and 6.5m boundary to the balcony of the adjoining developments. The proposed development generally complies with the building separation, with exception of the balconies on the western boundary, however the variation is minor and subject to condition requiring privacy screens on the western edge of these balconies, the impact is considered to be satisfactory.
3G Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	Consistent The development provides an accessible and legible building entry which defines the private property from the public domain.
3H Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Consistent The development includes a 5.5m wide driveway and crossover which facilitates adequate sightline distances along the adjacent footpath. The driveway ramp slopes down from the street such that visual impact is minimised.
3J Bicycle and Car Parking	For development in the following locations: • On sites that are within 80m of a railway	Consistent An assessment of car

	station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre. The minimum car parking requirement for residents and visitors is set out in the <i>RMS Guide to Traffic Generating Developments</i>, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	parking provision having regard to WDCP 2011 and location of the site, has been undertaken. In summary, the amount of car parking is adequate for the development, as addressed elsewhere in this report. <u>Bicycle Parking</u> The ADG does not include any numerical requirement for the provision of bicycle parking. This is addressed under Clause C3(A) of the WDCP 2011.
Part 4 Designing the Building		
Amenity		
4A Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: - Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area. - A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter	Consistent The development allows for 75% (12 apartments) of living rooms and private open spaces to apartments to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. Nil apartments will receive no direct sunlight between 9.00am and 3.00pm in mid winter.
4B Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: - At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. - Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Consistent 13 units (81%) will receive a minimum of 2 hours of direct sunlight between 9.00am and 3.00pm in mid-winter. No apartments exceed the 18.0m requirement.

4C Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>If located in mixed used areas</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Consistent The development provides floor-to-ceiling heights of 2.7m to all apartment levels.
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
4D Apartment Size and Layout	• Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> • The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. • A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each. • Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Consistent All apartments within the development comply with the minimum area.		
Apartment type	Minimum internal area													
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													

	- Daylight and air may not be borrowed from other rooms. - Habitable room depths are limited to a maximum of 2.5 x the ceiling height. - In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window. - Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space). - Bedrooms have a minimum dimension of 3m (excluding wardrobe space). - Living rooms or combined living/dining rooms have a minimum width of: 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments																
4E Private Open Space and Balconies	- All apartments are required to have primary balconies as follows: <table border="1"> <thead> <tr> <th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr> </thead> <tbody> <tr> <td>Studio apartments</td><td>4m²</td><td>-</td></tr> <tr> <td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr> <tr> <td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr> <tr> <td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr> </tbody> </table> Note: The minimum balcony depth to be counted as contributing to the balcony area is 1.0m. - For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Consistent All apartments within the development comply with the minimum balcony area and depth.
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
4F Common	The maximum number of apartments off a	Consistent															

Circulation and Spaces	circulation core on a single level is eight. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	The maximum number of apartments off a circulation core on a single level is 6. The proposed development includes access to all floors via a lift.										
4G Storage	- In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><thead><tr><th>Dwelling Type</th><th>Storage size volume</th></tr></thead><tbody><tr><td>Studio apartments</td><td>4m³</td></tr><tr><td>1 bedroom apartments</td><td>6m³</td></tr><tr><td>2 bedroom apartments</td><td>8m³</td></tr><tr><td>3+ bedroom apartments</td><td>10m³</td></tr></tbody></table> - At least 50% of the required storage is to be located within the apartment.	Dwelling Type	Storage size volume	Studio apartments	4m³	1 bedroom apartments	6m³	2 bedroom apartments	8m³	3+ bedroom apartments	10m³	Consistent (subject to condition) The proposed building includes resident storage areas for all units within the building as well as within the basement levels. A condition of consent has been imposed to ensure the proposed storage areas are allocated in accordance with the size requirements of the ADG for the respective units.
Dwelling Type	Storage size volume											
Studio apartments	4m³											
1 bedroom apartments	6m³											
2 bedroom apartments	8m³											
3+ bedroom apartments	10m³											
4H Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent All garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas are located more than 3.0m away from bedrooms.										
4J Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent <u>Noise</u> The development has been designed in a manner to minimise impacts of external noise and to mitigate noise transmission, as discussed elsewhere in this report. <u>Pollution</u>										

		The completed development is unlikely to impact adversely on air quality or alter the microclimate of the area.
Configuration		
4K Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent The development proposes two and three bedroom apartments. Given the town centre location and the variety of land uses, it is considered that the development has the capacity to accommodate numerous residents who have opportunities to live, work and leisure within the same district. Further to this, the apartments proposed will offer a different housing type and affordability to that of detached housing which is generally seen throughout the Northern Beaches.
4L Ground Floor Apartments	- Street frontage activity is maximised where ground floor apartments are located. - Design of ground floor apartments delivers amenity and safety for residents.	Consistent The Ground floor apartments deliver appropriate levels of amenity and safety for residents.
4M Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent The proposed building includes progressive setbacks and good levels of vertical and horizontal articulation such that the resulting building alignments and proportions that are generally balanced and reflective of the internal layout and structure. Through the provision of

		progressive setbacks, articulation and the use of a variety of materials, the development is considered to contribute towards the existing or future local context of the medium density character of the local area.				
4N Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features.	Consistent The design of the development includes a flat roof form which is considered to positively respond to the character of the street and surrounding buildings.				
4O Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent The landscape works within the proposed development are satisfactory.				
4P Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:				Consistent Council's Landscape Officer has reviewed the application and accompanying documentation and raises no objection to the proposal subject to conditions. The landscape design (as prepared by Taylor Brammer) for the development includes a reasonable level of replacement vegetation to contributes towards the architectural scale of the proposed building without under-utilizing or overcrowding the site such that it impacts upon solar access and which is considered to contribute towards the landscape character of the streetscape and neighbourhood while providing for acceptable	
	Plant type	Definition	Soil Volume	Soil Depth		Soil Area
	Large Trees	12-18m high, up to 16m crown spread at maturity	150m³	1,200mm		10m x 10m or equivalent
	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m³	1,000mm		6m x 6m or equivalent
	Small trees	6-8m high, up to 4m crown spread at maturity	9m³	800mm		3.5m x 3.5m or equivalent
	Shrubs			500-600mm		
	Ground Cover			300-450mm		
	Turf			200mm		

		levels of internal and external amenity.
4Q Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the <i>Liveable Housing Guideline's</i> silver level universal design features.	Consistent The 7 core design features elements in the silver level are: 1. A safe continuous and step free path of travel from the street entrance and/or parking area to a dwelling entrance that is level. 2. At least one, level (step-free) entrance into the dwelling. 3. Internal doors and corridors that facilitate comfortable and unimpeded movement between spaces. 4. A toilet on the ground (or entry) level that provides easy access. 5. A bathroom that contains a hobless (step-free) shower recess. 6. Reinforced walls around the toilet, shower and bath to support the safe installation of grabrails at a later date. 7. A continuous handrail on one side of any stairway where there is a rise of more than 1 metre.

		Of the above, the development is considered to comply with Elements 1, 2, 3 and 4. Other remaining elements can be conditioned to comply.
4S Mixed Use	- Can the development be accessed through public transport and does it positively contribute to the public domain? - Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Not Applicable
4T Awnings and Signage	- Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. - Signage must respond to the existing streetscape character and context.	Not Applicable
Performance		
4U Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent The BASIX Certificate submitted with the application indicates that the development will achieve above target scores for water (43) and energy (33) usage while Thermal Comfort will achieve a target pass.
4V Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Consistent The application includes Drainage Plans and a Geotechnical Site Investigation which take into account water disposal measures and the impact of the development on any groundwater seepage.
4W Waste Management	Supply Waste Management Plans as part of the development application demonstrating safe and convenient collection and storage of waste and	Consistent The application includes a

	recycling.	Waste Management Plan which demonstrates safe and convenient collection and storage of waste and recycling.
4X Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the building.	Consistent The application includes a Schedule of Materials and Finishes which ensures the longevity and sustainability of the building.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

Comment:

The development satisfies the requirements of Clause 30(1)(a), (b) and (c).

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

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

(3) *To remove doubt:*

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

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

Comment:

It is considered that adequate regard has been given to:

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1009488M and 24 May 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 003885950 and 24 May 2019).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

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:	11.0m	Highest point of the Building -11.6m Roof mechanical plant screen -11.8m Lift overrun 12.0m	5.4% 7.2% 9%	No No No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development Standard:	Height of Buildings
Requirement:	11.0m
Proposed:	Building - 11.6m (5.4%) Roof Mechanical Plant screen - 11.8m (7.2%) Lift overrun - 12.0m (9%)
Percentage variation to requirement:	Variable and up to 9%



Figure 1 - Building Height Non-Compliance (Source: Statement of Environmental Effects, prepared by BBF Town Planners)

Assessment of Request to Vary a Development Standard

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

Clause 4.6 Exceptions to Development Standards

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

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

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

Comment:

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

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

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

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

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

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

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

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

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 this regard, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by

cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

The development is consistent with the height and scale of residential flat buildings in the local area. Flat buildings in the local area are generally 3-4 storeys in height with the exception of 186-188 Pacific Parade, on the corner with Monash Parade, which is 8 storeys. As previously mentioned, attention has been given to maintaining a 3 storey built form by stepping back the upper most level to minimise the bulk and scale of the development and to better integrate with the streetscape. The proposal is consistent with this objective. The majority of the building conforms with the 11.0m standard with the lift overrun and north west corner of the roof representing a minor non-compliance.

The development will have a 3 storey presentation to the street with the upper most level being stepped in further which allows the bulk and scale to be minimised and will not create an unreasonable visual

impact when viewed from the street. The front setback will be landscaped which allow the built form to be softened further.

We are of the opinion that there are sufficient environmental planning grounds to justify the minor variation sought including the topography of the land which makes strict compliance difficult to achieve as indicated by the minor building height breaches along the northern edge of the development being compensated for by the southern edge which sits well below the 11 metre height standard.

The building is of exception design quality and represents the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

In accordance with Clause 4.6(5), the contravention of the development standard does not raise any matter of significance for State or Regional environmental planning with the public benefit maintained by Council's adoption of an application specific merit based assessment as it relates to building height within the 11.0 metre height precinct in which the site is located.

The applicant's justification is concurred with.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

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

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

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

Comment:

The proposed height and scale of the development is consistent and compatible with the height and scale of surrounding and nearby development.

The non-compliance relates to minor portions of the building (including the screen around the plant room and lift overrun) which will not unreasonably affect the overall appearance of the building nor offend the height and scale of surrounding and nearby development.

The development is considered to satisfy this objective.

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

Comment:

The building generally complies with the Height of Buildings development standard. The extent of the variation is 600mm (5.4%) in the north-western corner of the upper level roof form, 800mm (7.2%) to the western edge of the roof mechanical plant screen and 1.0 metre (9%) to the lift overrun.

The variations are considered to be minor and, because they do not cover a larger area of roof and are not visually prominent, the non-compliances will not unreasonably impact upon the visual appearance of the development when viewed from private or public domains, disrupt views, contribute towards a loss of privacy or solar access.

The development is considered to satisfy this objective.

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

Comment:

The site is a narrow allotment located within an established medium density zone. Surrounding development consists of similarly scaled development reflective of a highly urbanised environment in a broader medium density area.

The development will not have any adverse impact upon the scenic quality of Warringah's (that part of the Northern Beaches covered by the WLEP 2011) coastal and bush environments.

The development is considered to satisfy this objective.

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

Comment:

The non-compliance is considered to be minor and, because it does not cover a larger area of roof and therefore be more visually prominent, the non-compliance will not unreasonably impact upon the visual appearance of the development when viewed from nearby public

places.

The development is considered to satisfy this objective.

R3 Zone Objectives

The underlying objectives of the R3 Medium Density Residential zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*

Comment:

The development will increase the housing stock of the site and provide a reasonable mix of apartment types and sizes commensurate to a medium density residential environment.

The development is considered to satisfy this objective.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The development provides 2 and 3 bedroom apartments of varying size which is considered to satisfy the provision of affordable housing choice within the medium density residential environment of Dee Why.

The development is considered to satisfy this objective.

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

Comment:

The development of an apartment building will provide additional occupants to frequent local businesses within the Dee Why Town Centre and Dee Why Beach precinct. In this regard, the development will enable other land uses that provide facilities or services to meet the day to day needs of residents.

The development is considered to satisfy this objective.

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

Comment:

The landscape design for the development includes a reasonable level of replacement vegetation to contribute towards the architectural scale of the proposed building without under-utilising or overcrowding the site such that it impacts upon solar access and which is considered to contribute

towards the landscape character of the streetscape and neighbourhood while providing for acceptable levels of internal and external amenity.

The development is considered to satisfy this objective.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Comment:

The development includes a scale, bulk and height which is considered to be appropriate to the existing or desired future character of the street and surrounding buildings.

The proposed building includes progressive setbacks and good levels of vertical and horizontal articulation such that the resulting visual quality derived from the building alignments and proportions are consistent with surrounding development and complimentary to the zone.

The proposed built form and scale is considered to define the public domain and contribute to the character of the streetscape which predominantly features medium density residential flat buildings of varying age, scale and style.

The development is considered to satisfy this objective.

Conclusion on R3 Objectives

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

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

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

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

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development to:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and
- (b) to allow earthworks of a minor nature without requiring separate development consent.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

Clause 6.2 - 'Matters for Consideration'	Comments
(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality	A Geotechnical Report, as prepared by JK Goetehncial, dated 6 May 2019 was submitted with the current application to ensure all relevant matters relating to the potential impact of the proposed earthworks on including surrounding development, contaminated soils, drainage and soil stability, etc. are addressed. Subject to the imposition of relevant conditions of consent to implement the recommendation of the report, it is considered that the proposed earthworks will not result in any unacceptable impacts.
(b) the effect of the proposed development on the likely future use or redevelopment of the land	The site is located in an established residential area. The adjacent development does not impose any unusual or impossible development constraints. The proposed development will not cause impact on the likely future use or redevelopment of the land.
(c) the quality of the fill or the soil to be excavated, or both	The geotechnical report provided demonstrates that the site conditions can support the proposed development.
(d) the effect of the proposed development on the existing and likely amenity of adjoining properties	The proposed earthworks will not impact on the existing and likely amenity of adjoining properties.
(e) the source of any fill material and the destination of any excavated material	Satisfactory subject to conditions.
(f) the likelihood of disturbing relics	Satisfactory subject to conditions.
(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area	There are no watercourse, drinking water catchment or environmentally sensitive area within the vicinity of the proposed development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

6.4 Development on sloping land

Under this clause, 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 site slopes towards the street and the applicant has submitted a Geotechnical Assessment Report prepared by JK Goetehncial, dated 6 May 2019. This report concludes that the

proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

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

Comment: The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

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

Comment: The applicant's report addresses the existing subsurface flow conditions. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
B2 Number of storeys	3 Storey (max)	Part 3 and part 4 storey	No
B3 Side Boundary Envelope	5.0m (East)	Breach is on the Eastern elevation (8.4%-4.2% for 7.9m)	No
	5.0m (West)	breach on west elevation (11.8%-1.9% for 33m)	No
B5 Side Boundary Setbacks	4.5m (East)	Basement levels - 2.0m Building - 4.6m	No Yes
	4.5m(West)	Basement Level - 1.9m to 5.3m Driveway wall -1.9m Ground Level - 5.4	No No Yes
B7 Front Boundary Setbacks	6.5m	Basement Level -6.0m Front Balconies - 6.0m Building - 6.5m	No No Yes
B9 Rear Boundary Setbacks	6.0m	6.0m	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	50%	45% (675m ²)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D19 Site Consolidation in the R3 and IN1 Zone	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B2 Number of Storeys

Description of the Non-compliance

Clause B2 requires development to comply with the maximum number of storeys identified on the WDCP 2011 map 'Number of Storeys'. The maximum number of storeys for the R3 zone is 3.

The control defines a storey as:

"Those storeys which may be intersected by the same vertical line, not being a line which passes through any wall of the building; and

Storeys that are used for the purposes of garages, workshops, store rooms, foundation spaces or the like, that do not project, at any point, more than 1 metre above ground level (existing) are not counted".

Given the above definition, the development does not comply with the control at the central part of the building where it achieves a total of 4 storeys.

Merit consideration:

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

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

Comment:

The development has been found to be generally compliant with the overall Height of Buildings Development Standard (with a minor, and supported, exception of up to 1.0m for the NW corner and the lift overrun).

The non-compliant number of storeys is located within the central part and away from the street and will not unreasonably add to the bulk and scale of the building, such that it unreasonably visually dominates its surrounds.

The development is considered to satisfy this Objective.

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

Comment:

The non-compliant elements are satisfactory in terms of the contribution to the visual impact, streetscape and amenity.

As discussed above, the non-compliance is contained within the overall height of the building and, will not have an unreasonable visual impact when viewed from adjoining properties or the street.

The development is considered to satisfy this Objective.

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

Comment:

As discussed under Clause D7 - 'Views', the development, as a whole, will not unreasonably impact upon the sharing of views.

The proposed development does not result in an unreasonable impact upon the equitable sharing of views.

The development is considered to satisfy this Objective.

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

Comment:

The non-compliance is found to have minimal impact upon the neighbouring properties.

Overshadowing

The development was found to comply with the requirements of the clause and not unreasonably impact upon the amenity of neighbouring properties in terms of access to sunlight.

Privacy

This matter is discussed elsewhere in this report (refer to Clause 3F of the ADG and Clause D8 (Privacy) of the WDCP 2011).

In summary, although Clause 6A under SEPP 65 establishes precedence for visual privacy over the WDCP 2011 an assessment was conducted against the provisions of Clause D8, where the development was found to be compliant with the separation requirements with the exception of the windows to the foyer. A condition is imposed to address this matter.

View Sharing

The proposed development does not result in an unreasonable impact upon the equitable sharing of views.

The development is considered to satisfy this Objective.

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

Comment

The development includes a flat roof design which is progressively stepped down the site to address the topography. The roof design is considered to be the best option, as opposed to a pitched roof form, for the site given the concerns raised by surrounding residents in terms of view loss.

The development is considered to satisfy this Objective.

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

Comment

The Number of Storeys built form control under the WDCP complements the Height of Buildings Development Standard under the WLEP 2011 in that the identified non-compliance generally corresponds to the areas identified as an overall building height non-compliance although it is noted that the extent of non-compliance under the Height of Buildings Development Standard are considerably less. However, in both instances, this assessment finds that, when assessed on its merits, the respective non-compliance's satisfy the Objectives of the control.

Therefore, having regard to the above, it is considered that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the variation to the Number of Storeys control is supported, in this particular circumstance.

B3 Side Boundary Envelope

Description of Non-compliance

Clause B3 requires development to be sited within a building envelope determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries of 5.0m.

The development does not comply with the control at both sides of the central part of the building and, to a lesser extent, at the front western corner of the building.

The extent of non-compliance is details as follows:

- **Eastern Elevation** - The breach is measured to be 7.9m (variation of 8.4%) as shown in the diagram below, the non-compliance is noted in red.



Figure 2: Eastern Elevation - Non-compliance with Side Boundary Envelope shown in red

(source: Architectural plan, prepared by PBD Architects)

- **Western Elevation** - The breach is measured to have an overall length of 33.0m (variation of 1.9% to 20.2%) as shown in the diagram below, the non-compliance is noted in red.



Figure 3: Western Elevation - Non-compliance with Side Boundary Envelope shown in red
(source: Architectural plan, prepared by PBD Architects)

Merit consideration

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

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

Comment:

The development includes a scale, bulk and height which is considered to be appropriate to the existing or desired future character of the street and surrounding buildings.

The proposed building includes progressive setbacks and good levels of vertical and horizontal articulation such that the resulting building alignments and proportions are consistent with surrounding development and complimentary to the zone.

Because the non-compliance's are predominantly located within the central part of the building where the site steps upwards, will not add to the bulk and scale of the building, such that it will unreasonably dominate its surrounds within the medium density zone.

The development is considered to satisfy this Objective.

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

Comment:

The non-compliance is found to have minimal impact upon the neighbouring properties, as discussed elsewhere in this report.

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

Comment:

The non-compliance is located at the central of the building. In this respect, the extent of the non-compliance reflects the sudden drop of the site as it slopes downward. Notwithstanding this area of non-compliance, the remainder of the development has been designed to step down the site to respond to the topography.

Therefore, having regard to the above, it is considered that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the variations to the Side Boundary Envelope control are supported, in this particular circumstance.

B5 Side Boundary Setbacks

Description of Non-compliance

Clause B5 requires development to maintain a minimum setback from side boundaries of 4.5m.

The clause provides for an exception to the above requirement by allowing variations for existing narrow width allotments, where compliance is unreasonable in the context of surrounding medium density development for basement carparking and private open space. In this context, the clause permits the following variations:

- Basement car parking may extend up to 2.0m from the side boundary and no more than 1.0m above ground level (existing);
- Private open space may extend up to 3.5m from a side boundary; and
- Entrance and stair lobbies at ground floor level may encroach the required setback up to 2.0m from a side boundary.

The development proposes the following variable setbacks:

B5 Side Boundary Setbacks	4.5m (East)	Basement Above Ground
	4.5m (West)	Basement Drive Above Ground

Merit consideration

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

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

Comment:

Numerically, the development provides 45.9% of deep soil landscaped area. This provision is marginally lower than the required 50% as prescribed under Clause D1 of the WDCP 2011 and equates to a variation of 5% (28.2m²).

Notwithstanding the numerical shortfall, the landscape design for the development includes a reasonable level of replacement vegetation that contributes towards the architectural scale of the proposed building, which is considered to contribute towards the landscape character of the streetscape and neighbourhood while providing for acceptable levels of internal and external amenity.

Therefore, given the minor variation to Clause D1, the considered landscape design which softens the built form, the development is considered to satisfy this Objective.

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

Comment:

The proposed building includes progressive setbacks and effective levels of vertical and horizontal articulation such that, given the size, topographical and vegetative constraints of the site, visual dominance is minimised as much as possible with the resulting building alignments and proportions being generally consistent with that of other medium density development in the area.

The non-compliance's resulting from the development are not considered to add unreasonable bulk to the development due to their open form which contributes towards the articulation of the building.

The development is considered to satisfy this Objective.

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

Comment:

As discussed above, the incorporation of progressive setbacks and effective levels of vertical and horizontal articulation is considered sufficient to minimise the scale and bulk of the building.

The development is considered to satisfy this Objective.

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

Comment:

The non-compliance is found to have minimal impact upon the neighbouring properties as discussed elsewhere in the report. In summary, the development was found to comply with the requirements of the clause and not unreasonably impact upon the amenity of neighbouring properties in terms of access

to sunlight.

The development is considered to satisfy this Objective.

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

Comment:

This matter is discussed elsewhere in this report (refer to Clause D7 (Views) of the WDCP 2011).

In summary, the extent of view loss was considered to be reasonable under the circumstances.

The development is considered to satisfy this Objective.

Therefore, having regard to the above, it is considered that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the variations to the Side Boundary Setback control are supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of Non-compliance

Clause B7 requires development to maintain a minimum setback of 6.5m to road frontages.

The front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences.

The development includes non-compliance's of varying degree at the following levels:

B7 Front Boundary Setbacks	6.5m	Basemen Front Bal Above Groun
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Merit consideration:

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

- ***To create a sense of openness.***

Comment:

The basement element is not visible from the street and does not detract from a sense of openness beyond that which is currently evident along Pacific Parade.

The balcony elements are open structures which contribute towards the articulation of the front facade and, therefore, add visual interest to the built form. The encroachment of the balconies does not add

any unreasonable building bulk such that these features would impact upon the sense of openness to the street or neighbouring properties.

The development is considered to satisfy this Objective.

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

Comment:

The development exhibits a visual continuity to other medium density developments within the local area.

This is achieved through the provision of landscaped elements within the front setback area and effective articulation to the front facade through the inclusion of recessed building alignments and exposed terrace/balcony elements.

The development is considered to satisfy this Objective.

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

Comment:

The development introduces a contemporary element to the existing architecture of this part of Pacific Parade which consists of a mix of aged and modern residential flat buildings.

The provision of landscaping at the ground floor and variable setback elements at the upper levels provide architectural interest which contributes towards the visual quality of the streetscape.

The development is considered to satisfy this Objective.

- ***To achieve reasonable view sharing.***

Comment:

This matter is discussed elsewhere in this report (refer to Clause D7 (Views) of the WDCP 2011). In summary, the view loss was considered to be reasonable under the circumstances.

In particular, because the non-compliance's are located at the front of the development, no unreasonable loss of views will occur from the more elevated properties to west as a result of the minor encroachments due to the visual permeability of the balconies.

The development is considered to satisfy this Objective.

Therefore, having regard to the above, it is considered that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the

variations to the Front Boundary Setbacks control are supported, in this particular circumstance.

C3 Parking Facilities

The parking requirement under Appendix 1 of the Warringah Development Control Plan 2011 is:

- 1 space per 1 bedroom dwelling.
- 1.2 spaces per 2 bedroom dwelling.
- 1.5 spaces per 3 bedroom dwelling.
- 1 visitor space per 5 units or part of dwellings.

This translates to a requirement for 22 residential spaces and 3 visitors, total of 25 spaces. The development provides for 28 car parking over two levels, comprising 25 residential spaces and 3 visitor spaces (including a disabled space).

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

D1 Landscaped Open Space and Bushland Setting

Description of Non-compliance

Clause D1 requires development to provide 50% (750.3m²) of landscaped open space.

The development provides 45% (675m²) which represents a variation of 5% (74.3m²).

Merit consideration

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

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

Comment:

The Landscape Plan submitted with the application indicates that a minimum of 6.0m landscaped front setback area. This, together with landscaped strips along both side boundaries and the rear of the site will provides a sufficient level of planting to maintain and enhance the streetscape.

The development is considered to satisfy this Objective.

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

Comment:

The development has been designed to protect the key natural features of the site which includes a significant large trees towards the rear of the site property at the adjoining site.

The development is considered to satisfy this Objective.

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

Comment:

The proposed landscaped area includes sufficient dimensions to enable a reasonable level of planting to mitigate the architectural scale of the proposed building without under-utilising or overcrowding the site.

The development is considered to satisfy this Objective.

- ***To enhance privacy between buildings.***

Comment:

This matter is discussed elsewhere in this report (refer to Clause 3F of the ADG and Clause D8 (Privacy) of the WDCP 2011).

Notwithstanding, the provision of trees and shrubs along the side and rear boundaries will further enhance privacy between buildings, in particular to those buildings to the east and south.

The development is considered to satisfy this Objective.

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

Comment:

The development includes ground floor terraces and upper floor balconies which comply with the requirements of Clause 4E (Private Open Space and Balconies) under the ADG.

The development is considered to satisfy this Objective.

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

Comment:

The proposed landscaped area of the development provides sufficient spaces for service functions for the ground floor units, which include clothes drying and the like.

The development is considered to satisfy this Objective.

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

stormwater.Comment:

The application has been assessed by Council's Development Engineer who did not raise any objection to the proposed stormwater management and design for the site subject to conditions which are included in the Recommendation of this report.

The development is considered to satisfy this Objective.

Therefore, having regard to the above, it is considered that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the variation to the Landscape Open Space and Bushland Setting control is supported, in this particular circumstance.

D7 Views

Submissions were received during the public exhibition period from the neighbouring properties to the south-west (No. 3/22 Boronia Street, 5/22 Boronia Street) and to the south-east (No. 4/5 Monash Pde) who raised concerns that the development will impact upon views.

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

Step 1. Nature of the views affected

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

Comment on Step 1:No. 3/22 Boronia Street, 5/22 Boronia Street

Views from this property are obscured by thick vegetation to the north and district views to the east.

The obscured street view is across the rear boundary while the district view is directly across the eastern side boundary.

No. 4/5 Monash Parade

Views from this property are of partially obscured district views to the north and north-west. The views are considered to be partially obscured due to the number of buildings.

The obscured views are across the side boundary diagonally across the northern side boundary.

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

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

Comment on Step 2:

The views are district views and only available from the standing positions, and the view are obtained across a side and rear boundaries within a medium density zone.

Step 3. Extent of impact

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

Comment on Step 3:

The view impact on both properties are considered to be minor.

As noted above under Step 2, the view is obtained across a side and rear boundary and within a medium density zone. Therefore, while the impact is considered to be minor, its retention is not considered to be sustainable due to the higher intensity development potential within the medium density zone which is demonstrated by the subject application.

Step 4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment on Step 4:

Although the development proposes a number of non-compliance's, the extent of those non-compliance's do not unreasonably detract from the sharing of views.

The development will result in some view loss, however the impact of view loss will be same to the adjoining development even if the development was fully compliant with the Building Height development standard and the built form control (storeys) under the WDCP 2011.

The expectation that medium density development could be designed to maintain district views across the side and rear boundaries is unrealistic, particularly given the topographic and location of other buildings within the R3 zone which limits the ability to incorporate through-site view corridors.

In this regard, and given the aforementioned constraints, it is considered that a more skilful or

considered design could not achieve a significantly better outcome such that it would provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.

D8 Privacy

Clause D8 (Privacy) under the WDCP 2011 requires that the windows of one dwelling are to be located so they do not provide direct or close views (i.e. from less than 9.0m away) into the windows of other dwellings. Additionally, the clause also recommends that the windows of one dwelling are to be off-set from the windows of adjoining dwellings.

The development includes terraces and habitable room windows which face towards the side and rear boundaries (i.e. towards No. 169 Pacific Parade, No. 161 Pacific Parade and No. 34 and No. Boronia Street respectively).

The plans, as amended, indicate the provision of privacy screening to all windows and balconies that have the potential to overlook into the adjoining properties, in addition a condition has been included in the consent that requires privacy screens for the upper level balconies on the western elevation. This design solution is consistent with the clause which states:

"When screening devices are necessary, consideration should be given to longevity, maintenance requirements and treatment of screens and windows so they are integrated components of the design. Screening solutions may include:

- *Timber screens*
- *External blinds*
- *Window hoods or shutters*
- *Landscaping to adequately screen windows and outdoor areas and may also visually reduce building bulk*
- *Balconies provide privacy when viewed from the street or public space*
- *Screen balconies to avoid overlooking into the private open spaces of lower terraces using planter boxes, louvre screens and pergola structures*
- *High window sills of at least 1.7m above floor level*
- *Obscure or translucent glazing".*

Therefore, the development is considered to achieve compliance with the requirements of Clause D8.

D19 Site Consolidation in the R3 and IN1 Zone

The land is of a sufficient area to result in development that is generally in accordance with the relevant requirements and policies of Council. The lot to the east is of sufficient size and dimension to be developed as a consolidated site consistent with that currently proposed.

The applicant has indicated that have approached the owners of No. 167 Pacific Parade to purchase their property but was refused verbally. A copy of a letter and the valuation report has been submitted with this application.

Given the above, the proposed development is found to be consistent with the requirements of Clause 19 Site Consolidation in the R3 Zone of WDCP.

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 \$59,561 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$5,956,058.

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, 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

Submissions

As a result of the public exhibition process, the notification of the application resulted in 6 individual submissions. The main issues were:

- Noise
- Traffic safety
- Non-compliance with Building height
- Insufficient car parking
- View loss
- Sunlight access

- Impact from excavation and construction works

All issues have been addressed in this report (see 'Public Exhibition') and were found to not warrant the refusal or further redesign of the application.

Referrals

All external and internal referral departments have raised no objection to the development.

Environmental Planning Instruments

The development has been found to be generally consistent with the Matters for Consideration under s.4.15 of the Environmental Planning & Assessment Act, 1979.

The development has been found to be generally consistent with the various provisions of the following Environmental Planning Instruments:

- State Environmental Planning Policy No. 55 – Remediation of Land;
- State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (including the associated Apartment Design Guide);
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; and
- State Environmental Planning Policy (Infrastructure) 2007.

Warringah Local Environmental Plan 2011

The development has been found to be consistent with the Aims of the Plan and consistent with the Objectives of Clause 4.6 - Exceptions to Development Standards with regards to a variation to the building height under the Height of Buildings Development Standard.

Warringah Development Control Plan

The development has been found to be consistent with the Objectives of the Plan.

Variations to the following Controls were considered to be acceptable due to their consistency with the Objectives of the relevant Clause:

- Clause B2 - Number of Storeys;
- Clause B3 - Side Boundary Envelope;
- Clause B5 - Side Boundary Setbacks;
- Clause B7 -Front Boundary Setbacks; and
- Clause D1 - Landscaped Open Space and Bushland Setting.

As a direct result of the application and the consideration of the matters detailed within this report it is recommended that approval be granted to the Development Application subject to the conditions detailed within the "Recommendation" section of this report.

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

RECOMMENDATION

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- 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 standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/0622 for Construction of a residential flat building and demolition works on land at Lot 2 DP 1246740, 165 Pacific Parade, DEE WHY, Lot 1 DP 1246740, 163 Pacific Parade, DEE WHY, 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
DA 000, DA001, DA002, DA003, DA105, DA201, DA300, DA301, and DA400 - All Issue A	21/05/2019	PBD Architects
DA100, DA101, DA102, DA103, DA104, and DA200 - All Issue C	24/10/2019	PBD Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
1556.19 - D2 - Rev. A	08/04/2019	LMW Design Group Pty Ltd
1556.19 - D6, and D7 - All Rev. B	10/05/2019	LMW Design Group Pty Ltd
1556.19 - D1, D3, D4, and D5 - All Rev. C	14/05/2019	LMW Design Group Pty Ltd
1556.19 - E1, E4, and E5 - All Rev. B	20/05/2019	LMW Design Group Pty Ltd
1556.19 - E2, and E3 - All Rev. A	08/04/2019	LMW Design Group Pty

		Ltd
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Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Arborist Report	05/04/2019	Naturally Trees
BCA and Access Report - Ref. PRO-03527-D4C7	21/05/2019	Building Innovations Australia
Geotechnical Report - Ref. 32343SMrpt	06/05/2019	JK Geotechnics
Traffic and Parking Report - Ref. 18821	17/05/2019	Varga Traffic Planning Pty Ltd
Traffic Management Plan - 18821	17/05/2019	Varga Traffic Planning Pty Ltd

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LA01, and LA02	22/05/2019	Taylor Brammer Landscape Architects Pty Ltd
LA03 - Rev. A	24/05/2019	Taylor Brammer Landscape Architects Pty Ltd
LD01 - Rev. A	22/05/2019	Taylor Brammer Landscape Architects Pty Ltd

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	May 2019	Auswide Consulting

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

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

2. Prescribed Conditions

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- 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);
- A sign must be erected in a prominent position on any site on which building work,

subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative Requirement

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

- v) For any work/s that is to be demolished

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
- Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$59,560.58 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$5,956,058.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount

unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

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

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

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

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

5. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

6. **Construction, Excavation and Associated Works Bond (Crossing / Kerb)**

A Bond of \$10000 as security against any damage or failure to complete the construction of the vehicular crossing, kerb and gutter and any footpath works required as part of this consent.

Reason: Protection of Council's Infrastructure

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

7. **On slab landscape planting and associated works**

- a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being

provided.

- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

- c) The following soil depths are required in order to be counted as landscaping:

- 300mm for lawn
- 600mm for shrubs
- 1metre for trees

Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

8. Submission Roads Act Application for Civil Works in the Public Road

An Application for Works to be approved within Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the design of the driveway crossing, kerb & gutter and footpath which are to be generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and/ or Council's Policy. The footpath shall be reconstructed to match the adjacent existing footpath. The plan shall be prepared by a qualified Civil engineer. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

9. Vehicle Driveway Gradients

Driveway gradients within the private property are to comply with AS/NZS 2890.1:2004. For the first 6m from the site boundary, the maximum driveway gradient shall be 1 in 20(5%). Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%). Access levels across the road reserve are to comply with the allocated vehicle profile detailed in Council's Policy. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure suitable vehicular access to private property

10. On-site Stormwater Detention

An On-site Stormwater Detention system must be designed and constructed in accordance with Northern Beaches Council's WATER MANAGEMENT POLICY PL850, in particular On-site Stormwater Detention Technical Specification, and generally in accordance with the stormwater plans prepared by LMW Design Group, Drawing Number D3, D4 & D5, Rev C; D6 & D7, Rev B, dated April 2019.

Detailed drainage plans are to be prepared by a qualified experienced practicing Civil Engineer, with Corporate membership of the Institute of Engineers Australia (M.I.E.) or who is eligible to become a Corporate member and has appropriate experience and competence in the related field.

The drainage plans must address the following:

- i) The proposed OSD tank shall be enlarged to limit stormwater discharge per kerb outlet to

20L/s. Rainwater tank volume cannot be used as offset for OSD volume.

ii) The basement stormwater sump must not be connected to the HED Pit in OSD tank. The basement stormwater sump shall be connected directly to the stormwater pits & pipelines system downstream to the proposed OSD tank before discharging to Pacific Parade to avoid stormwater back flow into the basement stormwater sump.

Detailed drainage plans are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of storm water and storm water management arising from the development.

11. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

12. **Construction Management Program**

An application for Traffic Management Plan is to be submitted to Council for approval. The Traffic Management Plan shall be prepared to RMS standard by an appropriately certified person. An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community

13. **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.

14. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

15. **Privacy Screen**

1.65 metre privacy screens (measured from finished floor level) are to be erected for the entire length of the outermost western edge of the balconies located off units 1.04, 10.5, 2.04, 2.05, 3.03, 3.04 as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

16. **Dilapidation Survey**

A photographic survey of all the properties located immediately adjoining the site, including No. 165 and 161 Pacific Parade, 3 Monash Parade, 34 and 40 Boronia street detailing the physical condition of those properties, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, shall be submitted to Council and the Certifying Authority (where Council does not issue the Construction Certificate) prior to the issue of a Construction Certificate. This survey is to be prepared by an appropriately qualified independent person agreed to in writing by both the applicant and the owner of the adjoining property.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to the satisfaction of Council, that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.

(Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible).

Reason: Proper management of records (DACPLCPCC1)

17. **Waste and Recycling Requirements**

Details demonstrating compliance with Warringah Development Control Plan – Part C9 Waste Management, including the required Warringah Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with Warringah Development Control Plan – Part C9 Waste Management, causes inconsistencies with other parts of the approval i.e. architectural or

landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.
(DACWTC01)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

19. **Removing, Handling and Disposing of Asbestos**

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act
- Work Health and Safety Regulation
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)] and
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)]
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005.
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

20. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

21. **Footpath and kerb & gutter Construction**

The applicant shall construct the footpath and kerb & gutter along the entire frontage of the site. The works shall be in accordance with the following:

- (a) All footpath works are to be constructed 1.5m wide and in accordance with Council's Specification.
- (b) Council is to inspect the formwork for footpath and kerb & gutter prior to pouring of concrete to ensure the works are in accordance with Council's specification.

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

Reason: To ensure compliance of footpath works with Council's specification for engineering works.

22. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

23. **Vehicle Crossings**

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

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

Reason: To facilitate suitable vehicular access to private property.

24. **Maintenance of Road Reserve**

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

Reason: Public Safety.

25. **Notification of Inspections**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- o Prior to pouring concrete for the footpath, kerb & gutter and vehicle crossing.

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of

the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification.

Reason: To ensure new Council infrastructure is constructed to Council's requirements.

26. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

27. **Protection of sites of significance**

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

28. **Installation and Maintenance of Sediment Control**

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

29. **Waste/Recycling Requirements (Waste Plan Submitted)**

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled [INSERT] and dated [INSERT].

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

30. **Waste/Recycling Requirements (Materials)**

During demolition and/or construction the following materials are to be separated for recycling – timber – bricks – tiles – plasterboard – metal – concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible. (DACWTE02)

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

31. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

32. **Authorisation of Legal Documentation Required for Onsite Detention**

An application for the authorization of legal documents is to be submitted to Council for approval. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) with a copy of the Works-as-Executed plan(details overdrawn on the copy of the approved drainage plan), hydraulic engineers certification and photographs of the completed system.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

33. **Registration of Encumbrances for On-site Stormwater Detention**

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

Reason: To identify encumbrances on land.

34. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**

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

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

Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure the on-site detention is maintained to an appropriate operational standard.

35. **Required Planting**

i) Trees shrubs and groundcovers are to be shall be planted in accordance with Landscape Planting Plan Dwg No. LA03 dated 24/05/2019 prepared by Taylor Brammer Landscape Architects.

ii) Additional planting is to be provided as per the following schedule:

No. of Trees Required.	Species	Location	Minimum Pot Size
2	<i>Livistona australis</i>	Front landscape area of the site	100 litre

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity.

36. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To prevent pollution of the environment and to protect the amenity of the area. (DACPLF03)

37. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines
(https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

38. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

39. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

40. **Waste and Recycling Facilities Certificate of Compliance**

The proposal shall be constructed in accordance with Warringah Development Control Plan – Part C9 Waste Management

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided. (DACWTF01)

41. **Waste/Recycling Compliance Documentation**

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

42. **Positive Covenant for Waste Services**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

43. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land. (DACWTF04)

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

44. **Landscape maintenance**

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted 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.

Reason: To maintain local environmental amenity.

45. **Visitors Sign**

A sign, legible from the street, shall be permanently displayed to indicate that visitor parking is available on the site and the visitor car parking spaces shall be clearly marked as such.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure that visitors are aware that parking is available on site and to identify those spaces to visitors. (DACPLG04)

46. **Loading and Unloading**

All loading and unloading of vehicles and the delivery of goods must be carried out wholly within the site.

Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity. (DACPLG20)







5 Environmental Planning Instruments (S. 4.15)

5.1.2 Part 4 of Warringah LEP 2011– Principal Development Standards

Part 4 of the Warringah LEP 2011 contains the Principal Development Standards. Applicable standards to the proposal are:

Clause 4.3 Height of buildings – Exceptions to development standards

A maximum building height of 11 metres applies to the subject site with the stated objectives of such standard as follows:

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

The proposed development breaches the 11m development standard along its northern edge including a section of the proposed acoustic screen around the roof mounted plant and lift overrun as depicted in the Figure 7 below. The maximum extent of variation is 600mm (5.4%) to the north western edge of the upper level roof form, 800mm (7.2%) to the western edge of the roof mechanical plant screen and 1 metre (9%) to the lift overrun.



Figure 7 - 11m Height Plane breach

Clause 4.6 of WLEP 2011 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

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

Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

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

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

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

Clause 4.6 Claim for Variation

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Zone and Zone Objectives

The subject site is zoned R3 Medium Density Residential pursuant to the Warringah LEP. Residential Flat Buildings are permitted with consent. The objectives of the zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*

The proposed development is permitted with consent in the zone and will provide the community with housing opportunities in a superior locality.

- *To provide a variety of housing types within a medium density residential environment.*

The development will provide a mix of 2 and 3 bedroom apartments. 16 apartments in total.

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

The residential use of the site will be maintained.

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

Extensive landscaping is proposed with the development and is depicted on the landscape plans prepared by Taylor Brammer Landscape Architect. Landscaping is proposed around the majority of the perimeter of the site and which will soften the built form and ensure that the development will sit within a landscaped setting.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

The development has been expertly designed and is of high architectural merit. It provides an articulated built form that will create a visually interesting presentation to the street coupled with the excellent landscaped design.

Building Height Standard and Objectives

The proposed development breaches the 11m development standard along its northern edge including a section of the proposed acoustic screen around the roof mounted plant and lift overrun as depicted in the Figure 7. The maximum extent of variation is 600mm (5.4%) to the north western edge of the upper level roof form, 800mm (7.2%) to the western edge of the roof mechanical plant screen and 1 metre (9%) to the lift overrun.

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

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

The development is consistent with the height and scale of residential flat buildings in the local area. Flat buildings in the local area are generally 3-4 storeys in height with the exception of 186-188 Pacific Parade, on the corner with Monash Parade, which is 8 storeys. As previously mentioned, attention has been given to maintaining a 3 storey built form by stepping back the upper most level to minimise the bulk and scale of the development and to better integrate with the streetscape. The proposal is consistent with this objective. The majority of the building conforms with the 11m standard with the lift overrun and north west corner of the roof representing a minor non-compliance.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the height of the proposed development as offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment. Accordingly, it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the streetscape and surrounding properties.

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

It is considered that the proposal will not significantly impact on the amenity of neighbouring properties in terms of privacy, or solar access. Privacy attenuation measures have been incorporated into the design with privacy screens to balconies and appropriate fenestration to minimise overlooking into neighbouring properties. The shadow diagrams provided demonstrated that compliant levels of solar access will be maintained to all neighbouring properties.

The plan bundle includes a view analysis (DA700(A)) based on drone photography from the direction of No. 34 and 40 Baronía Street to the south. The view analysis demonstrates that whilst some view impact will occur from various levels of the adjoining properties that such impact is less than that which would result from a building constructed to the maximum building height along its southern edge with the view loss not resulting from the non-compliant building height elements of the proposal.

Whilst such view loss is regrettable, it is reasonable anticipated given the R3 Medium Density zoning of the land, the 11 metre height standard and through the adoption of a compliant building envelope on the site. A view sharing outcome is achieved. The proposal is consistent with this objective.

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

While the subject site is in proximity to Dee Why Beach it will not be able to be viewed from the Dee Why Beach foreshore area.

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

The development will have a 3 storey presentation to the street with the upper most level being stepped in further which allows the bulk and scale to be minimised and will not create an unreasonable visual impact when viewed from the street. The front setback will be landscaped which allow the built form to be softened further.

We are of the opinion that there are sufficient environmental planning grounds to justify the minor variation sought including the topography of the land which makes strict compliance difficult to achieve as indicated by the minor building height breaches along the northern edge of the development being compensated for by the southern edge which sits well below the 11 metre height standard.

The building is of exception design quality and represents the orderly and economic use and development of the land consistent with objectives 1.3(c) and (g) of the Act.

In accordance with Clause 4.6(5) the contravention of the development standard does not raise any matter of significance for State or Regional environmental planning with the public benefit maintained by Council's adoption of an application specific merit based assessment as it relates to building height within the 11 metre height precinct in which the site is located.

Conclusions

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

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

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development standard, and

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- (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 proposals ability to comply with the zone 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 considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

ITEM 3.3 **DA2019/1081 - 119-120 NORTH STEYNE , MANLY -
ALTERATIONS AND ADDITIONS TO AN EXISTING
RESIDENTIAL FLAT BUILDING**

REPORTING OFFICER **MATTHEW EDMONDS**

TRIM FILE REF **2019/712610**

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

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 of Manly Local Environmental Plan 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives of the zone.

- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/1081 for alterations and additions to an existing residential flat building at Lot CP SP 74073, 119-120 North Steyne, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1081
Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot CP SP 74073, 119 - 120 North Steyne MANLY NSW 2095
Proposed Development:	alterations and additions to an existing residential flat building
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	The Proprietors of Strata Plan 74073
Applicant:	The Proprietors of Strata Plan 74073
Application Lodged:	30/09/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	16/10/2019 to 30/10/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 12.3%
Recommendation:	Approval
Estimated Cost of Works:	\$ 133,267.00

Executive Summary

The application seeks consent for the alterations and additions to an existing residential flat building.

The proposal is permissible with consent in the R3 Medium Density Residential Zone under Manly Local Environmental Plan 2013 (MLEP 2013). The proposal is non-compliant with the building height development standard of 13.0m under the MLEP 2013. The Applicant has lodged a request under Clause 4.6 of the MLEP 2013 to vary the development standard.

The subject residential flat building measures 14.6m in height and therefore currently breaches the permissible building height development standard by 1.6m. The proposal will maintain the existing

building height.

The proposal involves the removal of an existing decorative/feature awning of the residential flat building along the eastern elevation fronting North Steyne. The awning is located off the existing roof and currently sits above the balcony of Apartment 08. The awning will be replaced by an extension to the existing roof measuring 1.46m in depth and will cover a portion of the balcony below.

Notification of the application resulted in no submissions to the proposed development.

The application has been referred to the Northern Beaches Local Planning Panel (NBLPP) as the development has a non-compliance with the building height in excess of 10%. It is recommended that the panel approve the application.

PROPOSED DEVELOPMENT IN DETAIL

The subject development application proposes the following works:

- Removal of the existing decorative awning feature along the eastern elevation of the residential flat building and extend existing roof by 1.46m over part of the existing balcony of Apartment 08.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards

SITE DESCRIPTION

Property Description:	Lot CP SP 74073 , 119 - 120 North Steyne MANLY NSW 2095

Detailed Site Description:

The subject site consists of one (1) allotment located on the south western corner of North Steyne and Pacific Street. The rear of the site fronts Pine Lane.

The site is irregular in shape with a frontage of 49.985m along Pacific Street, 15.205m to North Steyne and 26.45m to Pine Lane. The southern boundary measures 43.46m and site has a surveyed area of 916.7m².

The site is located within the R3 Medium Density zone under MLEP 2013 and accommodates a six (6) storey residential flat building with two (2) levels of basement garages. Pedestrian access to the site is granted from Pacific Street with vehicular access from Pine Lane.

The site is relatively flat with low retaining walls located along all four (4) side boundaries. The site contains low and medium scale planting along the side boundaries.

Adjoining and surrounding development is characterised by residential flat buildings of a similar size and scale with some single residential dwellings located north of the subject site fronting North Steyne. To the south, the subject site is adjacent to 118 North Steyne which is classified as a local heritage item (I172) under the MLEP 2013.

Map:



SITE HISTORY

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

- DA234/02 - Demolition of three existing Buildings and Erection of Residential Flat Building -

- approved under delegation on 4 November 2002.
- DA234/02 - Application to modify Development Consent 234/02 approved under delegation on 6 September 2004
- DA483/04 - Strata Subdivision of New 10 Unit Development - approved under delegation on 4 November 2004.
- DA234/02 - Application to modify Development Consent 234/02 approved under delegation on 16 February 2005
- DA0090/2013 - Alterations and additions to an existing residential flat building including increase in window opening size to Unit 8 - approved under delegation on 19 June 2013.
- DA0225/2014 - alterations and additions to existing residential flat building including new windows to the southern and western sides of Unit 8 - approved on 21 January 2015 under the Development Assessment Unit (DAU).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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. <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. <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. <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. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

No referrals were sent in relation to this application

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 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 subject site is located upon land within the coastal environment area. The proposed removal of an existing decorative awning feature and extension of the existing roof of the subject building will have a negligible impact on the adjoining coastal environment. Access to the building is along Pacific Street and will have a minimal impact on the existing public space and safe access to the beach and along the foreshore.

- (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 subject site is located upon land within the coastal environment area. The subject works are proposed to the existing roof of the building and has been sited and designed to have a negligible impact on the land.

14 Development on land within the coastal use area

(1)

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

Comment:

The proposed roof extension is located within the existing building footprint and does not increase the existing height of the development. The proposed works will not present as an overbearing or dominant change to the existing building. Whilst the proposal will be visible from the foreshore it will not create any overshadowing or view loss issues. The proposal will not create any unreasonable bulk and scale to the building.

The proposed works will have a minimal impact on the surrounding coastal and built environment in relation to the matters listed above as it is considered a minor addition to the existing development.

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

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

Comment:

The proposed works to the building will have a negligible impact on the surrounding environment and is unlikely to cause an increased risk of coastal hazards on the subject land or other land.

As such, it is considered that the application does comply 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	Existing / Approved	Proposed	% Variation	Complies
Height of Buildings:	13m	14.6m	14.6m	12.3%	No (See Clause 4.6 variation discussion in report)

Compliance Assessment

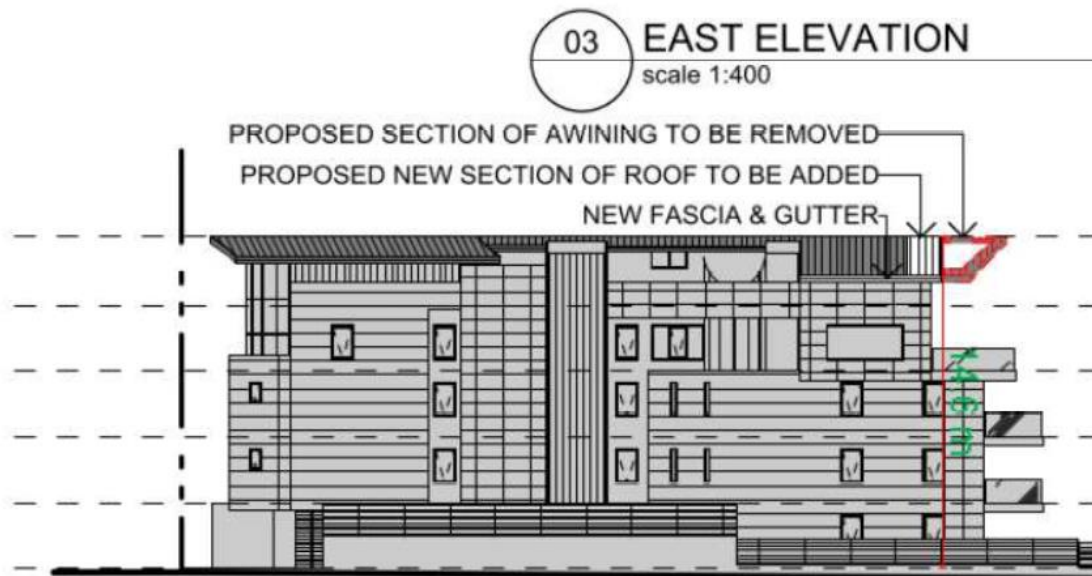
Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	13.0m
Proposed:	14.6m
Percentage variation to requirement:	12.3%



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.3 Height of Buildings 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 Clause 4.6(3). There are two separate matters for consideration contained within Clause 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 Clause 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.'

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

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

The Applicant's written request argues, in part:

- The proposed replacement of the roof/feature awning providing an extension to the existing roof form will provide improved amenity for the occupants of the subject apartment;
- The proposed works will reduce the bulk and scale of the development and be more in keeping with the design, size and scale of surrounding development; and
- Notwithstanding the non-compliant building height, the proposed works are considered modest and will have a minimal overshadowing and view loss impacts towards any neighbouring properties.

In this regard, the Applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying Clause 1.3 (c) and (g) of the EPA Act.

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

Therefore, Council is satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 Height of buildings of the MLEP 2013 are addressed as follows:

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposed alterations and additions will not surpass the existing height of the building and will maintain the existing building height. The proposed roof addition will measure 1.46m towards the eastern elevation (North Steyne) and will provide shading for the occupants of Apartment 08. The new roof will continue the existing roof form of the development, hence creating a design more in keeping with the prevailing building height and future streetscape along North Steyne.

b) to control the bulk and scale of buildings,

Comment:

The proposed roof extension will remove a decorative awning from a prominent position being the top floor of a corner allotment. Whilst the new roof addition exceeds the prescribed maximum building height for the site, the roof addition will maintain the existing building height and will act as an extension of the roof (1.46m deep) to provide cover over a portion of the existing balcony along the eastern elevation of the building. The minor alterations and additions are considered minor and will reduce the overall bulk and scale of the development when viewed from a public space.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

The proposed alterations and additions to the building will not impact on or disrupt any existing views to or from nearby residential development from public spaces (including the harbour and foreshores). No views between public spaces (including the harbour and foreshores) are disrupted as a result of the minor alterations to the existing roof.

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

Comment:

The proposed removal of the dilapidated decorative awning and small extension will not

result in any additional overshadowing that will unreasonably impact on the solar access to public and private open spaces and will maintain the existing level of sunlight provided to private open space and to habitable rooms of adjacent dwellings.

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

Comment:

The proposed works are located within the existing building footprint of a residential flat building and, being a minor extension to an existing roof, will have a negligible impact on any bushland and surrounding land uses.

Zone Objectives

The underlying objectives of the R3 Medium Density Residential zone are addressed as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*

Comment:

The proposed minor change will not alter the existing housing needs of the community with the residents occupying the building.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The minor alterations and additions will not alter the existing medium residential use within the subject site.

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

Comment:

The minor works will not alter the existing land use for the site.

- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

Comment:

The proposed minor works will not require the revitalisation of the existing building as the works are minor and will reduce the overall bulk and scale of the building.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Comment:

The proposal alterations and additions to the existing building will not alter the role of Manly as an international tourist destination.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential 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 consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Local Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 916.7sqm	Requirement	Proposed	% Variation*	Complies
4.1.4 .1 Street Front Setbacks	Prevailing building line / 6m	Prevailing building line unchanged	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	4.5m (based on wall height)	South: 4.9m	N/A	Yes
	Secondary street frontage: Prevailing setback / 4.5m	Prevailing building line unchanged	N/A	Yes
4.1.4.4 Rear Setbacks	8m	N/A - corner site	N/A	Yes
4.1.5.3 Private Open Space	12sqm per dwelling	No change	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	Yes	Yes
3.1.1 Streetscape (Residential areas)	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$ 666 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 133,267.

CONCLUSION

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

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

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

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

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

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

- Manly LEP - Clause 4.3 Height of Buildings.

The proposal includes a non-compliance with the height development standard of 12.3%. the non-compliance has been considered in the context of the site and the surrounding properties and on balance, the non-compliance with the height control has been assessed as reasonable given the reduction in bulk and scale of the development.

The removal of the decorative awning and extension of the existing roof form using compatible materials and finishes will result in a building that is more compatible with the surrounding development and R3 Zone.

In conclusion, the application is acceptable in relation to the relevant policies and and is recommended for approval. It is considered that the proposed development satisfies the appropriate controls and that all process and assessments have been satisfactorily addressed.

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

RECOMMENDATION

Council is 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 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- 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 standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/1081 for alterations and additions to an existing residential flat building on land at Lot CP SP 74073, 119 - 120 North Steyne, MANLY, 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
DA-A-050 Rev A	28 June 2019	Quattro Architecture
DA-A-051 Rev A	28 June 2019	Quattro Architecture
DA-A-100 Rev A	28 June 2019	Quattro Architecture
DA-A-101 Rev A	28 June 2019	Quattro Architecture
DA-A-102 Rev A	28 June 2019	Quattro Architecture
DA-A-200 Rev A	28 June 2019	Quattro Architecture
DA-A-260 Rev A	28 June 2019	Quattro Architecture

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Waste Management Plan	23 September 2019	Vaughan Milligan Development Consultant

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

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

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.

- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and

machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of

residents and the community.

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$666.34 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$133,267.00.

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

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

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

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

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

5. Security Bond

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

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

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

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

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

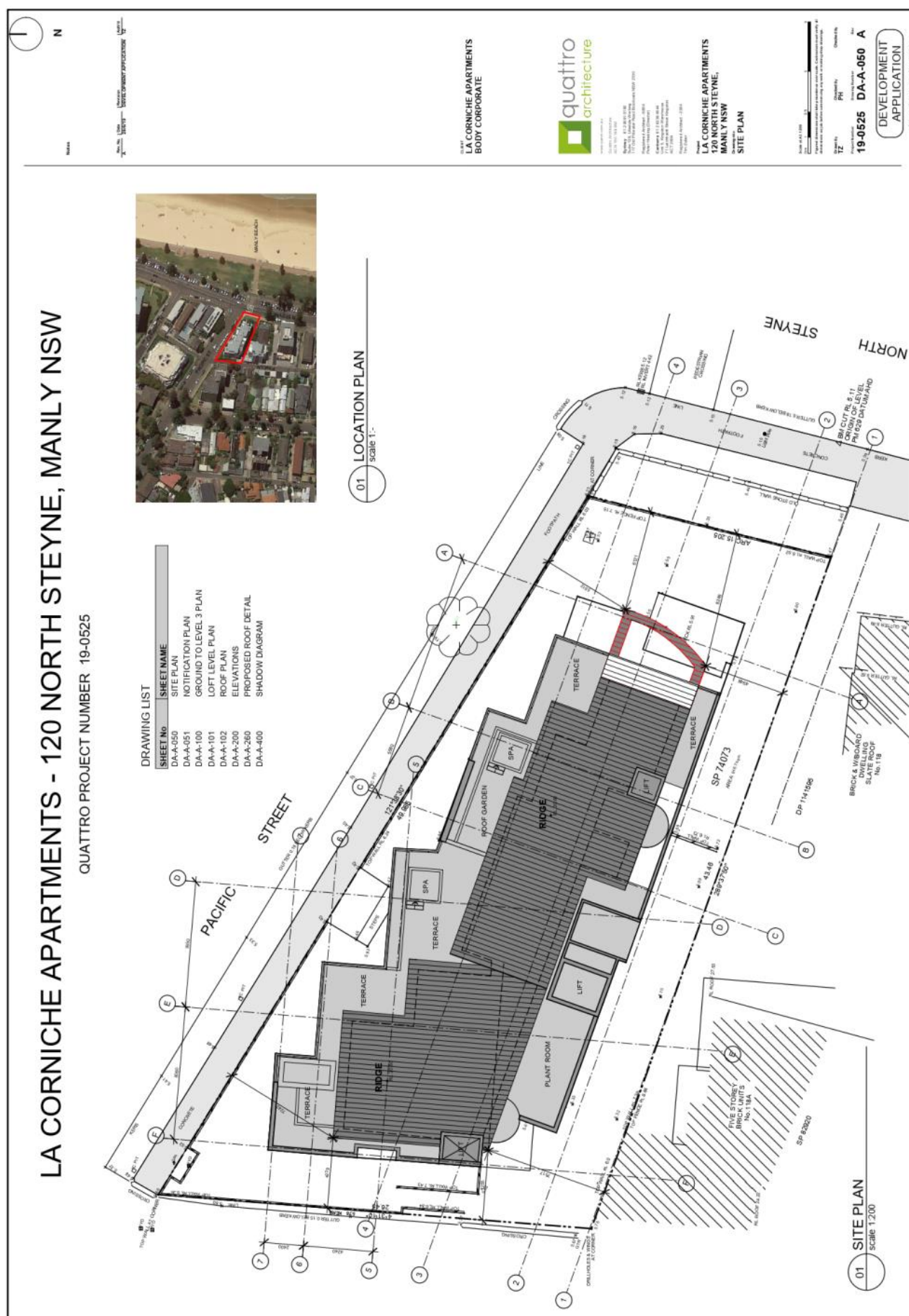
**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION
CERTIFICATE**

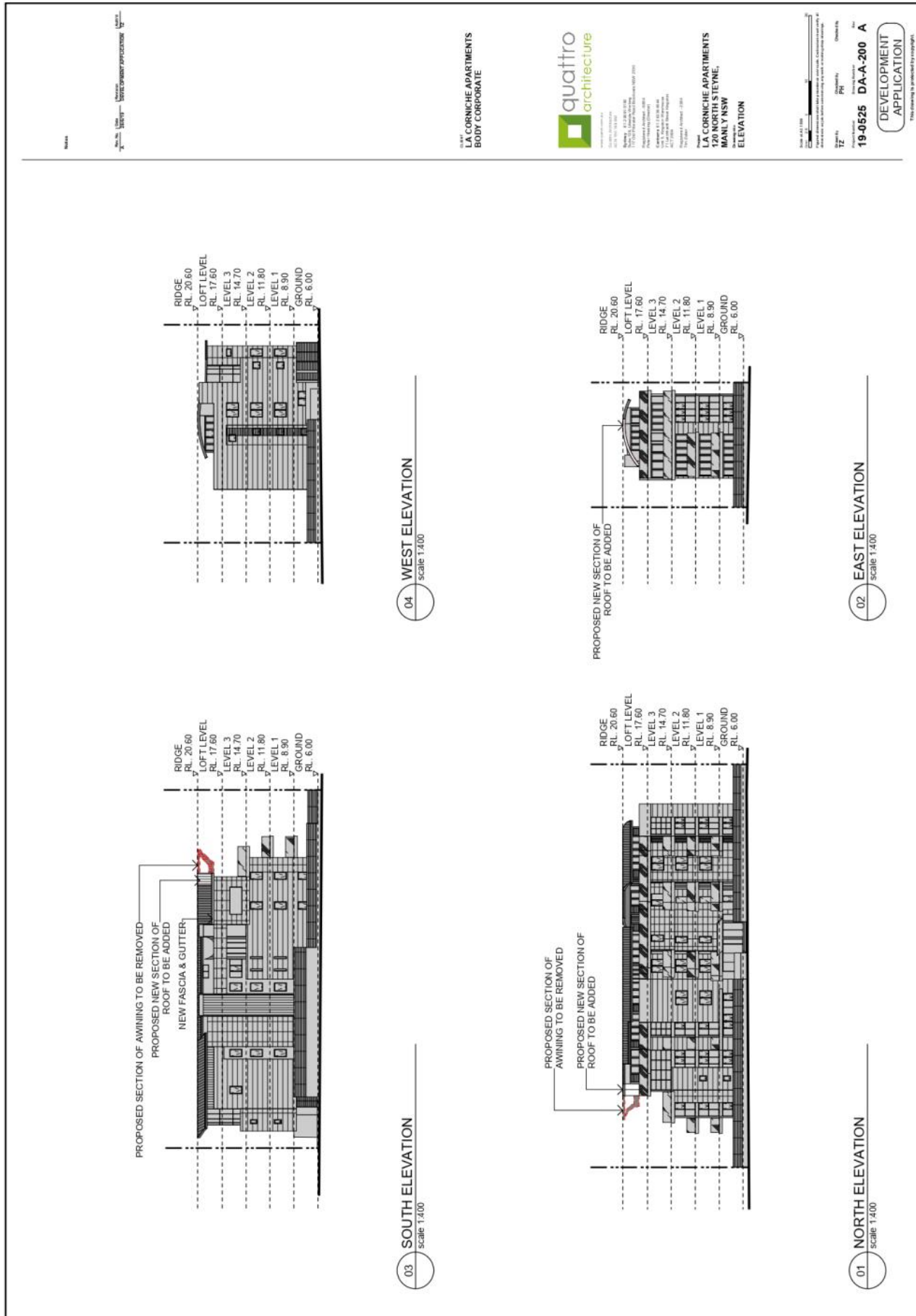
6. **Compliance with Standards**

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

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

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





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APPENDIX 1
CLAUSE 4.6 – MAXIMUM BUILDING HEIGHT

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WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF MANLY LOCAL ENVIRONMENTAL PLAN 2013

119-120 NORTH STEYNE, MANLY

**PROPOSED REPLACEMENT OF AN EXISTING DECORATIVE ROOF FEATURE/AWNING WITH A
NEW ROOF AWNING**

For: Proposed replacement of an existing decorative roof feature/awning with a new roof awning
At: 119-120 North Steyne, Manly
Owner: The Owners Corporation – SP 74073
Applicant: The Owners Corporation – SP 74073
C/- Vaughan Milligan Development Consulting

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).

2.0 Background

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

The maximum building height for this locality is 13m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed works to replace an existing decorative roof feature with a new awning will maintain the existing maximum building height of RL 20.6, which is up to 14.6m above ground level. There will not be any increase in the maximum building height.

The proposed work will exceed the maximum roof height by 1.6m or 12.3% and therefore does not comply with this control.

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

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3.0 Purpose of Clause 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

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

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

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the replacement of a roof feature/awning with a new awning, which will be provided as an extension to an existing roof form and which is consistent with the stated Objectives of the R3 Medium Density Residential Zone, noted as:

- To provide for the housing needs of the community within a medium density residential environment.*
- To provide a variety of housing types within a medium density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*
- To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

The proposal will provide for the replacement of an existing roof feature/awning with a new awning to provide for increased amenity for the site's occupants.

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

The maximum ridge level will stand at RL 20.6m, which matches the existing maximum height.

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

The proposed works at the roof level are modest and have been located to mitigate any adverse impacts of overshadowing and loss of view towards any neighbouring properties.

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

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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

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

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

6.0 Justification of Proposed Variation

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

Paragraph 27 of the Samadi judgement states:

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

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Precondition 1 - Consistency with zone objectives

The site is located in the R3 Medium Density Residential Zone. The objectives of the R3 zone are noted as:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*
- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Comments

It is considered that notwithstanding the extent of the non-compliance with the maximum building height control (1.6m), the proposed works which see the replacement of an existing decorative awning with a new awning which will be consistent with the individual Objectives of the R3 Medium Density zone for the following reasons:

- *To provide for the housing needs of the community within a medium density residential environment.*

The R3 Medium Density Residential Zone contemplates medium density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed minor changes to the existing residential flat building which will provide for an appropriate level of amenity for the occupants.

The building and the new awning alterations to the roof level will respect the predominant height and scale of the surrounding dwellings.

The development will see the existing maximum height maintained, with the curved roof and contemporary building form and the darker external finishes considered to suitably reduce the visual bulk of the dwelling.

The compatible form and scale of the building will meet the housing needs of the community within a residential flat building which is a permissible use in this medium density residential zone.

- *To provide a variety of housing types within a medium density residential environment.*

The minor alterations to the building façade will not alter the existing medium density housing type within the site.

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

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

- ***To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.***

The development does not suggest a revitalisation of the building, with only minor changes proposed. The works are not detracting from the development, which at this stage of its building life does not require a re-development.

- ***To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.***

The proposal does not alter the tourism opportunities in the area.

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

Precondition 2 - Consistency with the objectives of the standard

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

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

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following:*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

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Comments

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

(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,

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The surrounding area is predominantly characterised by multi storey residential flat buildings and other medium density development, often located over basement garages and service rooms.

The proposal seeks to provide or an extension of the existing curved roof form to replace a dilapidated decorative roof feature. The existing overall height of the dwelling will be unchanged.

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

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

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

Further, the modulation of the front façade and building elevations where visible from the public domain minimises the visual impact of the development.

The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and the proposed extension to the low pitch curved roof form will suitably distribute the bulk of the new floor area.

(c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),***
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),***
- (iii) views between public spaces (including the harbour and foreshores),***

Due to the works being positioned on the eastern side of the upper floor level, the properties to the west of the site enjoys views towards the beach. Views past the site are generally along the side setback areas.

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The proposal will maintain the increasing setbacks to the upper floor level which will allow for suitable views to be maintained through and over the site.

Views from the surrounding public spaces are not adversely affected.

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

As the proposal will see the replacement of an existing roof awning feature, the shadow analysis prepared by Quattro Architecture provides a shadow analysis to confirm that the change in overshadowing to the southern neighbouring properties is negligible.

The increasing setbacks to the proposed upper floor and low pitch skillion roof form will assist in minimising the effects of overshadowing and will appropriately maintain the neighbour's amenity.

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

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

The proposal is intended to reflect the predominant scale and form of the surrounding development in this portion of Manly and will reflect the existing medium density uses in the vicinity.

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

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

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

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for minor alterations to the existing building, which will improve the amenity of the occupants, without increasing the overall height of the building.

Council's controls in Clause 4.3 provide a maximum building height of 13m. As a result of the existing built form, with the proposal to extend the existing roof form to provide for a new awning, a portion of the roof will be up to 14.6m above ground level.

It is considered that the proposal achieves the Objectives of Clause 4.3 and that the development is justified in this instance for the following reasons (over):

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- The development will maintain a compatible scale relationship with the existing medium density development in the area. Development within this area of Manly has a wide range of architectural styles and given the variety in the scale of this development, the proposal will be consistent with surrounding development and will not adversely affect the streetscape.
- The proposed modest additions to the residential flat building will maintain amenity and appropriate solar access for the subject site and neighbouring properties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Council's controls in Clause 4.3 provide a maximum building height of 13m for the subject development.

The proposed new awning will provide a height of 14.6m or a 1.6m/12.3% variation to the control.

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

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

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

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be

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satisfied that “the applicant’s written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard.” He held that this means:

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

Accordingly, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The external form of the proposed new awning will see an extension to the existing roof form and results in a building which is compatible in scale to its surrounding neighbours, which promotes the orderly & economic use of the land.
- Similarly, the proposed development will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of this portion of Manly, which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties.

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

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7.0 Conclusion

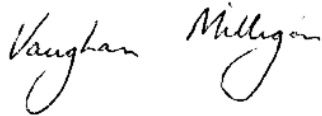
This development proposes a departure from the maximum building height control, with the proposed new awning to provide a maximum building height of 14.6m, which reflects the height of the existing roof.

This variation occurs as a result of the height and form of the current building.

This objection to the maximum building height control specified in Clause 4.3 of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

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

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



VAUGHAN MILLIGAN
Town Planner

ITEM 3.4 **MOD2019/0521 - 23 LAUDERDALE AVENUE, FAIRLIGHT -
MODIFICATION OF DEVELOPMENT CONSENT DA2017/1304
GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION
OF 4 ATTACHED DWELLINGS AND 4 LOT TORRENS TITLE
SUBDIVISION**

REPORTING OFFICER **STEVE FINDLAY**

TRIM FILE REF **2019/713072**

ATTACHMENTS 1 [↓](#) **Assessment Report**
 2 [↓](#) **Photo to Display RL's**
 3 [↓](#) **Site Plan and Elevations**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2019/0521 for Modification of Development Consent DA2017/1304 granted for demolition works and construction of 4 attached dwellings and 4 lot Torrens title subdivision at Lot 1 DP 168846 & Lot 1 DP 1087552, 23-25 Lauderdale Avenue, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0521
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 1 DP 1087552, 25 Lauderdale Avenue FAIRLIGHT NSW 2094 Lot 1 DP 168846, 23 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA2017/1304 granted for Demolition works and construction of 4 attached dwellings and 4 lot 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:	Ann Maree Hreszczuk
Applicant:	Ewhen Hreszczuk Ann Maree Hreszczuk
Application Lodged:	25/10/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	08/11/2019 to 22/11/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: NIL%
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal involves a modification of consent for four (4) attached dwellings. Specifically, the modification involves a change in the height of each of the dwellings.

A previous modification application for a similar change in height was refused by the NBLPP. The current application is slightly different in that the change in height is 100mm lower than the original modification proposal.

This application also addresses the reasons for refusal as provided by the Panel. In particular, the applicant states that they have provided "*justification to demonstrate that a non-compliant development is reasonable given the increased impact.*"

The modified design provides a stepping in height so as to maintain a significant view corridor over the west of the subject site from 42 Lauderdale Avenue.

In the circumstances, the development provides an appropriate height for the attached dwellings will result in a positive outcome for the streetscape and locality. Therefore, the non-compliance with the building height development standard is not considered unreasonable and the variation does not result in any unreasonable impacts to adjoining or surrounding properties.

The application has also been assessed against the planning controls of the MDCP 2013, and whilst there are further minor variations to the wall height control, this is found to be consistent with the objectives and requirements of the control. In this regard, the built form will integrate into the landscape, streetscape and will relate positively to adjoining and surrounding residential buildings.

The assessment concludes that the proposed design is appropriate for the site and would not have any unreasonable impacts on views or any other unreasonable amenity or visual impact.

Therefore, it is recommended that the application be approved.

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification involves a change in levels, increased height of the dwellings, re-arranged floor plans, addition of a small balcony and change to vehicular access to Unit 1. In detail, the change in levels results in the following height increases:

- Unit 1 - Increase in height of roof by 600mm; increase in height of clerestory by 500mm
- Unit 2 - Increase in height of roof by 400mm; increase in height of clerestory by 300mm
- Unit 3 - Increase in height of roof by 200mm; increase in height of clerestory by 100mm
- Unit 4 - Reduction in height of clerestory by 100mm

NBLPP Reasons for Refusal of MOD2019/0051

The following comments are provided in regard to the reasons for refusal given by the NBLPP in their determination on 17 July 2019:

1. The original development approval resulted in view loss to 42 Lauderdale Avenue, however this was reasonable given that the proposal complied with the height control under clause 4.3 of Manly Local Environmental Plan 2013. The proposed amendments will further increase the view loss to this property from what would become a non-compliant development.

Comment:

In consideration of whether view loss is reasonable on the basis that the modified development is non-compliant, an assessment has been made against the objectives of Clause 3.4.3 under the Manly DCP for Maintenance of Views and against the Views Planning Principle established by the Land and Environment Court. The assessment has found that despite the non-compliance, the retention of the primary views for the affected property and the minor nature of the impact (when views are considered from the whole of the property), provide a situation in which the view sharing outcome is reasonable.

2. There is no justification to demonstrate that a non-compliant development is reasonable given the increased impact.

Comment:

The applicant provides the reason that an increase in height is required to meet the parking needs of the residents. The justification to demonstrate that a non-compliant development is reasonable is provided under Clause 4.3 Height of buildings. In this justification, it is provided that the overall impact on views is negligible-minor and that the proposal provides a sufficient outcome for view sharing when considered against the Land and Environment Court established Planning Principle.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
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)

SITE DESCRIPTION

Property Description:	Lot 1 DP 1087552 , 25 Lauderdale Avenue FAIRLIGHT NSW 2094 Lot 1 DP 168846 , 23 Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of 2 allotments located on the southern side of Lauderdale Avenue. The two lots form an irregular shape with a frontage of 11.885m along Bollingbroke Parade, 24.595m along

Lauderdale Avenue and 44.925m along Arlington Drive. The sites currently have a surveyed area of 472.6mm² at 23 Lauderdale Avenue and 454.6m² at 25 Lauderdale Avenue.

The site is located within the R1 General Residential zone and currently accommodates a 1-2 storey dwelling on each site.

The site has a slope of 1- 2 metres from Bollingbroke Parade down to Arlington Drive.

Each site has exiting vegetation scattered across the properties.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a mix of residential dwellings and flat buildings.

Map:



SITE HISTORY

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

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

- **DA5240/92** - Alterations and additions, determined by Council on 6 April, 1992. (23 Lauderdale Avenue).
- **DA2017/1304** - Demolition of the existing dwellings and construction of four (4) attached dwellings with 4 lots subdivided under torrens title subdivision along with landscaping and

fencing approved by NBLPP 1 August 2018 (parent application to current modification).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2017/1304, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	Council is satisfied that the proposed works are substantially the same as those already approved under DA2017/1304.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application was publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2013 and Manly Development Control Plan.

Section 4.55(1A) - Other Modifications	Comments
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the residential character of the proposal.

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

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

No referrals were sent in relation to this application

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.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	9.0m	N/A	No (see comments)

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	No
Part 6 Additional local provisions	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

4.3 Height of buildings

Whilst the modification application will result in a building height that exceeds the maximum height permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

This application has been made under Section 4.55 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s.79C matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Nevertheless, an assessment in relation to the related objectives of the variation is as follows:

Assessment against the underlying objectives of the standard, pursuant to Clause 4.3 – ‘Building Height’ of the MLEP 2013

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

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposal involves building bulk that is well separated and buffered from the surrounding streets to ensure the development is in keeping with the character of the area. Given the similar proposed building height as surrounding development and the varied roof forms for surrounding development, the non-compliance with the building height development standard would not result in a undesirable outcome for the streetscape.

The development satisfies this objective.

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

Comment:

The proposed dwellings have an in-built garage with access to Arlington Drive and each dwelling has two levels above this garage. The top level is set further back from the street than the lower levels and balconies and planter boxes provide a visual buffer between the bulk of the development and the street. This provides a situation in which the additional height would not provide an unreasonable bulk and scale.

The development satisfies this objective.

(c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

As a result of the sloping topography of the surrounding land, which involves a higher slope to the north-west, dwellings in this area are somewhat elevated and have relatively uninterrupted views to the south-east over the subject site. This is further contributed to by the maintenance in the approved height of Unit 4 as a significant view corridor exists over the top of that dwelling.

Furthermore, an assessment in accordance with the Land and Environment Court established planning principle has found that the maintenance of the views from the top level of 42 Lauderdale Avenue and maintenance of a view corridor over unit 4 results in the the level of impact assessed as being assessed as negligible-minor.

The development satisfies this objective.

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

Comment:

The proposed modulation of the dwelling and adequate setbacks results in a circumstance in which the proposal would have no unreasonable impact on solar access. Additionally, there is no change to the proposed height of Unit 4, so that there would be no unreasonable impact to the neighbouring dwelling at 14 Bollingbroke Parade.

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

Comment:

Not applicable

Assessment against the underlying objectives of the R1 General Residential zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R1 General Residential zone.

To provide for the housing needs of the community.

To provide for a variety of housing types and densities.

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

Comment:

The proposed development is for a residential use and is consistent with the objectives above.

Assessment of the variation against the objectives of Clause 4.6 of the MLEP 2013

(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.

Comment:

In this circumstance, providing flexibility to the building height development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the street context.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

It is appropriate to allow flexibility in this circumstances, as additional building height can be provided without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

6.9 Foreshore scenic protection area

Clause 6.9 (3) states that consent must not be granted unless the following matters are considered (comment is provided against each matter):

(a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore

Comment:

The proposal has been considered against the Land and Environment Court established planning principle for Views. This consideration has found the impact to be **negligible to minor**, and as such the minor breach of the height will not be detrimental to the loss of views.

(b) measures to protect and improve scenic qualities of the coastline

Comment:

The proposal has lowered the height of the clerestory to the western dwelling and this contributes to providing a suitable view corridor for neighbouring properties.

(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore

Comment:

The minor increase in height to the dwellings maintains views to the foreshore and is consistent with the general pattern and height of buildings in the area. This provides a suitable outcome in terms of relationship with the foreshore.

(d) measures to reduce the potential for conflict between land-based and water-based coastal activities

Comment:

The site is well separated from the harbour and the proposal does not involve an unreasonable amount of excavation. As such, conflict between land and water based activities is adequately minimised.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 927.2m ² (23 and 25 Lauderdale Avenue); Lot 1: 248.2m, Lot 2: 208.7m, Lot 3: 214.8m & Lot 4: 255.5m	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	North-East: 7.1m (based on gradient 1:10)	8.3m	8.9m	No (see comments)
	South-West: 6.9m (based on gradient 1:15)	7.9m	7.9m	No (but no change)
4.1.2.3 Roof Height	Height: 2.5m	1.0m	1.1m	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part 3	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 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
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
Part 4	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

Merit Considerations:

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

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Comment:

The proposal is in a location in which views can be obtained to the south toward the harbour. As a result of the reasonable setbacks provided by the development and the location of the property, being down slope from dwellings to the north-west, the proposal provides an adequate outcome for view sharing.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

An assessment of view loss has also been undertaken with reference to the Views Planning Principle established by the NSW Land and Environment Court and in relation to the views for 42 Lauderdale Avenue, Fairlight as follows:

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

Comment:

The views available are toward the harbour, over the top of the subject site. The views in this direction are partially obscured by existing development and three pine trees. Views either side of the subject side are more significantly obscured (as a result of taller buildings).



Photo 1: View looking south-west from the upper level of 42 Lauderdale Avenue, Fairlight

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 views are obtained from front balconies that are off living areas at the front of the property. Views can also be obtained from living room windows in these areas and from an upstairs study room window. The views from the upstairs area can be obtained from standing and sitting position. The views at the lower level can be obtained from a standing position but become more oblique from a sitting position.

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:

As a result of the retention of the views from the upstairs area and the corridor of view retained over 'Unit 4,' the proposed impact is assessed as being **negligible-minor**.

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

Comment:

The proposal maintains a compliant building height for Unit 4 within the development. At this location, there is a significant view corridor for 42 Lauderdale Avenue. On the basis of the retention of the view corridor, the maintenance of the views from the top level and the level of impact assessed as being negligible-minor, the proposal is considered to be reasonable in terms of view sharing.

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

Comment:

The proposal provides a flat roof for each dwelling and maintains a reasonable corridor of views over the top of Unit 4. As a result, the proposal provides appropriate minimisation of view loss.

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

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

Description of Non-compliance

The proposal does not comply with the control for wall height at the north-eastern boundary. In this regard, the proposal provides a wall height of 8.9m and the numerical requirement for wall height in this location is 7.1m.

It is noted that the approved wall height is 8.3m and this also does not comply with the control.

Merit Considerations:

With regard to the consideration for the variations, the development is considered against the underlying Objectives of the Height of Buildings standard under the Manly LEP (as are stated are particularly relevant) of the controls as follows:

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposal involves building bulk that is well separated and buffered from the surrounding streets to ensure the development is in keeping with the character of the area. Given the similar proposed building height as surrounding development and the varied roof forms for surrounding development, the non-compliance with the building height development standard would not result in a undesirable outcome for the streetscape.

The development satisfies this objective.

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

Comment:

The proposed dwellings have an in-built garage with access to Arlington Drive and each dwelling has two levels above this garage. The top level is set further back from the street than the lower levels and balconies and planter boxes provide a visual buffer between the bulk of the development and the street. This provides a situation in which the additional height would not provide an unreasonable bulk and scale.

The development satisfies this objective.

(c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment:

As a result of the topography of the surrounding land, which involves a higher slope to the north-west, views for dwellings to the north-west are retained over the subject site. This is further contributed to by the maintenance in the approved height of Unit 4 as a significant view corridor exists over the top of this dwelling.

The development satisfies this objective.

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

Comment:

The proposed modulation of the dwelling and adequate setbacks results in a circumstance in which the proposal would have no unreasonable impact on solar access. Additionally, there is no change to the proposed height of Unit 4, so that there would be no unreasonable impact to the neighbouring dwelling at 14 Bollingbroke Parade.

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

Comment:

Not applicable

The proposed development satisfies the underlying objectives of the clause.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

Conclusions on the Assessment of the Application

The modifications to the proposed development do not comply with the 'Height of Buildings' Development Standard of 8.5m under the MLEP 2013.

In this case, the four attached dwellings provide a design that provides height that appropriately maintains views and is consistent in form, character and style with existing development in the street. Furthermore, an assessment against the objectives of the clause have found the proposal to be consistent and reasonable.

The assessment of the modified proposal against the provisions of the Manly DCP 2013, found that the proposal would result in a greater non-compliance with the wall height control in the north-east part of the building. Given the the character of the area, amenity outcome and design which steps down the site to maintain views, some flexibility in applying this control is warranted. It is considered that the non-compliance will not have any unreasonable amenity impacts for adjoining and nearby properties and is consistent with the streetscape character of the locality.

Recommendation

On balance, the proposal should be approved as the design is reasonable for the site and locality by virtue of the minor non-compliance's that do not create any unreasonable amenity impacts. The proposed dwellings will integrate with the streetscape and the minor increase in height would not result in an unreasonable view sharing outcome.

Therefore, the application is recommended for approval.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes the proper and orderly planning for the site or the locality. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2019/0521 for Modification of Development Consent DA2017/1304 granted for Demolition works and construction of 4 attached dwellings and 4 lot torrens title subdivision on land at Lot 1 DP 1087552, 25 Lauderdale Avenue, FAIRLIGHT, Lot 1 DP 168846, 23 Lauderdale Avenue, FAIRLIGHT, subject to the conditions printed below:

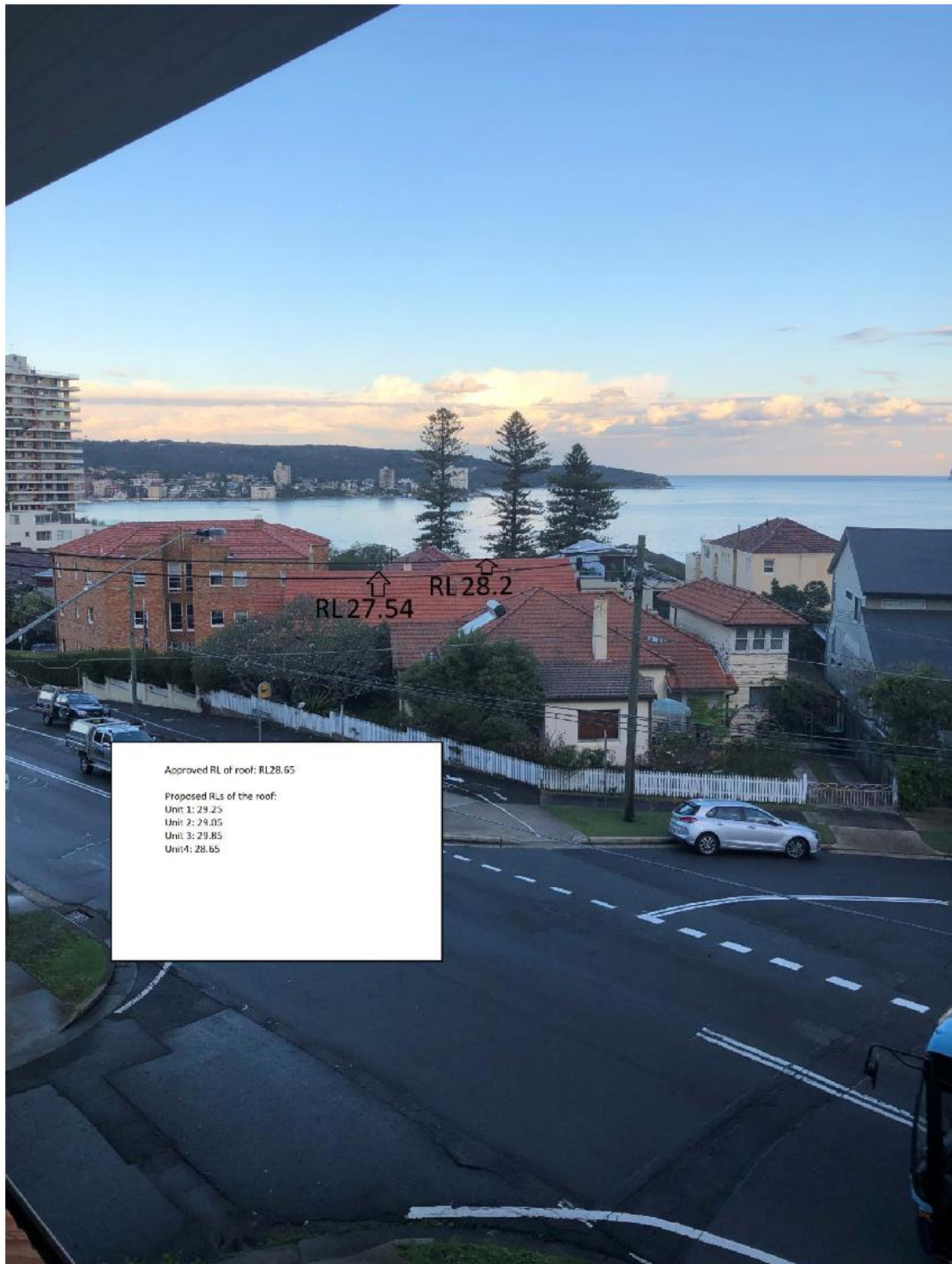
A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

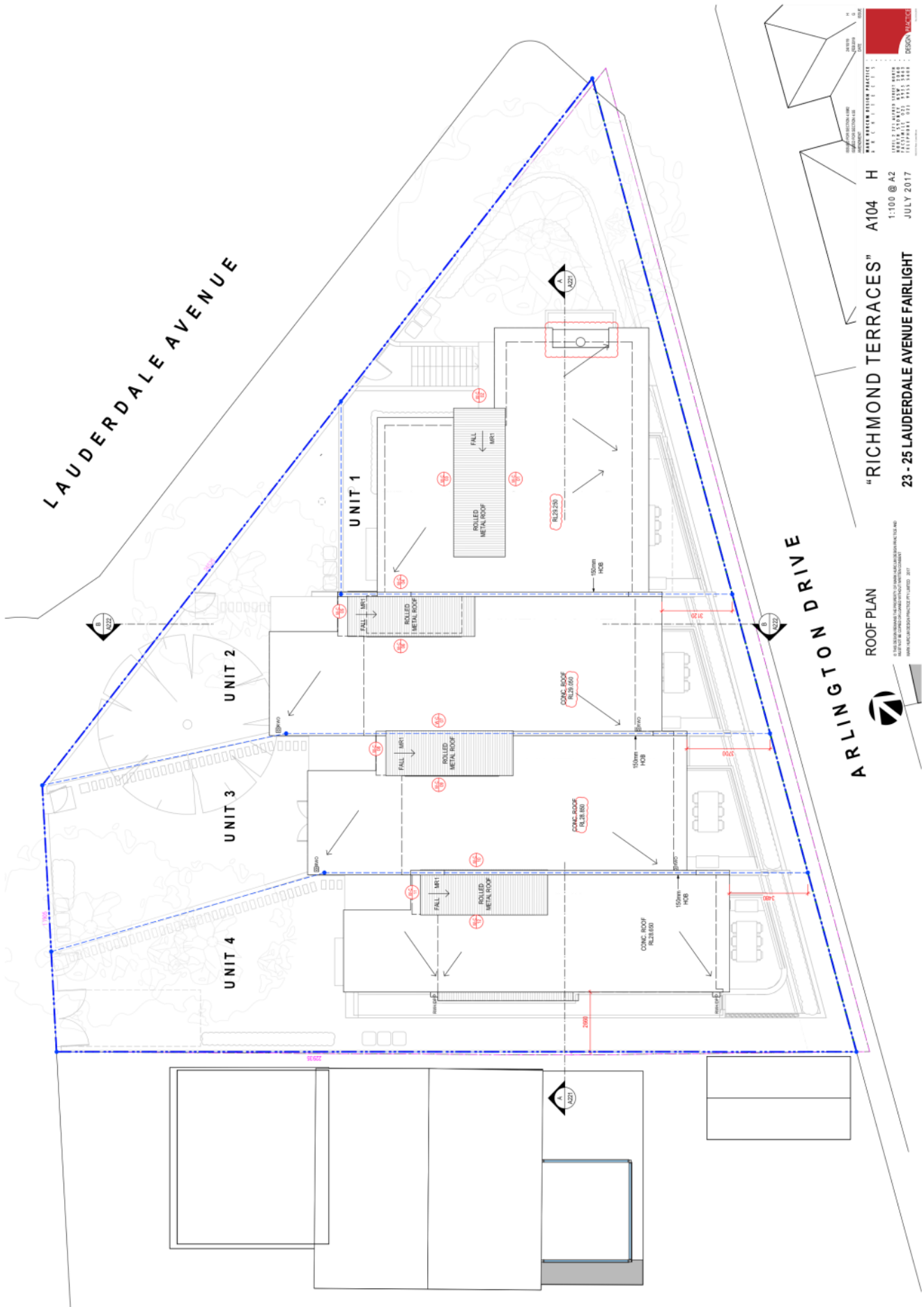
The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A004- Demo & Excavation Plan- Rev F	24/10/2019	Mark Hurcum Design Practice
A101- Basement Floor Plan- Rev I	24/10/2019	Mark Hurcum Design Practice
A102- Ground Floor Plan- Rev I	24/10/2019	Mark Hurcum Design Practice
A103- First Floor Plan- Rev I	24/10/2019	Mark Hurcum Design Practice
A104- Roof Plan- Rev H	24/10/2019	Mark Hurcum Design Practice
A106- Basement Floor Plan- Rev C	24/10/2019	Mark Hurcum Design Practice
A201- Elevations - Rev I	24/10/2019	Mark Hurcum Design Practice
A202- Elevations - Rev G	24/10/2019	Mark Hurcum Design Practice
A203- Elevation Diagram - Rev E	24/10/2019	Mark Hurcum Design Practice
A221- Section A-A & B-B - Rev G	24/10/2019	Mark Hurcum Design Practice
A222- Site Section - Rev E	24/10/2019	Mark Hurcum Design Practice

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







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DATE	NAME	SCORE
10/10/10	10/10/10	10/10/10

DESIGN PRACTICE

NAME: _____

DATE: _____

SCORE: _____

DESIGN PRACTICE

NAME: _____

DATE: _____

SCORE: _____

ITEM 3.5 **DA2019/0505 - 874-876 PITTWATER ROAD, DEE WHY -
DEMOLITION WORKS AND THE CONSTRUCTION OF A
SHOPTOP HOUSING DEVELOPMENT WITH ASSOCIATED
BASEMENT CARPARKING, LANDSCAPING, AND PUBLIC
DOMAIN IMPROVEMENT WORKS**

REPORTING OFFICER **MATTHEW EDMONDS**
TRIM FILE REF **2019/620978**
ATTACHMENTS **1** [↓](#) **Assessment Report**
 2 [↓](#) **Site Plan and Elevations**
 3 [↓](#) **Clause 4.6**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 of Warringah Local Environmental Plan 2011 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives of the zone.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0505 for demolition works and the construction of a shop top housing development with associated basement car parking, landscaping and infrastructure at Lots 1-4 DP 9900, 874-876 Pittwater Road, Dee Why subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0505
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 2 DP 9900, 876 Pittwater Road DEE WHY NSW 2099 Lot 3 DP 9900, 876 Pittwater Road DEE WHY NSW 2099 Lot 4 DP 9900, 876 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 9900, 874 Pittwater Road DEE WHY NSW 2099
Proposed Development:	Demolition works and the construction of a shop top housing development with associated basement car parking, landscaping and infrastructure
Zoning:	Warringah LEP2011 - Land zoned B4 Mixed Use
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	DL Dee Why Pty Ltd
Applicant:	Crawford Architects Pty Ltd
Application Lodged:	22/05/2019
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Mixed
Notified:	15/06/2019 to 15/07/2019
Advertised:	15/06/2019
Submissions Received:	7
Clause 4.6 Variation:	4.3 Height of buildings: 12.5%
Recommendation:	Approval
Estimated Cost of Works:	\$ 17,265,020.00

EXECUTIVE SUMMARY

The application proposes an eight storey shop top housing development that is subject to the provisions of *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development*. In accordance with the direction of the Secretary, the development constitutes 'sensitive' development, that must be referred to the Local Planning Panel for determination. The application also involves a variation to the building height development standard in excess of 10%, which also triggers the need for referral to the Local Planning Panel for determination. As such, the application is referred to the Northern Beaches Local Planning Panel ('NBLPP'), with a recommendation of approval.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for an eight storey shop top housing development over four levels of basement car parking, including:

- 12 x ground floor retail tenancies with a total GLA of 758.4m²,
- 78 x residential apartments, inclusive of 7 x adaptable units, comprising:
 - 4 x studio apartments,
 - 41 x 1 bedroom apartments,
 - 31 x 2 bedroom apartments,
 - 2 x 3 bedroom apartments,
- 141 x parking spaces, comprising:
 - 78 x residential parking spaces,
 - 47 x retail parking spaces,
 - 11 x residential visitor spaces,
 - 1 x maintenance space,
 - 1 x removalist space, and
 - 3 x car share spaces,
- Associated infrastructure, and
- Landscaping.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - Zone B4 Mixed Use
Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 6.2 Earthworks

Warringah Local Environmental Plan 2011 - 6.3 Flood planning
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - C9 Waste Management
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D18 Accessibility and Adaptability
Warringah Development Control Plan - Area 7 Pittwater Road

SITE DESCRIPTION

Property Description:	Lot 2 DP 9900 , 876 Pittwater Road DEE WHY NSW 2099 Lot 3 DP 9900 , 876 Pittwater Road DEE WHY NSW 2099 Lot 4 DP 9900 , 876 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 9900 , 874 Pittwater Road DEE WHY NSW 2099
Detailed Site Description:	The site is irregular in shape, with a 61.17m wide frontage to Oaks Avenue to the south, a 36.525m wide frontage to Pittwater Road to the west, a 3.055m wide splay at the intersection of the two streets and a total area of 1571m². The site currently contains two separate two-storey mixed used buildings, with vehicular access gained via two separate driveway crossings to Oaks Avenue. Pittwater Road is a six-seven lane classified road, with bus lanes and time-restricted parking on both sides of the street. The main bus stops servicing Dee Why are located immediately to the north of the site on both sides of Pittwater Road. Oaks Avenue is a four lane local street, with time-restricted parking on both sides. The intersection of Pittwater Road and Oaks Avenue is controlled with traffic lights, with pedestrian crossings connecting the site with the western side of Pittwater Road and the southern side of Oaks Avenue. Both the Pittwater Road and Oaks Avenue public road reserves have been the subject of recent upgrades, with improved stormwater infrastructure, new kerb and guttering, paving and street trees. The site is located within the Dee Why Mixed Use Centre, and is surrounded by mixed use development of varying age, character and scale. The site is bounded to the north and east by an L-shaped six-seven storey shoptop housing development known as 880 Pittwater Road and 10 Oaks Avenue, which is sited with nil setbacks to the common side boundary. The site is subject to medium and high risk flooding.

Map:



SITE HISTORY

Previous Development Applications

On 6 June 2015, a prelodgement meeting was held with Council to discuss a potential nine storey shop top housing development at 876 Pittwater Road (only).

On 7 December 2015, development application DA2015/1202 was lodged with Council, seeking consent for a nine storey shop top housing development at 876 Pittwater Road (only).

On 14 April 2016, development application DA2015/1202 was withdrawn from Council, due to multiple areas of non-compliance with relevant requirements.

On 22 August 2017, a prelodgement meeting was held with Council to discuss a potential seven storey shop top housing development at 876 Pittwater Road (only).

On 30 October 2017, development application DA2017/1063 was lodged with Council, seeking consent for a seven storey shop top housing development at 876 Pittwater Road (only).

On 20 June 2018, development application DA2017/1063 was approved by Council, under the delegation of the Northern Beaches Local Planning Panel. The approved development is shown in **Figure 1**, below.

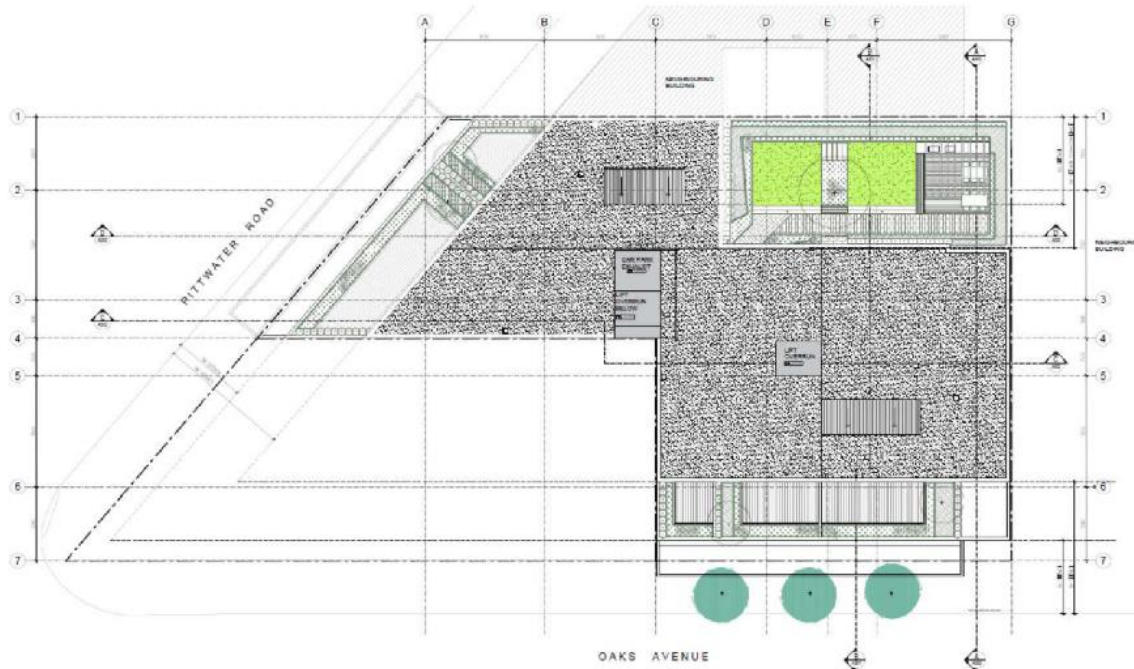


Figure 1 - Site plan of development approved pursuant to DA2017/1063.

On 16 August 2018, a prelodgement meeting was held with Council to discuss a potential eight storey shop top housing development at 874 and 876 Pittwater Road (the subject site). The applicant presented a schematic form generally consistent with that now proposed, which was supported by Council staff.

On 12 November 2018, development application DA2018/1851 was lodged with Council, seeking consent for an eight storey shop top housing development at the subject site.

On 30 January 2019, development application DA2018/1851 was withdrawn from Council, due to multiple areas of non-compliance with relevant requirements.

Application Background

On 22 May 2019, the subject development application was lodged with Council.

On 24 July 2019, Council requested additional information with relation to:

- Footpath levels and flooding
- Stormwater management
- Building height
- Communal open space
- Traffic & basement design
- Inadequate information
- Design & amenity with respect to the Apartment Design Guide

On 2 September 2019, amended plans and additional information were submitted to Council.

On 6 November 2019, Council requested further additional information with regard to:

- Refinement of the facades
- Emphasis of entrances
- Design & amenity with respect to the Apartment Design Guide

On 20 November 2019, amended plans and documentation were submitted to Council.

Relevant Policy Background

On 18 October 2016, the Department of Planning and Environment issued a Gateway determination of the Dee Why Town Centre Planning Proposal. Relevant to the site, the planning proposal sought to increase the building height development standard from 24m to 27m.

From 22 February 2018 to 25 March 2018, draft WLEP 2011 was publicly exhibited, in conjunction with associated draft amendments to WDCP 2011.

On 25 September 2018, draft WLEP 2011 was adopted by Council and was subsequently forwarded to the Minister of Planning and Environment.

From 8 October 2018 to 11 November 2018, further amendments to WDCP 2011 were publicly exhibited.

On 5 March 2019, the amendments to WDCP 2011 were adopted by Council, to be implemented in conjunction with the gazettal of the amendments to WLEP 2011.

As at the date of this report, draft WLEP 2011 remained under review by Parliamentary Counsel.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Evaluation

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Amendments to Warringah Local Environmental Plan 2011 (' WLEP 2011 ') have been publicly exhibited and are with Parliamentary Counsel for review. See further discussion, below.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 (' WDCP 2011 ') applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via

Section 4.15 Matters for Consideration	Comments
	a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. <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. <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. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter can be addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the WDCP 2011 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

Draft WLEP 2011

Amendments to WLEP 2011 have been publicly exhibited (on two occasions), adopted by Council and are with Parliamentary Counsel for review. The amendments relevant to the site are considered individually, below:

- *Redefinition (increase) of the Dee Why Town Centre*

Comment: The current version of WLEP 2011 defines an area of Dee Why as the Dee Why Town Centre, as shown on the Key Sites Map of WLEP 2011. The area is limited to two Key Sites, along Pittwater Road, Howard Avenue and Oaks Avenue. The subject site is not located within the Dee Why Town Centre as currently mapped, and as such, the provisions of Part 7 of WLEP 2011 do not apply.

The draft amendments to WLEP 2011 seek to include a new Dee Why Town Centre Map, comprised of all B4 Mixed Use zoned sites in Dee Why, inclusive of the subject site. The Key Sites Map is also to be amended to include additional key sites, exclusive of the subject site. By virtue of inclusion within the Dee Why Town Centre, the provisions of Part 7 of WLEP 2011 will be applicable to the site. However, the majority of these controls are limited to the current nominated Key Sites, and do not relate to the subject site. Furthermore, even the objectives identified for the town centre as a whole are very specific to these current Key Sites, and no indication of how these objectives are to be amended to reflect the newly defined town centre has been forthcoming or made available to the general public.

- *A 3m increase to the height of buildings across the Dee Why Town Centre Area,*

Comment: The planning proposal was supported by a draft Height of Buildings Map that identifies a 3m increase to the current maximum height of buildings across the Dee Why Town Centre. In relation to the subject site, the maximum building height is to be increased from 24m to 27m under the provisions of clause 4.3 of WLEP 2011.

- *A reduction to podium heights across the entire Dee Why Town Centre Area,*

Comment: The planning proposal indicates an intent to reduce podium heights throughout the town centre to two and three storeys. Clause G1 of WDCP 2011 currently prescribes that podium heights are to be four storeys along Pittwater Road. Whilst unclear at this stage, it is assumed that the reduced podium height will be addressed under the current provisions of clause 7.3(d) of WLEP 2011, which prescribe a desire to create a unified and consistent building form, with street edges defined by podiums. The current design, which incorporates a four storey podium, is considered to achieve consistency in this regard, aligning with the established heights of podiums along Pittwater Road. Any reduction to the podium height (to 3 storeys as anticipated by the draft amendments) would be antipathetic to this outcome, with a podium that is distinctly lower than the established alignment of podiums along Pittwater Road. As such, the four storey podium proposed is supported in this regard, despite the reduction contemplated in the draft LEP.

- *The introduction of floor space ratio.*

Comment: The planning proposal indicates an intent to introduce a floor space ratio (FSR) for development within the Dee Why Town Centre to "control the amount of floor area so that traffic generation rates remain within the capacity of the overall road network". The planning proposal was supported by a draft Floor Space Ratio Map which highlights a proposed FSR of 4:1 in relation to the subject site. The proposed development is inconsistent with the draft FSR, with a FSR of 4.37:1. The application was supported by a detailed statement addressing the non-compliance with draft FSR, stating that strict compliance with the draft provision is unreasonable in the circumstances where the expressed intent of the control is otherwise met. Namely, that the density of the proposed development will not result in any adverse impacts upon traffic generation and the capacity of the overall road network. This position is supported by the

findings of the Traffic & Parking Assessment Report provided to support the application, and Council's Traffic Engineer who has no objection to the proposal on traffic grounds.

The planning proposal does not relate the proposed FSR to anticipated built form outcomes, and no objectives are prescribed (as the FSR clause of the standard instrument is not adopted in the current LEP). In the absence of any nominated objectives, and noting that the proposal is supported on the basis of traffic generation, the proposed non-compliance with the draft FSR is not considered to warrant the refusal of this application.

Note: When gazetted, the amended height of buildings, and newly introduced podium heights and FSR prescribed by draft WLEP 2011 will be development standards, that are only able to be varied under the provisions of clause 4.6 of WLEP 2011. However, whilst in draft form, the controls are not 'development standards', as they are not provisions of an environmental planning instrument "made, or taken to have been made, under Part 3 and in force". Whilst they are relevant to the assessment of the proposal and are to be taken into consideration under the provisions of clause 4.15 of the EP&A Act, the consent authority can grant consent to a development that is inconsistent with a provision of a draft instrument without reliance upon clause 4.6.

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 7 submission/s from:

Name:	Address:
Miss Kathryn Renee Young	8 / 10 Oaks Avenue DEE WHY NSW 2099
George Carl Crowley	51 Parkland Road MONA VALE NSW 2103
Mr Noel Raymond Patrick Kelly	11 / 10 Oaks Avenue DEE WHY NSW 2099
Ms Dana Boudaghian	38 / 880 Pittwater Road DEE WHY NSW 2099
Ms Carol-Anne Stewart	27 / 10 Oaks Avenue DEE WHY NSW 2099
Mr David Martin	35 / 880 Pittwater Road DEE WHY NSW 2099
Mr Alexander James Rizzo	1 / 15 Oaks Avenue DEE WHY NSW 2099

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

- **Height**

Comment: A number of submissions have been received raising concerns with regard to the height of the proposed development, particularly in contrast with the adjoining development at 880 Pittwater Road and 10 Oaks Avenue. The proposed eight storey building is consistent with the maximum building height development standard prescribed by draft WLEP 2011, and is reflective of the height/scale of development envisioned for the Dee Why Town Centre, as exhibited to the community and as adopted by Council. The proposal is not incompatible with the adjoining six-seven storey development at 880 Pittwater Road and 10 Oaks Avenue, nor the nine storey Carlyle development to the north-west at 701 Pittwater Road or the 17 storey Meriton development to the north at 884-896 Pittwater Road.

- **Depth of excavation**

Comment: Concern has been raised in submissions from adjoining property owners regarding the depth of excavation proposed and potential impacts to their property during construction. The depth of excavation proposed is not inconsistent with the scale of development anticipated on the site, and the impacts upon adjoining properties can be minimised by appropriate conditions of consent. Furthermore, to address concerns regarding property damage, conditions of consent are recommended to require the applicant to produce pre/post construction dilapidation reports. The application has been referred to Council's Development Engineers and NSW Water (with regard to construction dewatering), and no concern is raised in this regard, subject to consistency with the recommended conditions of consent.

- **Solar access**

Comment: Five submissions have been received from owners of apartments within the adjoining development raising concern regarding the potential loss of sunlight arising from the proposed development. The potential impacts upon these apartments are considered individually, as follows:

- Apartment 8 (10 Oaks Avenue)

A two storey apartment located on Levels 1 and 2 of 10 Oaks Avenue, in the centre of the southern facade presenting to Oaks Avenue. Solar access to Apartment 8 will not be impacted as a result of the proposal.

- Apartment 27 (10 Oaks Avenue)

A single storey apartment located at the south-east corner of Level 3 of 10 Oaks Avenue, presenting to Oaks Avenue. Solar access to Apartment 27 will not be impacted as a result of the proposal.

- Apartment 35 (880 Pittwater Road)

A single storey apartment on the eastern facade of Level 4 of 880 Pittwater Road, located to the north of the subject site. Apartment 35 has a bedroom window oriented to the west into an internal light well. The proposal will obstruct late afternoon sun to this bedroom window during the peak summer months. However, the proposal will not impact upon solar access to the primary living space and balcony which are oriented to the east.

- Apartment 37 (880 Pittwater Road)

A two storey apartment on the north-western corner of Levels 5 and 6 of 880 Pittwater Road, presenting to Pittwater Road. Solar access to Apartment 37 will not be impacted as a result of the proposal.

- Apartment 38 (880 Pittwater Road)

A two storey apartment on the eastern facade of Levels 5 and 6 of 880 Pittwater Road, located to the north of the subject site. Apartment 38 has a bedroom window on Level 5 and

windows associated with a loft space on Level 6 oriented to the west into an internal light well. The proposal will obstruct late afternoon sun to these windows during the peak summer months. However, the proposal will not impact upon solar access to the primary living space or balcony which are oriented to the east.

As discussed in further detail with regard to clause D6 of WDCP 2011, the proposal is not considered to result in any unreasonable impacts upon solar access to adjoining properties.

- **Visual privacy**

Comment: Two submissions were received from owners of apartments within the adjoining development at 10 Oaks Avenue and 880 Pittwater Road raising concern regarding visual privacy. The two relevant apartments, Apartments 8 and 37, are not in the immediate vicinity of the proposal, and will not be overlooked by the proposed development. A further submission was received raising concerns regarding overlooking of units on the southern side of Oaks Avenue. The spatial separation between buildings on either side of Oaks Avenue (approximately 26m) is considered to provide sufficient privacy between opposing dwellings.

As discussed in further detail with regard to clause D8 of WDCP 2011, the proposed development is not considered to result in any unreasonable impacts upon privacy of adjoining properties.

- **Traffic**

Comment: Submissions have been received in objection to the proposal, with concerns that the development will further exacerbate traffic congestion along Oaks Avenue. The proposal has been considered by Council's Traffic Engineer, who raises no concern in this regard.

- **Noise during construction**

Comment: Concern has been raised in regards to noise levels during construction. Conditions of consent are recommended to limit construction hours at the site, and to require compliance with relevant industry standards, to ensure that impacts upon neighbouring properties are minimised during construction.

It is noted that the proposal has undergone a series of amendments in the time since the application was originally notified. Whilst displayed on Council's website, the amendments were not notified to adjoining neighbours, as the changes were relatively minor and did not alter impacts to adjoining properties.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Approval, with 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 inclusion of the attached conditions of approval and consideration of the notes below.</i>

Internal Referral Body	Comments
	<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 (Industrial)	Approval, with conditions. <i>The proposal is for an eight storey building with four below ground levels of parking. Ground level is retail, all levels above that are residential. It is noted that the master plans state separate DAs will be submitted for the use of each retail space. Currently there are no amenities included on the lower floors and no plans for vertical / roof top discharge of retail exhausts or residential air-conditioning. This raises some concern due to odour and noise issues caused by horizontal (street-side) discharge of emissions. We must make it clear that the provision for amenities and adequate fixtures such as mechanical exhaust ventilation, grease arrestors and plant must be included in those future applications.</i> <i>Given the information provided, we can recommend conditions covering noise and dust emissions during the demolition, excavation and construction phases, and ongoing conditions for noise and odour emissions generally.</i> <i>We have no overall objections to the development and recommend approval subject to conditions.</i>
Landscape Officer	Approval, with conditions. <i>No objections to the proposed works in general terms.</i> <i>It is noted that Council has recently undertaken streetscape works on the Pittwater Road frontage and that street tree planting has previously been undertaken in Oaks Avenue, limiting planting requirements to within the site itself.</i> <i>No objections subject to conditions as recommended.</i>
NECC (Development Engineering)	Approval, with conditions. <i>The stormwater drainage concept plan detailing the provision of On site stormwater detention is generally satisfactory , however the outlet pipe being skewed at 45 degrees has to much of an impact of Councils recently installed street paving and street planting. A condition has been recommended that a new inlet pit by constructed on the RHS of the proposed vehicle crossing in which the outlet pipe can be connected.</i> <i>No objections to the proposal subject to conditions.</i>
NECC (Stormwater and Floodplain Engineering – Flood risk)	Approval, with conditions. <i>The development proposes a new mixed use, multi-level building with multi-level basement car park. The site is affected by the one in 100 year flood extent. Subject to conditions, the development complies</i>

Internal Referral Body	Comments																												
	with Section E11 of the Warringah Development Control Plan and Clause 6.3 of the Warringah LEP. This includes the 6.3 (3) a-e, as the development is: compatible with the flood hazard of the land, is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties; incorporates appropriate measures to manage risk to life from flood; is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses; and is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding. Subject to conditions, the development is compliant with Council's flood prone land controls.																												
Strategic and Place Planning	Approval, with conditions. The application proposes the demolition of existing structures and construction of a shop-top housing development comprising 758.4m² of retail GFA and 78 residential apartments, being: • 45 x 1-bed units • 31 x 2-bed units • 2 x 3-bed units. The Dee Why Town Centre Contributions Plan 2019 applies to this development. The development will increase the demand for local infrastructure levied by the Plan. The contribution is calculated as follows: Proposed Residential Development: <table><tr><th>Type</th><th>Number</th><th>Contribution Rate</th><th>Subtotal</th></tr><tr><td>1 Bed</td><td>45</td><td>\$9,487.77</td><td>\$426,949.65</td></tr><tr><td>2 Bed</td><td>31</td><td>\$13,915.40</td><td>\$431,377.40</td></tr><tr><td>3 Bed</td><td>2</td><td>\$20,000.00</td><td>\$40,000.00</td></tr><tr><td colspan="3">Total</td><td>\$898,327.05</td></tr></table> Proposed Non-Residential Development: <table><tr><th>GFA (m²)</th><th>Contribution Rate</th></tr><tr><td></td><td>(\$16,603.60/100m²)</td></tr><tr><td>758.4m²</td><td>\$166.04m²</td></tr><tr><td>Total</td><td>\$125,924.73</td></tr></table> Total monetary contribution = \$1,024,251.78 Clause 4.3 of the Contributions Plan advises that the total contribution is attributable to the net increase in infrastructure demand. This clause stipulates that the applicant must demonstrate a case for the existing	Type	Number	Contribution Rate	Subtotal	1 Bed	45	\$9,487.77	\$426,949.65	2 Bed	31	\$13,915.40	\$431,377.40	3 Bed	2	\$20,000.00	\$40,000.00	Total			\$898,327.05	GFA (m ²)	Contribution Rate		(\$16,603.60/100m ²)	758.4m ²	\$166.04m ²	Total	\$125,924.73
Type	Number	Contribution Rate	Subtotal																										
1 Bed	45	\$9,487.77	\$426,949.65																										
2 Bed	31	\$13,915.40	\$431,377.40																										
3 Bed	2	\$20,000.00	\$40,000.00																										
Total			\$898,327.05																										
GFA (m ²)	Contribution Rate																												
	(\$16,603.60/100m ²)																												
758.4m ²	\$166.04m ²																												
Total	\$125,924.73																												

Internal Referral Body	Comments
	development to be taken into consideration in the calculation of the required contribution. There has been no information submitted with this application demonstrating the quantum of existing approved development.
Strategic and Place Planning (Urban Design)	Approval, with conditions. The applicant has submitted a new DA2019/0505 as a response to the previous DA2018/1851 which was withdrawn. Amended drawings dated 20 August 2019 was submitted in response to the issues raised. The proposal can now be supported for the following reasons: Previous DA: The 24m building height control has been exceeded by about 7.8m. The amendment to the LEP (Dee Why Town Centre Planning Proposal) proposes a 27m building height ie. 3m height limit increase in exchange for a one storey reduction in podium height limit. However the LEP amendments have not been gazetted to date. Assuming the LEP amended building height of 27m, the proposal will still be 4.8m over the building height limit. The proposed roof garden amenity structure comprising of fire stairs, lift core/lobby, toilet and undercover bbq seating area exceeds the building height control. The development should be beneath the maximum Height of Buildings permitted with variations only being considered for roof features or articulation – not additional floor space. The building height towards the Eastern boundary should step down to a maximum height of 24m at grid D to ensure adequate solar access and lessen the impact of the proposed built form to the residential units next door. Detailed shadow diagrams should be submitted to demonstrate solar access compliance to these next door units. The step down in the built form can then be utilised as the roof garden area (24m building height roof area) with the undercover amenities area tucked into the 27m building height area. The roof communal garden area should be designed to keep users away from the building edge for visual/acoustic privacy, comfort level, safety and security considerations. New DA: The proposal is about 4m above the 24m building height control. Given the LEP amendments for the Dee Why Town Centre Planning Proposal have not been made and the 27m building height is endorsed by Council, the proposed building height from grid A to grid D/E can be supported. The building height from grid D/E to H should be reduced to 24m to allow more daylight access and minimise the built form impact to the existing residential units on the eastern boundary. The roof communal garden can be located on this lower roof area. The provision of a 1.8m high glass balustrade to make the roof garden more comfortable and safe during windy days should be considered. Amended DA Aug 2019: The proposal is now totally within the 27m building height limit. Compared to the previously approved

Internal Referral Body	Comments
	DA, the building depth on the eastern boundary has been reduced from 16 to 13m. So despite the increase in previously DA approved building height of 24m to proposed 27m, the building façade width has been reduced by 3m as well, thereby neutralising the potential building impact on the adjacent neighbouring apartments. The proposed building height on the eastern boundary will not affect winter solar access to the neighbouring apartment units. The additional 4 units proposed on the top floor are also solar compliant units in accordance to the Apartment Design Guideline. As such, the proposal can be supported. 2. Previous DA: Building built-to lines on Pittwater Road/ Oaks Ave: 5m to kerb for the first 4/3 (3/2 – amended DCP) storeys respectively and 9m for the above storeys have not been complied with. The proposed solid structure balconies also encroach into the 9m setback requirement. Only lightweight structures that do not add to the visual mass of the building, such as pergolas and balconies, may penetrate the build-to lines. (Warringah DCP 2011). There are also balconies encroaching into the 5m setback zone sitting on top of the footpath awning structure. These balconies can become quite unsightly when the residents move in and start putting out clothe-drying racks and outdoor furniture. There will also be issues of noise nuisance and visual privacy between balconies. New DA: The proposal has complied with the Building built-to lines and proposed a further setback of about 2.5m (on top of the 9m kerb setback) to the upper stories on the south-eastern corner. This will reduce the shadow impact on the southern side of Oaks Avenue. Amended DA Aug 2019: The amendments do not affect the comments made previously which were supported. 3. Previous DA: Apartment Design Guidelines (ADG Pg. 87) require minimum ground floor retail/residential floor to ceiling height of 3.3/ 2.7m respectively. ADG recommends floor to floor height of 3.7/ 3.1m respectively allowing 0.4m for building structure and services. The proposal does not comply. New DA: The proposal has proposed 3.94 to 3.97/ 3.1m floor to floor height on the ground floor retail/residential floor. Shortfall on the ADG requirement of 70% solar access with 56.4% of the apartment proposed can be supported given the constrained nature of the site and the 75.6% (60% required) cross ventilation of apartment achieved. Amended DA Aug 2019: The amendments do not affect the comments made previously which were supported. 4. Previous DA: The corner built form treatment could be further improved. The curved solid wall treatment with the dark colour panel finish on the upper floors appears very heavy. It could be lightened with corner windows treatment or change in colour/material finishes to a more neutral cohesive scheme.

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	New DA: The upper floor is now cladded with a lighter shade of material finish (dark cedar 'Urbanline' cladding) which will complement the face-brick façade panels of the neighbouring building. Amended DA Aug 2019: The amendments do not affect the comments made previously which were supported. 5. Previous DA: The cross ventilation concept using the internal venting of the units via a small opening next to the front door relying on convection of hotter air rising to the roof top vents is a concern as there will be issues of noise and smell nuisance leaking through the unit vents into the common corridors. A suggestion to improve ventilation will be to extend and open the linear light/air well into the main courtyard to ensure effective air circulation and avoid trapped smell. New DA: The cross-ventilation concept has been improved via a continuous window opening facing the Pittwater Road boundary. Amended DA Aug 2019: The amendments do not affect the comments made previously which were supported. 6. Previous DA: The awning at Oaks Avenue closer to Pittwater Road side should be extended wider to achieve a 1m setback from the kerb. Where there are street trees on the footpath, the awning should be 1.5m set backed from the kerb. Minimum awning clearance height of 3.2m should be maintained. Coordination with the upgrading works at Dee Why Town Centre currently underway will be required. New DA: The Dee Why Town Centre upgrading works around the site have been completed. There are 3 cabbage Palms along the Pittwater Road façade so the shop awning should be 1m setback from the original kerb line which is correctly shown on the drawings but not dimensioned. The shop awning facing Oaks Avenue should be extended wider to achieve a 1.5m setback from the kerb given there are 4 street trees along that façade. Amended DA Aug 2019: The shop awning along Pittwater façade should be 1m setback from the original kerb line. The shop awning along Oaks Avenue should be extended wider to be 1.5m setback from the kerb line to cater for the existing street trees. All dimensions to be indicated on drawings. <u>Planner comment:</u> A 1.5m increase to the depth of the awning along Oaks Avenue will clash with the location of recently planted street trees, as shown on the amended survey provided to support the application. However, a 500mm increase could be accommodated without compromising the future growth of these street trees. This increase has been shown on the most recent version of amended plans submitted to Council.

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	Given the scale of the development, a peer review of the proposal was undertaken by an alternate member of Council's Urban Design Team. As a result of the peer review, further amendments were sought in relation to: • Refinement of facades, • Emphasis on entrances, and • Design and amenity with respect to the Apartment Design Guide. The following comments contain both the initial feedback from the peer review, with the response to the submission of amended plans in bold text: 1. <u>Site</u> The corner of Pittwater Road and Oaks Avenue is a significant gateway corner in the strategic centre of Dee Why, not least of all the distinct geometry of the acute corner position and the resultant view corridors and public realm which will be framed by the two street frontages. 2. <u>Bulk and Scale</u> <i>The proposed development reads as three distinct elements by virtue of the varying materiality, architectural language and expression of the finishes between the pedestrian ground plane, the podium and the upper level. The general massing works well for the corner site with its acute angled and colonnaded pedestrian thoroughfare. The scale in terms of the street elevation similarly is well broken up and setback at upper levels sufficient enough to reduce the bulk.</i> 3. <u>Façade treatment/ Materiality/Bulk and Scale</u> <i>The strategy of breaking up the massing and built form utilises various tactics; modulation by contrasting material/colour finishes, patterns and texture. The resulting composition; bulk, colour and materiality serves to accentuate the scale of the whole through the sum of its parts. There are various different treatments being articulated across the whole of the development which limits a cohesive conceptual response in terms of architectural language, rather the expression is more a 'blocking' of treatments that defines the pedestrian realm separated from the podium and separated yet again from the tower element.</i> <i>Relatively, the building is not of a scale that seems to warrant the tripartite strategy, which can be seen in high rise developments, that defines distinct yet separate uses.</i> <i>The upper level darker timber look treatment of the façade whilst dark has a softer materiality than the starkness of the</i>

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	<i>white composite panels of the podium below. Given the location and selection of lighter coloured materials this may pose reflectivity issues at certain times of the day. The difference and contrast of these two elements should be further tested so the building reads as a conceptual whole. This could be achieved by reducing the material palette.</i> <i>The treatment of the precast concrete panel wall to the eastern elevation is successful in that it expresses an honesty and robustness in materiality in contrast to the proposed ACP treatment. It is also an opportune element in the palette that could be further tested as the main treatment to replace the composite panels.</i> See comments below. 4. <u><i>Ground Plane/Commercial Façade</i></u> <i>The elegant nature and repetition of the columnar detail and geometry connecting to the awning and resolving to the ground plane facade softens the shear full height commercial glazing suites at the street level to provide a pedestrian scaled experience.</i> <i>Beyond the awning the podium above stands in isolation by virtue of the contrast with the tower above.</i> <u><i>Podium & Tower/Residential</i></u> <i>The materiality of the lower podium section presents as a very light coloured composite panel and reads more as a commercial tenancy rather than a residential use. The strategy used to break up the mass of this lower section through contrasting fenestration framing suite colours is very lively and dynamic to the point of being a different language to that of the timber look tower element above. Moreover, should the jointing detail be of a contrasting or even similar tone to the cladding panels this would not reduce the same overall effect of the perception of a commercial podium. The distinct disconnection of the street level from the podium level is heightened by this contrast in materiality and surface treatment.</i> <i>Overall the physical separation of the three elements through physical horizontal breaks in the bulk and mass assist to break up the mass. However the contrast of the materiality of the two above ground elements, whilst read as difference may read better conceptually if there was a similar deployment of patterned striation linking the two elements.</i> <i>Consideration of the use of the prefabricated and patterned concrete panels demonstrated on the southern elevation (drawing A212 A) in place of a composite panel material demonstrated on the proposed development would assist to tie the whole development together. The concrete elements of the scheme could also serve to resolve connections from ground</i>

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	plane through to upper levels of the development. The use of natural materials; concrete and timber would further enhance the building's gateway presence of this residential development. The revised drawings demonstrate further articulation to the concrete element through further striation which will result from the varying modular pre-cast panel sizes, assuming the striation is a jointing element. The relationship and vertical compatibility in the striation patterning assist to bring the elements together so as to be read as a whole. This further articulation assists to render a more nuanced response to the facade materiality and can be supported. Conditions that see this resolution through to construction should be considered. 5. <u>Public Realm/Ground Plane</u> The built to boundary nature of the building at street level as an extrusion of the cadastral does not allow for public realm additions within the site as an extension of street, but rather pushes public realm activation back out to the pavement proper. Whilst not a criticism of the scheme, the site and context would benefit from a finer grain response to site and seems to be an opportunity missed. No change to comment on. 6. <u>Pedestrian Entries /Lobbies</u> Vertical resolution of the breaks in the building façade coinciding with building entrances on both Pittwater Road and Oaks Avenue are discreet. The combination of the columns and connection to the awning demonstrate a well resolved articulation at street level. More generous entries to both street elevations for the commercial and residential entries could better identify the respective street addresses. See comments below. 7. <u>Residential Entry/Lobby</u> The current design shows solid walls to either side of the residential entry with a deeper than wide covered entry way on the Oaks Avenue elevation. There are potential CPTED issues with these small alcove type entries. Additionally the length and narrow width of this entry is not a welcoming or conducive entry to an apartment lobby. CPTED issues could be addressed by further widening the whole entry sequence corridor to 3 metres with the provision of glazed end walls of retail tenancies 10 and 11 that line the corridor. This option would see the deletion of retail 11 and the creation of a larger tenancy floor space for retail 12. Alternately, chamfered glazed walls at the entry to the corridor and glazed end walls as mentioned above may also achieve a more generous entry

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	sequence to the residential lobby and allow for borrowed light to activate the corridor. It is noted that the corridor to the residential has not changed significantly in width. The glazed entry to the corridor are supported. However consideration to the placement of letterboxes needs to consider the glazed elements (difficult to mount letterboxes on glazing. The curved geometry to the lobby proper provides a generous complement to the lobby and can be supported. 8. <u>Retail Entry/Lobby</u> The retail lobby fronting Pittwater Road reads as (and is) an access service lobby connecting to commercial carparking. The plan demonstrates a limited circulation area at the bottom and the top of the ramp and stairs. In the elevation of the streetscape this has the potential to read as a service cupboard or dark recess corner which poses potential CPTED issues with the current configuration. Clearance distance for access and perpendicular cross paths of travel out of this alcove require testing to ensure adequate circulation and access is achieved without disrupting pedestrian flows along the street frontage. A more generous lobby in terms of adequate circulation space and extension of a public arcade through to the rear of the retail stores and exiting onto Oaks Avenue suggest a more dynamic and enhanced pedestrian through site experience is an opportunity missed or unexplored. The bigger gesture of a 'through site connection' is another missed opportunity to create a permeable ground plane providing an enhanced pedestrian experience on this key gateway site. The revised planning to the Pittwater Road lobby has addressed previous concerns to provide an adequate response to the streetscape and entry circulation. 9. <u>Reveals</u> Fenestration reveals across the development should be carefully considered given the nature of the vertical flat plane of the two main facades. The vertical elemental distribution of fenestration down through the two residential elements reads as a cohesive and considered architectural response. As evidenced to the north on Pittwater Road the resulting architectural detail concerning the lack reveals or any distinctive architectural device to provide modulation across the facade results in a poor design outcome with little detail or sense of design consideration to the finishing and is not a desired outcome for this prominent gateway site. Whilst we are unable to assess these kinds of details at the DA stage it warrants consideration to ensure the façade materiality, ornament and massing are perceived as a conceptual whole. As outlined above the distinct difference in materiality to the

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	<i>upper level podium and tower elements negate this tactic.</i> As noted this is difficult to monitor once the DA is out of our hands. Fenestration reveals need to be carefully considered and designed with attention to the quality of the detailing to the façade fenestration reveal details. 10. <u>Upper Module Soffit</u> <i>The underside/soffit of the upper portion of the proposed development (drawing A211 A) should look to further recede this element by use of a darker colour. Lighter colours have the potential to deteriorate/discolour over time due to the nature of colour leeching through environmental effects.</i> Revised colour demonstrated on revised drawings addresses previous concerns. Supported 11. <u>Apartment Series 04 A</u> Unit 109A Balustrade <i>Drawing A105 E and A210 A show the unit's balustrade extending across the elevation to enclose the garden area and break in the vertical resolution of the façade. Whilst this provides additional external balcony space the extension across this area is somewhat discordant with the rhythm set up by the resolution of the two balconies directly above it. Extent of balustrade to unit 109A should align with those above.</i> The revised drawings demonstrate revision to the extent of balcony on the first level addressing Pittwater road. Supported 12. <u>Angled Apartment</u> <i>The length of the apartment coupled with the angle and the distribution in floor plan results in loss of solar amenity to the centre of the apartment.</i> <i>There are several acoustic amenity issues with these apartments that dovetail the bathrooms of one apartment into the adjacent apartment beside bedrooms. Acoustic noise from bathrooms adjacent the bedrooms and kitchen are not ideal. Further testing of the planning regime is encouraged to seek a solution that finds a simple modularity and distribution of apartments potentially off the lift corridor in the eastern zone.</i> The revised drawings demonstrate a plan rearrangement that adequately addressed the issue of acoustic amenity between apartments. Supported 13. <u>Balcony Overhangs Oaks Avenue</u> <i>There are several upper level balconies that protrude minimally beyond the façade on the Oaks Avenue elevation. The small dimension of this overhang does not really serve any benefit to the articulation of the façade. Balconies could be</i>

Internal Referral Body	Comments
	<i>recessed so they do not extend beyond the façade line. Whilst this may seem counter intuitive to the principle of modulation, this can be achieved by recessing balconies and providing generous reveals and articulation to the fenestration.</i>
Traffic Engineer	Approval, with conditions. <u>Parking:</u> The DCP indicates the following requirements in respect of the development elements: • Studio & One-Bedroom apartments 1.0 space • Two-bedroom apartments 1.2 spaces • Three bedroom apartments 1.5 spaces • Visitors 1 space per 5 apartments • Retail 1 space per 16.4m² GLFA Application of these guidelines to the proposed development would indicate the following minimum provision: • 4 x Studio apartments - 4 spaces • 41 x One-bedroom apartments - 41 spaces • 31 x Two-bedroom apartments - 37.2 spaces • 2 x Three bedroom apartments - 3 spaces • Visitors - 15.6 spaces • Retail (767m²) - 46.7 spaces Total: 148 spaces (85 residential spaces, 16 visitor spaces and 47 retail spaces) The DCP also specifies the provision of 1 bicycle space per apartment, a total of 12 visitor bike rails and and 1 bicycle space per 200m² retail GFA. Provision will be made for storage of bicycles in each apartment or within basement storage areas and there will be some 17 bicycle racks made available for visitors and retail users. This is considered satisfactory The applicant has proposed 141 car parking spaces in the following composition: • Residents - 78 spaces • Visitors - 11 spaces • Commercial/Retail - 47 spaces • Car share - 3 spaces • Removalist - 1 space • Maintenance/Service - 1 space

Internal Referral Body	Comments
	<i>In addition there will also be 4 motorcycle spaces.</i> <i>Although the quantum of carparking is 7 spaces short of the DCP requirement, given the provision of motorcycle parking and car share parking, it is considered that the shortfall is satisfactorily offset. The car share spaces will address the under supply of residential spaces.</i> <u><i>Traffic:</i></u> <i>The applicant has provided an amended traffic generation assessment (as requested) which has revised the traffic generation arising from the retail component of the development in line with RMS Traffic Generation rates. Incorporating these revised rates into the SIDRA traffic modelling for the development indicates that the revised traffic generation rates are acceptable and are unlikely to produce significant impacts on the local road network.</i> <u><i>Servicing:</i></u> <i>Servicing of the site internally by contracted waste providers for the commercial component is deemed adequate. Swept paths are also considered appropriate.</i> <u><i>Car Parking Layout:</i></u> <i>All parking spaces are to be compliant with AS2890.1 (most current revision) including the accessible spaces and shared zones.</i>
Waste Officer	Approval, with conditions. <i>The amended design of the residential garbage room and bulky good storage room as shown on drawing A154 still does not provide an efficient working space for the removal of waste by contractors, or deposit of waste by residents, and does not fully comply with Council's Waste Guidelines. However, is acceptable subject to the draft conditions, attached.</i> <i>To avoid ongoing waste issues for residents and ensure access by contractors it is essential that the rooms and access be maintained clear of any obstructions, waste stored on the floor, on top of bins or in any other way not contained within the approved bins, otherwise the space will become unserviceable.</i> <i>The rooms must also have clear visible signage with these instructions for residents.</i>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	No response. <i>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.</i>
Ausgrid: (Electricity Supply)	No response.

External Referral Body	Comments
	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Police - Local Command (CPTED)	No comment. The application was referred to NSW Police, who provided a response on 18 June 2019 advising that no referral response is required.
NSW Roads and Maritime Services (Traffic Generating Development)	Approval, with conditions. The application was referred to the RMS, who provided a referral response on 1 July 2019, recommending a series of conditions to be incorporated into any consent issued. These conditions have been included in the draft determination, attached.
Nominated Integrated Development – WaterNSW (Permit for Temporary Construction Dewatering)	General terms of approval issued. General Terms of Approval were issued by Water NSW on 27 September 2019, which are included in the draft determination, attached.

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 commercial 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 development proposed.

SEPP 65 - Design Quality of Residential Apartment Development

The application seeks consent for an eight storey shop top housing development, comprising 78 dwellings, and as such, the provisions of SEPP 65 apply to this development.

Clause 28 of SEPP 65 requires a consent authority to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the design quality of the development when evaluated in accordance with the design quality principles identified in Schedule 1 of SEPP 65, and the Apartment Design Guide ('ADG').

The proposal is considered to be consistent with the design quality principles of SEPP 65, as follows:

- **Principle 1: Context and Neighbourhood Character**

Comment: The proposed development is located in the Dee Why Town Centre, on the main road that runs from north to south through the Northern Beaches, with extremely high volumes of vehicular and pedestrian traffic passing along the frontages of the site. The town centre is transitioning from a low scale, medium density local centre to a high density mixed use town centre, and the site is surrounded by development of varying land use, scale, character and density.

The proposed development is compatible with the character of surrounding development within the B4 zone, and is consistent with the dominant form of recent development constructed within the town centre.

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

Comment: The ground floor retail level comprises a series of fine-grain shopfronts, providing activated street frontages that are consistent with the pattern of shopfronts throughout the locality. The height of the podium aligns with the height and scale of existing adjacent podiums along Pittwater Road, and the height of the tower is compatible with the height of surrounding shop top housing developments, specifically the Carlyle development to the north-west (701 Pittwater Road), the upper podium of the Meriton development to the north (884-896 Pittwater Road), and a number of more recent developments along Pittwater Road to the south.

The form of the building is appropriately resolved by virtue of articulation, modulation and varied materials and the scale of the building responds to the context of the site, being a corner block in the town centre. Overall, the proposal represents an appropriate, balanced solution between the current and draft/proposed built form controls that are applicable to the site.

- **Principle 3: Density**

Comment: There are no provisions within WLEP 2011 or WDCP 2011 that relate to the density anticipated on the subject site, and as such, the appropriateness of the density proposed is appraised based on the amenity of the development, the size/scale of the development and the impact of the development upon the surrounding environment.

The proposed development is an appropriate contextual fit for the site, with a density that is suitable within the B4 Mixed Use zone and for a site that is within the town centre, in such close proximity to the main transport links on Pittwater Road. The proposed density does not attribute to excessive bulk and scale, nor does it compromise the amenity for future occupants of the development. As such, the proposed density is considered to be appropriate for the site.

- **Principle 4: Sustainability**

Comment: The proposed development was supported by BASIX and NatHERS Certificates,

which include recommendations to ensure that the building performs in accordance with industry standards. Furthermore, the proposal has been designed to maximise natural cross ventilation with adequate levels of natural daylight, such that the amenity and livability of apartments will be high, despite the constraints associated with the south-facing corner site.

- **Principle 5: Landscape**

Comment: The site is located within a high density town centre that has no landscaped area requirements prescribed by WDCP 2011. Nonetheless, the proposal seeks to incorporate landscaping on the upper levels of the building, particularly Levels 1 and 4. The landscape solution is considered to be appropriate for the site.

- **Principle 6: Amenity**

Comment: As detailed in the assessment against the ADG and WDCP 2011, the proposed development provides a reasonable level of amenity for future occupants of the development, without unreasonably compromising the amenity of adjoining properties. Whilst there are some areas of technical non-compliance with regard to the design criteria and guidance prescribed by the ADG with regard to solar access and natural ventilation, the design is considered to be an appropriate response for the context of the site and the majority of apartments are reasonably resolved with high internal amenity.

- **Principle 7: Safety**

Comment: The proposed development is considered to maximise safety for future occupants and visitors of the development, with appropriate division/delineation between public and private spaces.

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

Comment: The application proposes a mix of 4 x studio, 41 x 1 bedroom, 31 x 2 bedroom and 2 x 3 bedroom apartments, inclusive of adaptable and "Livable" apartments interspersed throughout the development. The proposal is considered to be an appropriate response for the Dee Why Town Centre housing market, providing an appropriate balance of different housing options for a variety of living needs and household budgets.

- **Principle 9: Aesthetics**

Comment: The composition of the proposal is well refined, with appropriate articulation and modulation to respond to the scale of adjoining development, without overwhelming the streetscape. The proposal also features varied materiality to break down the scale of the development, and respond to the context of site.

The following table is an assessment against the ADG as required by SEPP 65:

DC – Is the development consistent with the Design Criteria?
DG – Is the development consistent with the Design Guidance?

O – Is the development consistent with the Objective?

ADG reference	Subclause	Design Criteria	DC	DG	O
Part 3 Siting the Development					
3A Site analysis	3A-1	Design decisions based on site analysis.	-	Y	Y
3B Orientation	3B-1	Layouts respond to the streetscape and optimise solar access.	-	Y	Y
	3B-2	Overshadowing of neighbouring properties is minimised during mid winter.	-	Y	Y
3C Public domain interface	3C-1	Transition between private and public places is achieved without compromising safety and security.	-	Y	Y
	3C-2	Amenity of the public domain is retained and enhanced.	-	Y	Y
3D Communal and public open space	3D-1	Communal open space has a minimum area equal to 25% of the site.	N	Y	Y
		Development must achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (midwinter).	Y	Y	Y
	3D-2	Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	-	Y	Y
	3D-3	Communal open space is designed to maximise safety.	-	Y	Y
	3D-4	Public open space is responsive to the existing pattern and uses of the neighbourhood.	-	Y	Y
3E Deep soil zones	3E-1	At least 7% of the site are shall comprise deep soil zones.	N	Y	Y
3F Visual privacy	3F-1	A minimum setback of 6m is to be provided between habitable rooms and balconies and side or rear setbacks, and a minimum setback of 3m is to be provided between non-habitable rooms and side and rear setbacks.	Y	Y	Y
	3F-2	Building design elements increase privacy without compromising access to light and air and balance outlook from habitable rooms and private open space.	-	Y	Y
3G Pedestrian access and entries	3G-1	Entries and pedestrian access connects to and addresses the public domain.	-	Y	Y
	3G-2	Access, entries and pathways are accessible and easy to identify.	-	Y	Y
	3G-3	Large sites provide pedestrian links for access to streets and connection to destinations.	-	Y	Y
3H Vehicle access	3H-1	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	-	Y	Y
3J Bicycle and car parking	3J-1	Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.	-	Y	Y
	3J-2	Parking and facilities are provided for other modes of transport.	-	Y	Y

ADG reference	Subclause	Design Criteria	DC	DG	O										
	3J-3	Car park design and access is safe and secure.	-	Y	Y										
	3J-4	Visual and environmental impacts of underground car parking are minimised.	-	Y	Y										
	3J-5	Visual and environmental impacts of on-grade parking are minimised.	-	-	-										
	3J-6	Visual and environmental impacts of above ground enclosed car parking are minimised.	-	-	-										
Part 4 Designing the building															
Amenity															
4A Solar and daylight access	4A-1	Living rooms and private open space of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at midwinter.	N	Y	Y										
		A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at midwinter.	N	Y	Y										
	4A-2	Daylight access is maximised where sunlight is limited.	-	Y	Y										
	4A-3	Design incorporates shading and glare control, particularly for warmer months.	-	Y	Y										
4B Natural ventilation	4B-1	All habitable rooms are naturally ventilated.	Y	Y	Y										
	4B-2	The layout and design of single aspect apartments maximises natural ventilation.	-	Y	Y										
	4B-3	At least 60% of all apartments are naturally cross ventilated.	N	Y	Y										
Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.		N	Y	Y											
4C Ceiling heights	4C-1	As measured from the finished floor level, the minimum ceiling height for: - habitable rooms is 2.7m, - non-habitable rooms is 2.4m, and - ground floor non-residential uses is 3.3m.	Y	Y	Y										
	4C-2	Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.	-	Y	Y										
	4C-3	Ceiling heights contribute to the flexibility of building use over the life of the building.	-	Y	Y										
4D Apartment size and layout	4D-1	Apartments are required to have the following minimum internal areas:	Y	Y	Y										
		<table><tr><th>Apartment Type</th><th>Min. internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 Bedroom</td><td>50m²</td></tr><tr><td>2 Bedroom</td><td>70m²</td></tr><tr><td>3 Bedroom</td><td>90m²</td></tr></table>	Apartment Type	Min. internal area	Studio	35m ²	1 Bedroom	50m ²	2 Bedroom	70m ²	3 Bedroom	90m ²			
		Apartment Type	Min. internal area												
		Studio	35m ²												
		1 Bedroom	50m ²												
2 Bedroom	70m ²														
3 Bedroom	90m ²														
The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each.															
Every habitable room must have a window in an external wall with a total minimum glass area of not	Y	Y	Y												

ADG reference	Subclause	Design Criteria	DC	DG	O																	
4E Private open space and balconies	4D-2	less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.																				
		Habitable room depths are limited to a maximum of 2.5 x ceiling height.	Y	Y	Y																	
	4D-3	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	N	Y	Y																	
		Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobes).	Y	Y	Y																	
		Bedrooms have a minimum dimension of 3m (excluding wardrobes).	Y	Y	Y																	
		Living rooms or combined living/dining rooms have a minimum width of 3.6m for 1 bedroom apartments and 4m for 2 bedroom apartments.	Y	Y	Y																	
		The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Y	Y	Y																	
	4E-1	All apartments are required to have primary balconies as follows:	Y	Y	Y																	
		<table><tr><th>Apartment Type</th><th>Min. area</th><th>Min. depth</th></tr><tr><td>Studio</td><td>4m²</td><td>-</td></tr><tr><td>1 Bedroom</td><td>8m²</td><td>2m</td></tr><tr><td>2 Bedroom</td><td>10m²</td><td>2m</td></tr><tr><td>3 Bedroom</td><td>12m²</td><td>2.4m</td></tr></table>			Apartment Type	Min. area	Min. depth	Studio	4m²	-	1 Bedroom	8m²	2m	2 Bedroom	10m²	2m	3 Bedroom	12m²	2.4m			
		Apartment Type	Min. area	Min. depth																		
		Studio	4m²	-																		
		1 Bedroom	8m²	2m																		
2 Bedroom		10m²	2m																			
3 Bedroom		12m²	2.4m																			
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m².			Y	Y	Y																	
4E-2	Primary private open space and balconies are appropriately located to enhance liveability for residents.	-	Y	Y																		
4E-3	Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.	-	Y	Y																		
4E-4	Private open space and balcony design maximises safety.	-	Y	Y																		
4F Common circulation and spaces	4F-1	The maximum number of apartments off each circulation core on a single level is eight.	N	Y	Y																	
	4F-2	Common circulation spaces promote safety and provide for social interactions between residents.	-	Y	Y																	
4G Storage	4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:	Y	Y	Y																	
		<table><tr><th>Apartment Type</th><th>Min. area</th></tr><tr><td>Studio</td><td>4m³</td></tr><tr><td>1 Bedroom</td><td>6m³</td></tr><tr><td>2 Bedroom</td><td>8m³</td></tr></table>			Apartment Type	Min. area	Studio	4m³	1 Bedroom	6m³	2 Bedroom	8m³										
		Apartment Type	Min. area																			
		Studio	4m³																			
		1 Bedroom	6m³																			
2 Bedroom	8m³																					

ADG reference	Subclause	Design Criteria	DC	DG	O
		3 Bedroom 10m ³			
		At least 50% is to be located within the apartment.			
	4G-2	Additional storage is conveniently located, accessible and nominated for individual apartments.	-	Y	Y
4H Acoustic privacy	4H-1	Noise transfer is minimised through the siting of buildings and building layout.	-	Y	Y
	4H-2	Noise impacts are mitigated within apartments through layout and acoustic treatments.	-	Y	Y
4J Noise and pollution	4J-1	In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.	-	Y	Y
	4J-2	Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.	-	Y	Y
Configuration					
4K Apartment Mix	4K-1	A range of apartment types and sizes is provided to cater for different household types now and into the future.	-	Y	Y
	4K-2	The apartment mix is distributed to suitable locations within the building.	-	Y	Y
4L Ground floor apartments	4L-1	Street frontage activity is maximised where ground floor apartments are located.	-	-	-
	4L-2	Design of ground floor apartments delivers amenity and safety for residents.	-	-	-
4M Facades	4M-1	Building facades provides visual interest along the street while respecting the character of the local area.	-	Y	Y
	4M-2	Building functions are expressed by the facade.	-	Y	Y
4N Roof design	4N-1	Roof treatments are integrated into the building design and positively respond to the street.	-	Y	Y
	4N-2	Opportunities to use roof space for residential accommodation and open space are maximised.	-	Y	Y
	4N-3	Roof design incorporates sustainability features.	-	Y	Y
4O Landscape design	4O-1	Landscape design is viable and sustainable.	-	Y	Y
	4O-2	Landscape design contributes to the streetscape and amenity.	-	Y	Y
4P Planting on structures	4P-1	Appropriate soil profiles are provided.	-	Y	Y
	4P-2	Plant growth is optimised with appropriate selection and maintenance.	-	Y	Y
	4P-3	Planting on structures contributes to the quality and amenity of communal and public open spaces.	-	Y	Y
4Q Universal design	4Q-1	Universal design features are included in apartment design to promote flexible housing for all community members.	-	Y	Y
	4Q-2	A variety of apartments with adaptable designs are provided.	-	Y	Y
	4Q-3	Apartment layouts are flexible and accommodate a range of lifestyle needs.	-	Y	Y
4R Adaptive	4R-1	New additions to existing buildings are	-	-	-

ADG reference	Subclause	Design Criteria	DC	DG	O
reuse		contemporary and complementary and enhance an area's identity and sense of place.			
	4R-2	Adapted buildings provide residential amenity while not precluding future adaptive reuse.	-	-	-
4S Mixed Use	4S-1	Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.	-	Y	Y
	4S-2	Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.	-	Y	Y
4T Awnings and signage	4T-1	Awnings are well located and complement and integrate with the building design.	-	Y	Y
	4T-2	Signage responds to the context and desired street character.	-	-	-
Performance					
4U Energy efficiency	4U-1	Development incorporates passive environmental design.	-	Y	Y
	4U-2	Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.	-	Y	Y
	4U-3	Adequate natural ventilation minimises the need for mechanical cooling.	-	Y	Y
4V Water management and conservation	4V-1	Potable water use is minimised.	-	Y	Y
	4V-2	Urban stormwater is treated on site before being discharged to receiving waters.	-	Y	Y
	4U-3	Flood management systems are integrated into site design.	-	Y	Y
4W Waste management	4W-1	Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	-	Y	Y
	4W-2	Domestic waste is minimised by providing safe and convenient source separation and recycling.	-	Y	Y
4X Building maintenance	4X-1	Building design detail provides protection from weathering.	-	Y	Y
	4X-2	Systems and access enable ease of maintenance.	-	Y	Y
	4X-3	Material selection reduces ongoing maintenance costs.	-	Y	Y

Detailed Assessment

- 3D Communal and public open space**

The proposed development is inconsistent with the requirement for an area of communal open space equal to 25% of the site area, with no communal open space proposed. Despite non-compliance, the proposal is supportable in this regard, noting the proximity of the site to areas of public open space and that all individual areas of private open space are generously proportioned and in excess of the minimum requirements of the ADG.

- 3E Deep soil zones**

With no deep soil zones proposed, the development is inconsistent with the requirement for a minimum of 7% of the site area to comprise deep soil zones. However, as acknowledged by the ADG, this requirement may not be possible on some sites, including sites such as this within a local centre with a non-residential ground floor use, where the DCP does not require any landscaped areas. Nonetheless, the proposal comprises appropriate landscaping, including plantings on structures, and an appropriate stormwater solution can be achieved.

- **4A Solar and daylight access**

The development is inconsistent with Objective 4A-1 of the ADG which requires living rooms and areas of private open space of at least 70% of apartments in a building to receive a minimum of 2 hours of direct sunlight between 9am and 3pm in midwinter, with only 40 apartments (51%) receiving compliant levels of solar access. Furthermore, the proposal is also inconsistent with the requirement that no more than 15% of apartments in a building are to receive no direct sunlight during this time.

However, strict compliance with this control is considered to be unfeasible in consideration of the context of the south-facing site, which is bordered by 6-7 storey buildings with nil setbacks to the northern and eastern side boundaries. The proposed development has maximised indirect light to all of the apartments, with appropriate ceiling heights and floor-to-ceiling glazing along the full width of the living space of each of the generously proportioned apartments. As such, the proposed apartments should still feel light and airy, despite the lack of direct sunlight during mid-winter, and the non-compliance is not considered to warrant the refusal of the proposed development.

- **4B Natural ventilation**

With 37 of the 78 (47%) apartments proposed designed to achieve cross-ventilation, the proposed development falls shy of the 60% minimum requirement prescribed by Objective 4B-1 of the ADG. However, in order to maximise ventilation to units in the south-west corner of the site (where most of the single aspect apartments are located), the proposal has been designed with an alternate ventilation system, that promotes airflow through these apartments and into the common circulation core that is open to Pittwater Road. Whilst not ideal, the alternate ventilation system at least provides the opportunity for 20 additional apartments to choose to achieve a greater level of ventilation to these single aspect apartments.

Apartments 105A, 205A, and 305A are cross-through apartments that exceed the 18m maximum glass line to glass line depth prescribed by Objective 4B-1 of the ADG, with a maximum depth of 18.5m. However, the 500mm non-compliance is limited in area, and quickly recedes along the length of a diagonal glazed doorway. The marginally non-compliant depth of these apartments is not considered to detrimentally impact upon the amenity of these units, and is considered supportable on merit.

The proposed configuration of units is considered to be the best-fit design solution for the site, appropriately responsive to the orientation and the siting/design of adjoining development. As such, the proposed non-compliance with this design criteria is not considered to warrant the refusal of the proposed development.

- **4D Apartment size and layout**

Nine of the proposed units (106A, 107A, 206A, 207A, 306A, 307A, 506A, 606A and 705A) feature open plan living rooms with a depth that marginally exceeds 8m, resulting in

inconsistency with the maximum depth prescribed by Objective 4D-2 of the ADG. The depth of these spaces is directly attributable to the inclusion laundries at the end of each respective kitchen, and the minor degree of non-compliance is not considered to reduce or adversely impact the amenity of the proposed unit.

- **4F Common Circulation & Spaces**

Levels 1, 2 and 3 have nine apartments accessible from the circulation core associated with Lift A, inconsistent with the 8 apartment limit prescribed by Objective 4F-1 of the ADG. The length of these circulation cores are not excessive, the circulation spaces are appropriately dimensioned and each level features feature openings to the Pittwater Road facade and voids to upper/lower levels. The demand upon these three circulation cores is not considered to be excessive, and does not warrant the refusal of the proposal in this regard.

- **4Q Universal Design**

Whilst not immediately evident on the plans, an Access Report has been submitted to confirm that 21 of the 78 (27%) apartments proposed have been designed to achieve consistency with the Silver Level requirements of the Livable Housing Guidelines, in excess of the 20% minimum encouraged by Objective 4Q-1 of the ADG.

The consent authority can be satisfied that the development has been considered in accordance with the requirements of clause 28 of SEPP 65, and that the proposal is generally consistent with the design principles of SEPP 65 and the objectives of the ADG.

SEPP (Infrastructure) 2007

The proposal was referred to Ausgrid in accordance with clause 45 of this policy. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Clause 101 of SEPP Infrastructure prescribes that the consent authority must not grant consent to development on land with a frontage to a classified road (Pittwater Road) unless it is satisfied of the matters considered below:

- *where practicable and safe, vehicular access to the land is provided by a road other than the classified road,*

Comment: Vehicular access to the site is gained from Oaks Avenue. The location and design of the proposed driveway is supported by Council's Development and Traffic Engineers.

- *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

Comment: The proposed development will not result in any adverse impact upon the safety, efficiency or operation of Pittwater Road.

- the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road

Comment: Subject to conditions of consent requiring high-performance glazing to relevant windows, the proposal is considered to be designed to minimise impacts upon the internal amenity of proposed residences fronting Pittwater Road.

As such, the consent authority can be satisfied that the proposal can be approved in accordance with clause 101 of this policy.

As the proposal meets the definition of 'Traffic Generating Development', the application was also referred to the RMS in accordance with clause 104 of this policy. RMS provided a response confirming that they have no objection to the proposal, subject to a series of conditions. The conditions provided by RMS have been included in the draft determination, attached.

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:	24m	27m	3m (12.5%)	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes

Detailed Assessment

Zone B4 Mixed Use

The proposed development is consistent with the objectives of the B4 Mixed Use zone, as follows:

- To provide a mixture of compatible land uses.

Comment: The proposed shop top housing development comprises a mix of retail and residential spaces, which are compatible with the surrounding mixed use zone.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

Comment: The main bus stops servicing Dee Why are located immediately to the north of the site, on both sides of Pittwater Road, connected to the site by an accessible path of travel. The proposed shop top housing development is located at the heart of the town centre, surrounded by a variety of retail and business premises which promote street activation and encourage walking within the locality. Council is also undertaking extensive works throughout the town centre to upgrade footpaths and public spaces, to also encourage walking and cycling.

- *To reinforce the role of Dee Why as the major centre in the sub-region by the treatment of public spaces, the scale and intensity of development, the focus of civic activity and the arrangement of land uses.*

Comment: The scale of the development is consistent with that anticipated within the Dee Why Town Centre. Furthermore, the proposal is a high-quality architectural design solution, resulting in a considerable improvement in the public presentation of the subject site.

- *To promote building design that creates active building fronts, contributes to the life of streets and public spaces and creates environments that are appropriate to human scale as well as being comfortable, interesting and safe.*

Comment: The ground floor level comprises a series of fine-grain retail spaces which mimic the scale of surrounding retail spaces throughout the town centre, and actively enhance the streetscape.

- *To promote a land use pattern that is characterised by shops, restaurants and business premises on the ground floor and housing and offices on the upper floors of buildings.*

Comment: The proposed shop top housing development provides retail premises on the ground floor, with residential dwellings above.

- *To encourage site amalgamations to facilitate new development and to facilitate the provision of car parking below ground.*

Comment: The proposed development comprises four separate allotments, being the last of the undeveloped sites at the corner of Pittwater Road and Oaks Avenue. A previous application was approved in 2018 for the development of three of these sites, excluding the corner most site. The proposal is a considerable improvement on this approved situation, allowing the orderly development the entire corner site, and limiting access points to basement car parks along Oaks Avenue.

4.3 Height of buildings

and clause 4.6 Exceptions to development standards

With a maximum height of 27m, the proposed development is non-compliant with the 24m maximum building height prescribed by clause 4.3 of WLEP 2011. The maximum building height is a development

standard, as defined by the EP&A Act, and as such, the provisions of clause 4.6 of WLEP 2011 can be applied.

Pursuant to clause 4.6(2) of WLEP 2011, consent may be granted for development even though the development contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the maximum building height is not expressly excluded and thus the clause can be applied in this instance.

Has the Applicant's submission addressed the relevant criteria?

Pursuant to clause 4.6(4) of WLEP 2011, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of WLEP 2011. The application was supported by a detailed submission (**attached**) addressing the provisions of clause 4.6 of WLEP 2011. The submission is considered with regard to the criteria of clause 4.6(3) of WLEP 2011, 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. In this regard, the applicant's submission has satisfactorily demonstrated that the non-compliant element of the proposal will achieve consistency with the objectives of the building height development standard, and as such, strict compliance with the 24m height limit is considered to be unreasonable and unnecessary in the circumstances of this application.

- 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*, "environmental planning grounds" were found to be grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects prescribed by clause 1.3 of that Act.

The applicant's submission provides that the proposed height of the development is consistent with the amended maximum building height prescribed by Draft WLEP 2011, being an orderly development outcome that is representative of the existing height of recently approved surrounding development and the desired height of development anticipated throughout the town centre. Furthermore, the proposal is a high quality architectural design solution, and the height breach does not attribute to any unreasonable impacts upon adjoining properties or the surrounding environment.

It is agreed that the proposed eight storey shop top housing development is consistent with the height and scale of a number of recent developments throughout the Dee Why Town Centre, and that there are a number of other examples where whereby the consent authority has endorsed variations to the existing 24m building height limit to permit eight and nine storey shop top housing developments. Furthermore, it is acknowledged that the majority of these approvals were prior to Council's exhibition and adoption of the draft 27m height limit.

With this in mind, it is considered that the applicant's written request to vary the maximum

building height development standard satisfactorily demonstrates that there are sufficient environmental planning grounds to justify contravention of the 24m maximum building height development standard.

Therefore, the consent authority can be satisfied that the applicant's written request has satisfactorily addressed the matters required by clause 4.6(3) of WLEP 2011.

Is the proposal in the public interest?

Under the provisions of clause 4.6(4)(a) of WLEP 2011, consent must not be granted to a proposal 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 proposal is considered to be consistent with the objectives of the building height development standard, as follows:

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

Comment: As discussed in the matter of *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*, compatibility does not require sameness, but rather the capability of existing in harmony together. The proposed development has been refined to ensure that the height and scale of the resultant development does not result in any unreasonable impacts upon the amenity of adjoining development, and the height and scale of the development is consistent with, and will visually align with, nearby development.

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

Comment: The proposed development is well articulated, comprising two distinct built form elements and a mix of surface treatments in order to minimise the visual impact of the proposal. Furthermore, the height of the proposed development has not been found to result in any adverse impacts upon adjoining properties with regard to view loss, visual privacy or overshadowing.

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

Comment: The proposed development is not considered to attribute to any adverse impacts upon the scenic quality of the area. The height of the proposal is consistent with the maximum height anticipated by draft WLEP 2011, and the proposal will ultimately sit within a precinct containing much taller development (up to 12 storeys to the east and 17 storeys to the north).

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

Comment: The proportions of the podium align with the existing podiums of adjoining buildings to the north along Pittwater Road, and the height and scale of the development is consistent with the height and scale of other nearby developments, including the nine storey shop top housing development to the north-west (701 Pittwater Road), the nine storey upper podium of the Meriton development to the north (884-896 Pittwater Road), and a number of more recent eight storey developments along Pittwater Road to the south.

Furthermore, as discussed in further detail separately above, the proposal is considered to be consistent with the relevant objectives of the B4 Mixed Use zone.

Therefore, the consent authority can be satisfied that the proposal is in the public interest.

Has concurrence been obtained?

Pursuant to clause 4.6(4)(b) of WLEP 2011, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Planning Circular PS 18-003 (dated 21 February 2018) issued by the NSW Department of Planning and Environment, the Secretary's concurrence may be assumed in this instance as the application is to be determined by the NBLPP.

Conclusion

Overall, the consent authority can be satisfied of the matters prescribed by clause 4.6 of WLEP 2011, and the proposal can be supported, despite contravention of the building height development standard.

6.2 Earthworks

In accordance with clause 6.2 of WLEP 2011, 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.

6.3 Flood planning

In accordance with clause 6.3 of WLEP 2011, development consent must not be granted to the proposed development unless the consent authority is satisfied that the development:

- *is compatible with the flood hazard of the land, and*
- *is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- *incorporates appropriate measures to manage risk to life from flood, and*

- *is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

Council's Flood Engineer has reviewed the proposed development, including the Flood Risk Management Report provided to support the application, and has confirmed that the proposal:

- is consistent with the provisions of clause E11 of WDCP 2011, and
- is consistent with the Objectives of this control, and
- is compatible with the flood hazard of the land, and
- is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- incorporates appropriate measures to manage risk to life from flood, and
- is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
- is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
G1 Build to Lines	5m from kerb - first 4 storeys	5m	-	Yes
	9m from kerb - above 4 storeys	5m - 12m	44%	No
G1 Ceiling Heights	3.6m - ground floor	3.8m (min)	-	Yes
	2.7m - residential floors	2.7m	-	Yes
G1 Maximum Area of Floor Plate	30% of roof	21%	-	Yes
	50% of top floor	63%	26%	No
	70% of second top floor	63%	-	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
C2 Traffic, Access and Safety	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	Yes
D2 Private Open Space	No	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	No	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes
Area 7 Pittwater Road	No	Yes

Detailed Assessment

C3 Parking Facilities

As discussed by Council's Traffic Engineer, the proposal is technically non-compliant with the minimum off-street parking requirements, with a shortfall of 7 spaces. However, this non-compliance is supported in such circumstances where the proposal is located immediately adjacent to the main bus stops servicing Dee Why and noting the incorporation of 3 car share spaces within the Level 1 Basement.

It is also noted that draft DCP controls have been adopted by Council that reduce the parking rate associated with shop top housing developments within the Dee Why Town Centre, as follows:

- 0.6 spaces per studio and 1 bedroom apartment
- 0.9 spaces per 2 bedroom apartment
- 1.4 spaces per 3 bedroom apartment

- 1 visitor space per 5 units
- 1 car share space per 25 units
- 4.2 retail spaces per 100m² of GFA

Based on these comparably reduced parking requirements, the proposal generates the need for only 108 off-street parking spaces, such that the proposal will result in an excess/over-supply of 31 spaces.

Overall, the proposed development is considered to provide adequate off-street car parking for the site, and noting that the location and design of the entrance to the car park is also acceptable, the proposal is considered to achieve consistency with the objectives of this development control.

C9 Waste Management

The application was not supported by a Waste Management Plan produced in accordance with Council's Waste Management Guidelines. Should the application be approved, a condition of consent can be included to require the production of a Waste Management Plan prior to the issuance of a construction certificate.

D2 Private Open Space

Clause D2 of WDCP 2011 requires a minimum area of 10m² of private open space, with minimum dimensions of 2.5m, for each dwelling in the proposed development. However, these requirements are inconsistent with the minimum requirements of the Apartment Design Guide, and, in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the Apartment Design Guide in relation to private open space and balconies have no effect.

D6 Access to Sunlight

Clause D6 of WDCP 2011 requires a minimum area of 3 hours of direct sunlight to 50% of each area of private open space between 9am and 3pm in midwinter. However, these requirements are inconsistent with the minimum requirements of the Apartment Design Guide, and, in accordance with clause 6A of SEPP 65, development controls that conflict with the provisions of the Apartment Design Guide in relation to solar and daylight access have no effect.

However, the provisions of the ADG do not derogate from the provisions of this clause that require the maintenance of direct sunlight to areas of private space of adjoining dwellings. In this regard, the proposed development will result in additional overshadowing of areas of private open space of the adjoining development to the south, specifically the side balconies associated with Apartments 1, 11 and 21 at 10 Oaks Avenue (located in the south-west corner of Levels 1, 2 and 3). These balconies are currently overshadowed for the majority of the day in midwinter, and do not comply with the current 3 hour minimum requirement prescribed by this control. The proposal will result in new/additional overshadowing of these balconies from 2pm to 3pm in midwinter.

The overshadowing does not arise as a result of a built form non-compliance, and the impact is lessened when compared to that previously approved pursuant to DA2017/1063. The south-facing balconies in question are considered to be extremely vulnerable to additional overshadowing, and with that in mind, the impact is not considered to be unreasonable.

Overall, the proposal is an appropriate design solution that responds well to the context of the site, and reasonable access to sunlight is maintained to adjoining properties. As such, the proposal is considered to be consistent with the objectives of this control.

D8 Privacy

The proposed development has been designed to maximise visual privacy of adjoining properties and future occupants. Whilst the garden courtyards in the north-eastern corner of Level 1 will be overlooked by dwellings above, each of the respective units have alternate areas of outdoor space, with dimensions in excess of the minimum requirements of the ADG. As such, the proposal is considered to be consistent with the provisions of this control which aim to ensure that 50% of the principal private open space of a lower apartment is protected from overlooking from apartments above.

D18 Accessibility and Adaptability

Clause D18 of WDCP 2011 requires 10% (rounded up to the next whole number) of dwellings within the proposed development to be capable of adaptation in accordance with the Class C requirements of AS4299. The proposed development is inconsistent with this control, with only 7 of the 78 (8.9%) of apartments proposed meeting this requirement.

However, upon review of the floor plans, it is apparent that the layouts of other units comply with these requirements or are capable of achieving compliance with very little amendment to the current design. Furthermore, an additional adaptable parking space can be accommodated within the basement (specifically along the northern wall of Basement Level 3) without reducing the amount of car parking spaces. As such, it is considered that the non-compliance can be rectified by virtue of a condition of consent, requiring an additional adaptable unit (and associated parking space) to be incorporated into the construction certificate detail.

Area 7 Pittwater Road

Build-to Lines

In accordance with this development control, the first four floors of the building are to be set back 5m from the kerb, with any additional storeys set back back 9m from the kerb. Whilst the first four floors are consistent with this control, the corner tower element is inconsistent with this control, with the maintenance of the 5m setback extended up to the top (eighth) floor.

However, the proposed design is consistent with the draft DCP amendments that have been publicly exhibited and adopted by Council, which prescribe that an exception to the upper level setback can be provided on corner sites where they are given visual prominence through a change in articulation, materials or colour or roof expression. In this regard, the non-compliant corner tower element is visually separated from the remainder of the development by virtue of the change in setbacks, which increases to 9m along the western facade and 12.5m along the Oaks Avenue facade, consistent with the slightly increased build-to lines along Oaks Avenue prescribed by the draft DCP.

Furthermore, the setbacks and scale of the proposal are compatible with other recent development constructed on nearby corner sites, including the Meriton development to the north (884-896 Pittwater Road) and the Carlyle development to the north-west (701 Pittwater Road).

Maximum Area of Floorplates

With an area of approximately 988m² or 63% of the ground floor floorplate, the proposed top (eighth) floor is inconsistent with this development control, which limits the floorplate of the topmost storey to 50% of the ground floor floorplate. Rather, the area of the top floor replicates that of the three levels below to achieve a consistent built form at the upper portion of the development. It is noted that this numeric requirement is not carried across into the draft DCP, and is no longer reflective of the design intent for Dee Why, as exhibited to the community and as adopted by Council.

Despite technical non-compliance with the current provisions of this clause, the proposed development is consistent with the draft DCP amendments and the design and form of the development has been supported by Council's Urban Designer. The variations to these aspects of the current controls are also supportable on merit, as the design of the proposal is consistent with the objectives of the development controls, as follows:

- *Development will reinforce the Dee Why Town Centre as the focus of regional activity and will be reflected in the treatment of public spaces, the arrangement of land uses and the scale and intensity of development.*

Comment: The proposed development provides ground floor retail to activate the street frontage, with seven floors of residential development above. Overall, the arrangement of land uses and the scale and intensity of the proposed development is consistent with that anticipated within the Dee Why Town Centre, particularly as reflected in the exhibited and adopted draft DCP.

- *To encourage good design and innovative architecture.*

Comment: The proposed development is considered to be an appropriate design solution for the context of the site, supported by Council's Urban Design Team.

- *To ensure shops and dwellings enjoy good access to natural light.*

Comment: The ground floor retail spaces have been designed with generous ceiling heights and maximum glazing to the streets, to maximise natural light into each space. Furthermore, the depth of the spaces is to be limited by virtue of fixed storage areas, to avoid long, skinny retail areas. The dwellings have also been designed to maximise access to natural light. Whilst the proposal does not strictly comply with the solar access requirements of the ADG, the proposal is considered to be an appropriate response in consideration of the south-west orientation of the site and in light of overshadowing arising from adjoining development.

- *To ensure that buildings have an active street frontage.*

Comment: The vast majority of the two street frontages are comprised of glazed shopfronts and entrance points to the development, ensuring that the activation of the street frontage is maximised.

- *To create an environment that is human in scale as well as comfortable, interesting and safe.*

Comment: The proportions of the development align with existing built form along the street frontages. Furthermore, the retail spaces have a fine-grain presentation to both Pittwater Road and Oaks Avenue, consistent with the streetscape character of the Dee Why Town Centre.

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.

Dee Why Town Centre Contributions Plan 2019

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, 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

Despite areas of technical non-compliance with regard to the current maximum building height, and a number of DCP and ADG controls/criteria, the proposed development is a high quality architectural response that is appropriate for the context of the site.

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

RECOMMENDATION

Council is satisfied that:

1. The applicant's written request under clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of clause 4.3 Height of Buildings development standard has adequately addressed and demonstrated that:
 - a. compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
 - 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 standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/0505 for Demolition works and the construction of a shop top housing development with associated basement car parking, landscaping and infrastructure on land at Lot 2 DP 9900, 876 Pittwater Road, DEE WHY, Lot 3 DP 9900, 876 Pittwater Road, DEE WHY, Lot 4 DP 9900, 876 Pittwater Road, DEE WHY, Lot 1 DP 9900, 874 Pittwater Road, DEE WHY, 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
Basement Level 4 A100, issue G	20 November 2019	Crawford Architects
Basement Level 3 A101, issue F	20 November 2019	Crawford Architects
Basement Level 2 A102, issue G	20 November 2019	Crawford Architects
Basement Level 1 A103, issue J	20 November 2019	Crawford Architects
Ground Floor Plan A104, issue P	20 November 2019	Crawford Architects
Level 1 Floor Plan A105, issue J	20 November 2019	Crawford Architects
Level 2 Floor Plan A106, issue G	20 November 2019	Crawford Architects
Level 3 Floor Plan A107, issue G	20 November 2019	Crawford Architects
Level 4 Floor Plan A108, issue G	20 November 2019	Crawford Architects
Level 5 Floor Plan A109, issue G	20 November 2019	Crawford Architects
Level 6 Floor Plan A110, issue G	20 November 2019	Crawford Architects

Level 7 Floor Plan A111, issue J	20 November 2019	Crawford Architects
Level 8 Floor Plan A112, issue K	20 November 2019	Crawford Architects
South Elevation A200, issue J	20 November 2019	Crawford Architects
West Elevation A201, issue J	20 November 2019	Crawford Architects
North Elevation A202, issue G	20 November 2019	Crawford Architects
East Elevation A203, issue G	20 November 2019	Crawford Architects
Section AA A300, issue G	20 November 2019	Crawford Architects
Section BB A301, issue G	20 November 2019	Crawford Architects
Section CC A302, issue G	20 November 2019	Crawford Architects
Section DD A303, issue F	20 November 2019	Crawford Architects
Section EE A304, issue F	20 November 2019	Crawford Architects
Section CC-1 A305, issue D	20 November 2019	Crawford Architects
Ramp Section A310, issue C	28 August 2019	Crawford Architects

Concept Drainage Plans		
Drawing No.	Dated	Prepared By
Stormwater Notes & Drawing Schedule SW10, revision P3	6 November 2018	Demlakian Engineering
Basement Level 4 Drainage Concept Plan SW11, revision P4	18 March 2019	Demlakian Engineering
Ground Floor Drainage Concept Plan SW12, revision P5	20 August 2019	Demlakian Engineering
Drainage Details Sheet 1 SW14, revision P4	20 August 2019	Demlakian Engineering
Drainage Details Sheet 2 SW15, revision P4	20 August 2019	Demlakian Engineering
Sediment Control Plan SW16, revision P4	19 March 2019	Demlakian Engineering
Sediment & Erosion Control Details SW17, revision P3	6 November 2018	Demlakian Engineering

Landscape Plans		
Drawing No.	Dated	Prepared By
Cover Sheet 000, revision D	19 March 2019	Site Image Landscape Architects
Landscape Plan Level 1 101, issue E	11 November 2019	Site Image Landscape Architects
Landscape Plan Level 4 102, issue E	13 November 2019	Site Image Landscape Architects
Landscape Details 501, issue C	17 October 2018	Site Image Landscape Architects
Landscape Details 502, issue C	17 October	Site Image Landscape

	2018	Architects
Landscape Specification 503, issue C	17 October 2018	Site Image Landscape Architects

b) Approved Reports (and the recommendations contained within):

Reports / Documentation – All recommendations and requirements contained within:		
Report No.	Dated	Prepared By
Preliminary Geotechnical Investigation, reference 4495-1-R1-Rev2	13 June 2019	Asset Geotechnical Engineering Pty Ltd
Flood Risk Management Report, Version D	19 March 2019	Demlakian Engineering
Access Report	15 March 2019	Accessible Building Solutions
BASIX Certificate 861253_04	25 April 2019	Damian O'Toole Town Planning P/L

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

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 the GTA issued by WaterNSW

The development must be carried out in compliance with the GTA issued by WaterNSW in their correspondence dated 27 September 2019, as follows:

- a. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application.
- b. An authorisation under the relevant water legislation, such as a Water Access Licence (WAL), shall be obtained for the take of groundwater as part of the activity. For avoidance of doubt, these terms do not represent any authorisation for the take of groundwater, nor do they constitute the grant, or the indication of an intention to grant, any required WAL.
- c. An authorisation under the relevant water legislation, such as an Approval, is also required for the works involved in extracting the groundwater. For avoidance of doubt, these terms do not represent any authorisation for the construction or installation of such works.
- d. The relevant works must not be carried out, installed or operated until a specialist hydrogeological assessment has been completed by the Department of Planning Industry and Environment, which concludes that adequate arrangements are in force to ensure that no more than minimal harm will be done to any water source, or its dependent ecosystems, as a consequence of the construction or use of the proposed water management work.
- e. The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be impacted by any water table fully watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for unforeseen high water table elevations to prevent potential future inundation.

- f. Sufficient permanent drainage shall be provided beneath and around the outside of the watertight structure to ensure that natural groundwater flow is not impeded and: a. any groundwater mounding at the edge of the structure shall be at a level not greater than 10 % above the level to which the water table might naturally rise in the location immediately prior to the construction of the structure; and b. any elevated water table is more than 1.0 m below the natural ground surface existent at the location immediately prior to the construction of the structure; and c. where the habitable part of the structure (not being footings or foundations) is founded in bedrock or impermeable natural soil then the requirement to maintain groundwater flows beneath the structure is not applicable.
- g. Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves cause pollution of the groundwater.
- h. The Applicant is bound by the above terms and any other terms and conditions of the subsequent authorisation(s) required for the extraction of groundwater and the associated works under the relevant water legislation.
- i. Measurement and monitoring arrangements to the satisfaction of WaterNSW are to be implemented. Weekly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a completion report provided after dewatering has ceased. Records of groundwater levels are to be kept and a summary showing daily or weekly levels in all monitoring bores provided in the completion report.
- j. Following cessation of the dewatering operations and prior to the surrender of any associated authorisation, the applicant shall submit to WaterNSW the completion report which shall include:
 - i. Detail of the volume of water taken, the precise periods and location of water taken, the details of water level monitoring in all of the relevant bores; and
 - ii. The location and construction of groundwater extraction works that are decommissioned; and
 - iii. A water table map depicting the aquifers settled groundwater condition and a comparison to the baseline conditions; and
 - iv. A detailed interpreted hydrogeological report identifying all actual resource and third party impacts, including an assessment of altered groundwater flows and an assessment of any subsidence or excessive settlement induced in nearby buildings and property and infrastructure.

(NOTE: For a copy of the above referenced document, 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 WaterNSW.

3. **Compliance with the requirements of RMS**

The development must be carried out in compliance with the requirements of Roads and Maritime Services (RMS) as outlined in their correspondence dated 1 July 2019, as follows:

- a. There are no objections to the development proposal on property grounds provided all buildings and structures (other than pedestrian footpath awnings), together with any improvements integral to the future use of the site are wholly within the freehold property (unlimited in height or depth), along the Pittwater Road boundary.
- b. Detailed design plans and hydraulic calculations of any changes to the Roads and Maritime's stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works. Documents should be submitted to

Development.Sydney@rms.nsw.gov.au

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued.

- c. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime.
Documents should be submitted to:
Development.Sydney@rms.nsw.gov.au
If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.
- d. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for approval prior to the issue of a Construction Certificate.
- e. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Pittwater Road during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>
- f. In accordance with AS 2890.1- 2004 (Parking Facilities, Part 1: Off-street car parking), the driveway shall be a minimum of 5.5 metres in width for a minimum distance of 6 metres from the property boundary.
- g. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004 and AS2890.6-2009. Parking Restrictions may be required to maintain the required sight distances at the driveway.
- h. Sight distances from the proposed vehicular crossings to vehicles on Oaks Avenue are to be in accordance with the Austroads Guide to Road Design: Part 4A: Unsignalised and Signalised Intersections (Section 3 – Sight Distance) and AS 2890. Vegetation and proposed landscaping/fencing must not hinder sight lines to and from the vehicular crossings to motorists, pedestrians and cyclists.
- i. Parking for building maintenance and removalists is to be provided on site.
- j. The swept path of the longest vehicle (including garbage trucks, building maintenance vehicles and removalists) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.
- k. All vehicles are to enter and leave the site in a forward direction.
- l. All vehicles are to be wholly contained on site before being required to stop.
- m. The proposed development will generate additional pedestrian movements in the area. Pedestrian safety is to be considered in the vicinity.
- n. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Pittwater Road.

(NOTE: For a copy of the above referenced document, 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 RMS.

4. **Approval for Retail Use**

This consent authorises the use of the ground floor retail spaces for retail use.

Reason: To enable the first use of ground floor spaces.

5. **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.

6. 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.

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

FEES / CHARGES / CONTRIBUTIONS

7. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

8. **Construction, Excavation and Associated Works Bond (Road)**

A Bond of \$40,000 as security against any damage to Council's footpath paving, kerb and gutter for the frontage of the site.

Reason: Protection of Council's infrastructure.

9. **Development Contributions**

A monetary contribution of \$1,024,251.78 (subject to (a) below) is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to Section 7.11 of the Environmental Planning and Assessment Act 1979 and the Dee Why Town Centre Contributions Plan 2019.

The contribution is calculated as follows:

Proposed Residential Development:

45 x 1-bed dwellings x \$9,487.77 = \$426,949.65
31 x 2-bed dwellings x \$13,915.40 = \$431,377.40
2 x 3-bed dwellings x \$20,000 = \$40,000
Total = \$898,327.05

Proposed Non-Residential Development:

\$16,603.60/100m²
\$166.04/m²
758.4m² x \$166.04/m² = \$125,924.73

Total monetary contribution = \$1,024,251.78

- a. Written evidence (receipt/s) from Council for the payment of the monetary contribution is to be provided to the Certifying Authority prior to issue of the construction certificate or subdivision certificate (whichever occurs first) or prior to the issue of the subdivision certificate where no construction certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter in which the development consent is issued, the amount unpaid (whether it be the full monetary contribution amount or a part thereof) will increase on a quarterly basis in accordance with the applicable Consumer Price Index.
- b. The Applicant may negotiate with Council for the direct provision of other facilities and services, and/or the dedication of land in lieu of the monetary contribution above (or any portion of that monetary contribution) through a Planning Agreement in accordance with the Dee Why Town Centre Contributions Plan 2019. A Planning Agreement between the Applicant and Council must be finalised, formally signed and in place prior to the payment of the monetary contribution.

The Dee Why Town Centre Contributions Plan may be viewed at 725 Pittwater Road, Dee Why or on Council's website.

Reason: To provide for contributions in accordance with the Contribution Plan that enables the provision of local infrastructure and services commensurate with the increased demand resulting from development in the Dee Why Town Centre.

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

10. **On Slab Landscape Planting and Associated Works**
A suitably qualified landscaping professional is provide:

- a. Confirmation of the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.
- b. Landscape treatment details indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

Details demonstrating compliance with these requirements are to be provided to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

11. **Stormwater Disposal**

Stormwater shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's (Warringah) Water Management Policy PL850.

A certificate is to be provided by a qualified experienced practicing Civil Engineer, with Corporate membership of the Institute of Engineers Australia (M.I.E.) or who is eligible to become a Corporate member and has appropriate experience and competence in the related field that the existing approved system can accommodate the additional flows or provide drainage plans demonstrating compliance with Council's requirements.

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

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

12. **BCA Report and Fire Audit**

A 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' from an appropriately qualified Accredited Certifier* is to be submitted addressing the following:

- a. The report is to detail the extent to which the proposed building does or does not comply with the deemed-to satisfy provisions of Sections C, D, E and F of the Building Code of Australia. The report is to also provide recommendations with respect to the proposed building required to ensure that the specified measures and facilities contained in the proposed building, including any modifications to be made by the proposed development are appropriate for its intended use. In this regard the report should include any items which may form part of a Performance (Alternative) Solution.

*To be regarded as an "appropriately qualified accredited certifier" the certifier must hold the relevant level of accreditation that would enable the certifier to issue a construction certificate for the subject building.

The 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' is to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure adequate provision is made for health, amenity, access and fire safety for building occupant health and safety.

13. **Pump-Out System Design for Stormwater Disposal**

The design of the pump-out system for stormwater disposal will be permitted for drainage of hard surfaces areas such as driveways and basement pavement areas only, and must be

designed in accordance with AS/NZS 3500. Engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer are to be submitted to the Principal Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site.

14. **Tanking of Basement Level**

The basement area is to be permanently tanked. Details of the tanking are to be prepared by a suitably qualified Engineer. Where temporary dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the relevant authority. The bore license must be obtained prior to commencement of dewatering works. All requirements of the relevant authority are to be complied with and a copy of the approval must be submitted to the Principal Certifying Authority prior to the issue of the construction certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State government requirements.

15. **On-Site Stormwater Detention**

An on-site stormwater detention system must be designed and constructed in accordance with Northern Beaches Council's (Warringah) Water Management Policy PL850, and generally in accordance with the Approved Concept Drainage Plans referenced in Condition 1 of this consent.

Detailed drainage plans are to be prepared by a qualified experienced practicing Civil Engineer, with membership of the Institute of Engineers Australia (M.I.E.) or RPENG.

The drainage plans must address the following:

- a. The detention tank outlet pipe is to be connected to a new stormwater inlet pit within Oaks Avenue located on the right side of the vehicle crossing.
- b. All utility services are to be shown on a long section relative the the outlet pipe within the footpath area.

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's requirements, are to be submitted to the Principal Certifying Authority for approval prior to the issue of the construction certificate.

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

16. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- a. Maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- b. Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

17. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings.

Council approval is required if temporary ground anchors are to be used within Council land. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the construction certificate

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

18. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

19. **Construction Traffic Management Plan**

A Construction Traffic Management Plan is to be submitted to Council for approval. The Construction Traffic Management Plan shall be prepared to RMS standard by an appropriately certified person. Council's written approval of the Construction Traffic Management Plan is to be submitted to the Principal Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

20. **Stormwater Drainage Application**

A Stormwater Drainage Application under Section 68 of the Local Government Act 1993 is to be submitted to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of a new stormwater inlet pit within Oaks avenue (located adjacent to the RHS of the vehicle crossing) which is to be generally in accordance with Council's specification for engineering works - AUS-SPEC #1.

The Stormwater Drainage Application form can be found on Council's website. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

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

to the issue of the construction certificate.

Reason: To ensure appropriate stormwater management.

21. **Flooding**

A suitably qualified flood engineer is to provide certification that the following requirements are satisfied:

a. Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006). Fittings and flooring below the relevant Flood Planning Level must be made of flood compatible material.

b. Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Probable Maximum Flood level, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

c. Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the respective Flood Planning Level.

d. Flood Emergency Response – E2

Appropriate access to a shelter in place refuge should be available from all areas of the new development.

e. Floor Levels – F1

New floor levels within the development shall be set at or above the relevant Flood Planning Level. Except areas that are within 5 meters of the street frontage in retail premises. In these areas, floor levels must be no lower than the adjacent footpath level and finishes below the Flood Planning Level must be constructed of flood compatible materials.

f. Car parking – G3

All access, ventilation and any other potential water entry points, including entry ramp crests to the basement car park shall be at or above the relevant Flood Planning Level.

Refer to the approved Ground Floor Plan referenced in Condition 1, as amended by Condition 12 of this consent for the relevant Flood Planning Level for specific parts of the development.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

22. **Pre-Commencement Stormwater Asset Dilapidation Report**

A Pre-Commencement Dilapidation Survey of Council's stormwater assets in Oaks Avenue is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available on Council's website.

The Pre-Commencement Dilapidation Report must be submitted to Council for approval, and a copy of Council's written approval is to be provided to the Principal Certifying Authority prior to the issue of the construction certificate.

Reason: Protection of Council's infrastructure.

23. **Pre-Commencement Dilapidation Report**

The applicant must prepare and submit a Pre-Commencement Dilapidation Report providing an accurate record of the existing condition of adjoining public and private properties and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties prior to the issuance of the construction certificate.

Evidence of the preparation and submission of the Pre-Commencement Dilapidation Report is to be submitted to the Certifying Authority prior to the issuance of the construction certificate.

Reason: Protection of public and private infrastructure during construction.

24. **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.

25. **External Materials and Finishes**

The external materials and finishes of the proposed development must be strictly in accordance with those nominated on the Approved Plans, referenced in Condition 1 of this Consent. Furthermore, the off form concrete columns and concrete awnings on the ground floor are to be finished in the same light grey finish as the precast panels on the external facade of the building, and the timber grain aluminium cladding is to be 'dark cedar'.

Demonstrated evidence is to be provided to the certifying authority prior to the issue of the construction certificate.

Reason: To ensure a high quality architectural finish.

26. **Boundary Survey**

A boundary survey, prepared by a Registered Surveyor, shall be provided as evidence that all buildings/works are within the subject site, with the setbacks shown on the approved plans referenced in Condition 1 of this consent. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issuance of the construction certificate.

Reason: To ensure the accurate location of buildings in relation to boundaries.

27. **Glazing to Western Windows and Doors**

All glazed windows and doors on the western facade, and those that open onto balconies on the western facade, are to comprise double glazing to reduce traffic noise and minimise heat load.

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

Reason: To ensure compliance with clause 101 of SEPP Infrastructure and to maximise energy efficiency.

28. **Adaptable Units**

The proposed development is to comprise eight (8) adaptable units designed in accordance with Class C requirements of AS4299.

Details demonstrating consistency with this requirement, inclusive of an amended Access Report prepared by a suitably qualified access consultant, are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To provide adaptable housing.

29. **Livable Housing**

Prior to the issuance of the construction certificate, a suitably qualified access consultant is to provide written certification to the certifying authority to confirm that all 21 "livable" apartments (and access thereto) have been designed to meet the Silver Level requirements of the Livable Housing Design Guidelines.

Reason: To provide livable housing options.

30. **Compliance with Approved Reports**

Written certification from suitably qualified persons is required to confirm that all the works/methods/procedures/control measures/recommendations approved by Council in the Approved Reports referenced in Condition 1 of this consent have been incorporated into 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 recommendations endorsed by Council.

31. **Excavation Management Plan**

Prior to the issue of the construction certificate, an Excavation Management Plan shall be prepared and submitted to the Council. The plan shall include (but not limited to):

- a. Vibrations limits (as measured at adjoining properties) to be complied with during excavations.
- b. Ongoing vibration monitoring during the course of excavation works.
- c. Identified plant and equipment to be utilised during excavations.
- d. Management responses to be undertaken in the event that vibration limits are exceeded at any time during the excavation.
- e. Evidence of compliance is to be documented and available on site at all time for Council to inspect. This evidence is then to be provided to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure the structural integrity of adjoining properties.

32. **Residential Apartment Development**

Prior to the issuance of the construction certificate, a statement by the qualified designer is to be submitted to the Certifying Authority to verify that the plans and specifications of the development achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles.

Reason: Legislative requirement.

33. **Facade Treatment**

All services, drainage, conduit, ducting and the like are to be encapsulated within the building and are not to be visible from the public domain.

Evidence is to be provided to the Certifying Authority prior to the issue of the construction certificate and incorporated into the construction certificate plans.

Reason: To ensure a high quality architectural finish and to minimise visual clutter.

34. **Access to Retail and Visitor Parking**

The installation of any security roller shutters or boom gates shall not restrict access to any designated visitor or retail car parking spaces. This requirement is to be reflected on the construction certificate plans and any supporting documentation for the endorsement of the Principal Certifying Authority prior to the release of the construction certificate.

Reason: To ensure spaces remain available for development parking demands.

35. **Waste and Recycling Requirements**

Details demonstrating compliance with Warringah Development Control Plan 2011 – Part C9 Waste Management, including the required Warringah Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of the construction certificate.

Note: If the proposal, when compliant with Warringah Development Control Plan – Part C9 Waste Management, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

36. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with Council's Waste Management Guidelines.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

37. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within

Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

38. **Tree Protection**

The following tree protection measures are applicable in relation to existing street trees to be retained within the adjacent road reserve:

- a. No tree roots greater than 30mm diameter are to be cut from protected trees unless authorised by a qualified Arborist present.
- b. All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist.
- c. All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- d. All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on/near the site.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

39. **Road Reserve**

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

Reason: Public safety.

40. **Notification of Inspections**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- a. Prior to backfilling of pipelines with the footpath area.
- b. Prior to pouring of stormwater gully pits.

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification

Reason: To ensure new Council infrastructure is constructed to Council's requirements.

41. **Vehicle Crossings**

The provision of one vehicle crossing 7 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ Normal and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in

plain concrete. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

42. **Maintenance of Sediment**

Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.

Reason: To ensure sediment controls are effective.

43. **Site Entry Access way**

An all-weather access way at the front of the property consisting of 50-75mm aggregate or similar material at a minimum thickness of 200mm and 15metres long laid over geotechnical fabric is to be constructed prior to commencement of works and maintenance over the works period.

Reason: To reduce sediment being taken off site.

44. **Cleaning of Vehicles Leaving Site**

Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.

Reason: To reduce sediment being taken off site.

45. **Protection of Adjoining Property - Excavation**

Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.

Reason: To ensure private and public safety.

46. **Dust Management**

Measures shall be undertaken to minimise any dust created as a result of excavation, vehicle movements and construction so as not to impact on neighbouring premises or create air pollution at any time.

Reason: To prevent air pollution from dust and comply with legislation.

47. **Protection of Street Trees**

No existing street trees can be removed without Council approval. Where such approval is granted, the trees must be replaced at full cost by the applicant with an advanced tree of a species nominated by Council's relevant officer.

Reason: To encourage the retention of street trees.

48. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP) required by this consent. All controls in the

CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council's Traffic Engineer for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to the accredited certifier or Council staff on request.

Reason: To ensure the developer/builder adheres to the Construction Traffic Management Plan.

49. **Waste/Recycling Requirements**

During demolition and/or construction the proposal/works shall be generally consistent with the Waste Management Plan required prior to the issue of the construction certificate.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided.

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

50. **Approved Landscape Plan**

Planting is to be implemented in accordance with the approved Landscape Plans referenced in Condition 1 of this consent and any associated condition.

Hard and soft (planting) landscape works are to be approved as completed by the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure the built form is softened and complemented by landscaping, reflecting the scale and form of development.

51. **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.

52. **Compliance with GTA Issued by WaterNSW**

Prior to the issue of the occupation certificate, written certification from WaterNSW is to be provided to the Certifying Authority to confirm satisfaction of the GTA imposed in their correspondence dated 27 September 2019, as prescribed in Condition 2 of this consent.

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

53. **Authorisation of Legal Documentation Required for Onsite Detention**

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

Reason: To create encumbrances on the land.

54. **Reinstatement of Kerb**

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: To facilitate the preservation of on-street parking spaces.

55. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

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

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

56. **Positive Covenant and Restriction as to User for On-Site Stormwater Detention**

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

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

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

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

57. **Creation of Positive Covenant and Restriction as a User**

A restriction on the use of land and a positive covenant shall be created on the title of the land in respect of the installation and maintenance of on-site stormwater disposal structures. The detailed information for a restriction on the use of land and a positive covenant is shown in Northern Beaches Council's (Warringah) Water Management Policy PL850. The terms of the positive covenant and a Restriction on the use of land are to be prepared to Council's standard requirements, at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

58. **Restoration of Damaged Public Infrastructure**

Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Private Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure public infrastructure is returned to the state it was in prior to development.

59. **External Materials and Finishes Certification**

Prior to the issue of the occupation certificate, the project architect is to provide written certification to the Certifying Authority to confirm that the external material and finishes of the as-built development are consistent with those nominated in the Approved Plans referenced in Condition 1 of this consent, and as clarified by the "External Materials and Finishes" condition of this consent.

Reason: To ensure a high quality finish of development.

60. **Post-Construction Dilapidation Survey**

The applicant must prepare and submit a Post Construction Dilapidation Report providing an accurate record of the condition of adjoining public and private infrastructure (including roads, gutter, footpaths, etc) and property following the completion of works on the site in comparison to the record contained within the Pre-Commencement Dilapidation Report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The applicant must bear the cost of all restoration works to infrastructure and property damaged during the course of this development.

The Post Construction Dilapidation Report and confirmation of the satisfactory restoration of any recorded damage must be submitted to Council for review. Written certification confirming Council's satisfaction with the Post Construction Dilapidation Report and any restoration works is to be provided to the Certifying Authority prior to the issue of the occupation certificate.

Reason: Protection of public and private infrastructure during construction.

61. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.

62. **Height Survey**

A survey prepared by a Registered Surveyor shall be provided as evidence that the development is constructed in accordance with the approved RL's for each of the floor levels and roof ridge levels of the building. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the occupation certificate.

Reason: To ensure the development is constructed in accordance with the approved levels.

63. **Undergrounding of Services**

Arrangements are to be made for the provision of all necessary services to the building to be provided underground.

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

Reason: To reduce visual clutter associated with above ground infrastructure.

64. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

65. **Compliance with Approved Reports**

Written certification from suitably qualified persons is required to confirm that all the works/methods/procedures/control measures/recommendations approved by Council in the Approved Reports referenced in Condition 1 of this consent, and the additional reports required within this consent, have been incorporated into the as-built development.

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

Reason: To ensure compliance with recommendations endorsed by Council.

66. **Compliance with RMS Requirements**

Prior to the issue of the occupation certificate, written certification from RMS is to be provided to the Certifying Authority to confirm satisfaction of the conditions imposed in their correspondence dated 1 July 2019, as prescribed in Condition 3 of this consent.

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

67. **Waste and Recycling Facilities Certificate of Compliance**
The proposal shall be constructed in accordance with Warringah Development Control Plan 2011 – Part C9 Waste Management
- Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the occupation certificate.
- Reason: To ensure waste and recycling facilities are provided.
68. **Waste/Recycling Compliance Documentation**
Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of the occupation certificate.
- Reason: To ensure waste is minimised and recycled.
69. **Positive Covenant for Waste Services**
A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of the occupation certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.
- Reason: To ensure ongoing access for servicing of waste facilities.
70. **Authorisation of Legal Documentation Required for Waste Services**
The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the occupation certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.
- If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.
- Reason: To create encumbrances on the land.

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

71. **Bulky Goods Store and Garbage Room**
The door to the bulky goods storeroom is to remain closed at all times (but able to be latched temporarily in the open position).
- The garbage room must remain free of anything not contained within the bins supplied by Council. The garbage room must not contain waste bins other than approved Council provided bins.
- Reason: To enable safe removal of waste from the site.
72. **Mechanical Ventilation System - Amenity**

The implementation of any mechanical ventilation system shall not adversely affect the amenity of the neighbourhood or interfere unreasonably with the comfort or repose of a person who is outside the premises by reason of the emission or discharge of noise, fumes, vapour, odour, steam, soot, ash, dust, waste water, waste products, grit, oil or other harmful products.

In the event of Council receiving complaints resulting from the mechanical exhaust system, the owner/occupier may be required, at their own cost, to provide a report from an Air Quality Consultant specifying the proposed methods for the control of odour and other air impurities discharging from the premises.

Any discharge to the atmosphere from the subject development shall not result in any odour or other air impurity being detected outside the boundaries of the property.

Reason: To minimise the operational impact on the surrounding neighbourhood.

73. **Landscape Maintenance**

Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting. If any tree, shrub or groundcover required to be planted 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 as referenced in Condition 1 of this consent.

Reason: To maintain local environmental amenity.

74. **Flood Risk Management - Storage of Goods**

Storage of hazardous materials, electrical items, equipment or and any other items susceptible to water damage on the ground floor are to be located above the relevant Flood Planning Level.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

75. **Flood Risk Management - Floor Levels**

Retail frontages and lobbies below the relevant Flood Planning Level must be flood proofed (wet and/or dry) to the Flood Planning Level. These frontages can only accommodate window displays, pedestrian stairs and/or ramps that lead up to the remainder of the development.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

76. **Hours of Operation for Retail Tenancies**

The hours of operation of the ground floor retail tenancies are to be restricted to:

- o Monday to Friday – 7:00am to 7:00pm
- o Saturday – 7:00am to 5:00pm
- o Sunday and Public Holidays – 9:00am to 5:00pm

Reason: To ensure that amenity of the surrounding locality is maintained.

77. **Commercial Waste and Recycling Storage**

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed.

78. **Amenity**

Activities must not detrimentally impact existing and future general amenity of the adjoining occupations and the neighbourhood by the emission of noise, smoke, dust, fumes, light or waste. Activities may include, but are not limited to the operation of plant, equipment, vehicles and commercial operations.

Reason: To protect existing and future amenity of the surrounding occupations and residents from the emissions caused by operations.

79. **Restriction of Visual Clutter**

No air-conditioning units or plant equipment are to be located on any roof or in any location visible from the public domain.

All services, drainage, conduit, ducting and the like are to be encapsulated within the building and are not to be visible from the public domain.

Reason: To ensure a high quality architectural finish and to minimise visual clutter.

80. **Parking allocation**

All 141 parking spaces are to be maintained free of obstruction and used solely for the parking of vehicles. The development is to maintain the following spaces for the life of the development:

- a. 78 x dedicated spaces for the 78 residential apartments,
- b. 11 x dedicated visitor parking spaces, clearly marked "visitor", including 1 parking space for people with disabilities compliant with the provisions of AS2890.6,
- c. 47 x dedicated retail spaces, clearly marked "retail", inclusive of 2 parking spaces for people with disabilities compliant with the provisions of AS2890.6,
- d. 3 x dedicated car share spaces, clearly marked and identified,
- e. 1 x removalist space, clearly marked and identified,
- f. 1 x delivery/maintenance space, clearly marked and identified,

Reason: To ensure that off-street parking is maintained for the life of the development.

81. **Adaptable Housing**

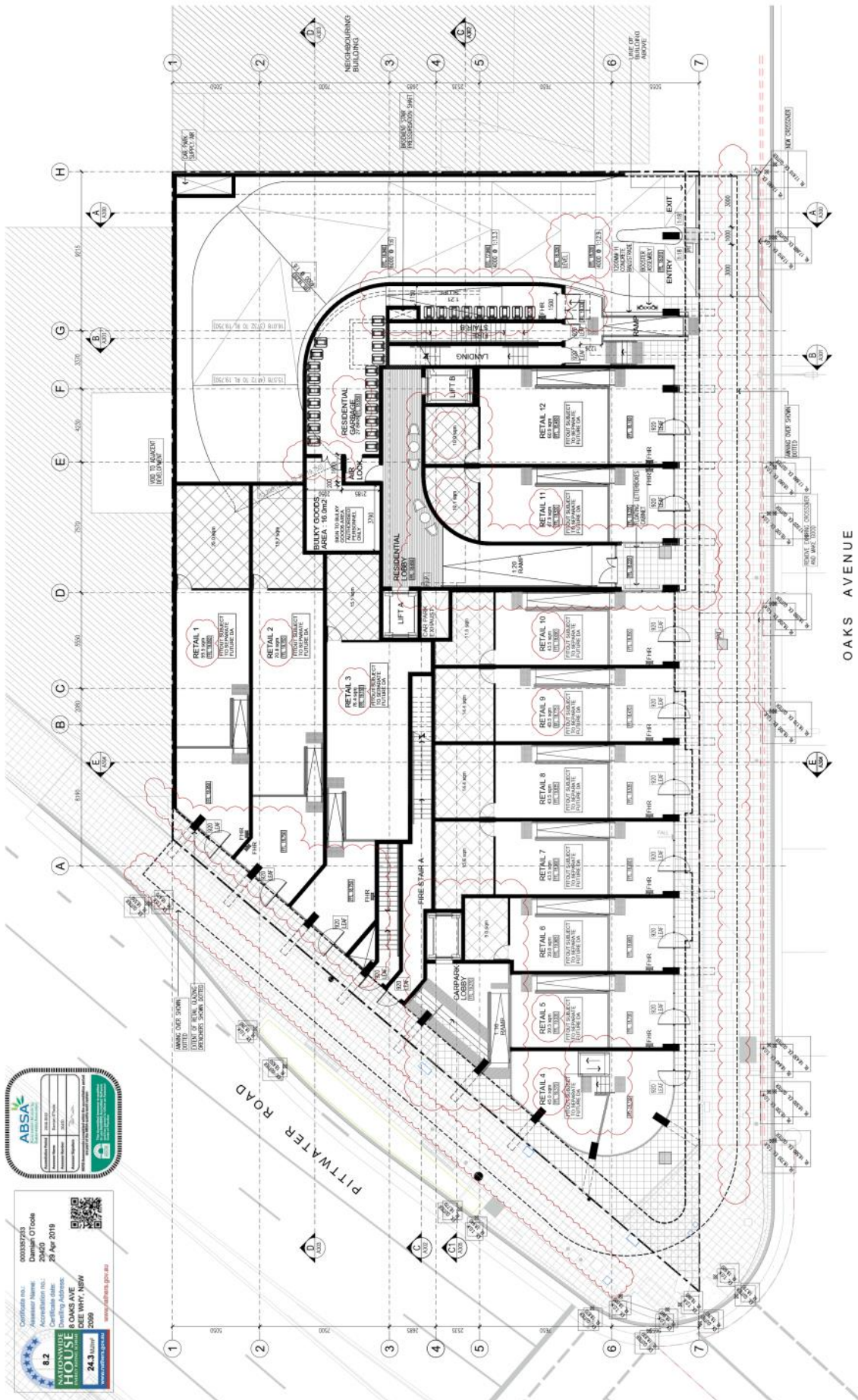
Eight (8) adaptable units, designed in accordance with Class C requirements of AS4299, are to be maintained for the life of the development.

Reason: To ensure the long-term provision of adaptable housing.

82. **Livable Housing**

21 livable units, designed to meet the Silver Level requirements of the Livable Housing Design Guidelines, are to be maintained for the life of the development.

Reason: To ensure the long-term provision of livable housing.



18041 A104 P

GROUND FLOOR PLAN

OAKS AVENUE

crawford architects

ARCHITECT NAME: CRAWFORD ARCHITECTS

DATE: 12/08/19

SCALE: 1:200

PROJECT NO: 18041 A104 P

CLIENT: MIXED USE DEVELOPMENT

LOCATION: 8 OAKS AVENUE, DEE WHY NSW 2089

DEVELOPMENT LINK: LOTS 1, 2, 3, 4 - D.P. 6880

ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED CONSTRUCTION TO COMPLY WITH THE BUILDING CODE OF AUSTRALIA (BCA) 2019 THESE PLANS ARE THE PROPERTY OF CRAWFORD ARCHITECTS AND ARE NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF CRAWFORD ARCHITECTS THIS DRAWING IS NOT TO BE USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN PERMISSION OF CRAWFORD ARCHITECTS	
DATE: 12/08/19 SCALE: 1:200 PROJECT NO: 18041 A104 P	CLIENT: MIXED USE DEVELOPMENT LOCATION: 8 OAKS AVENUE, DEE WHY NSW 2089 DEVELOPMENT LINK: LOTS 1, 2, 3, 4 - D.P. 6880

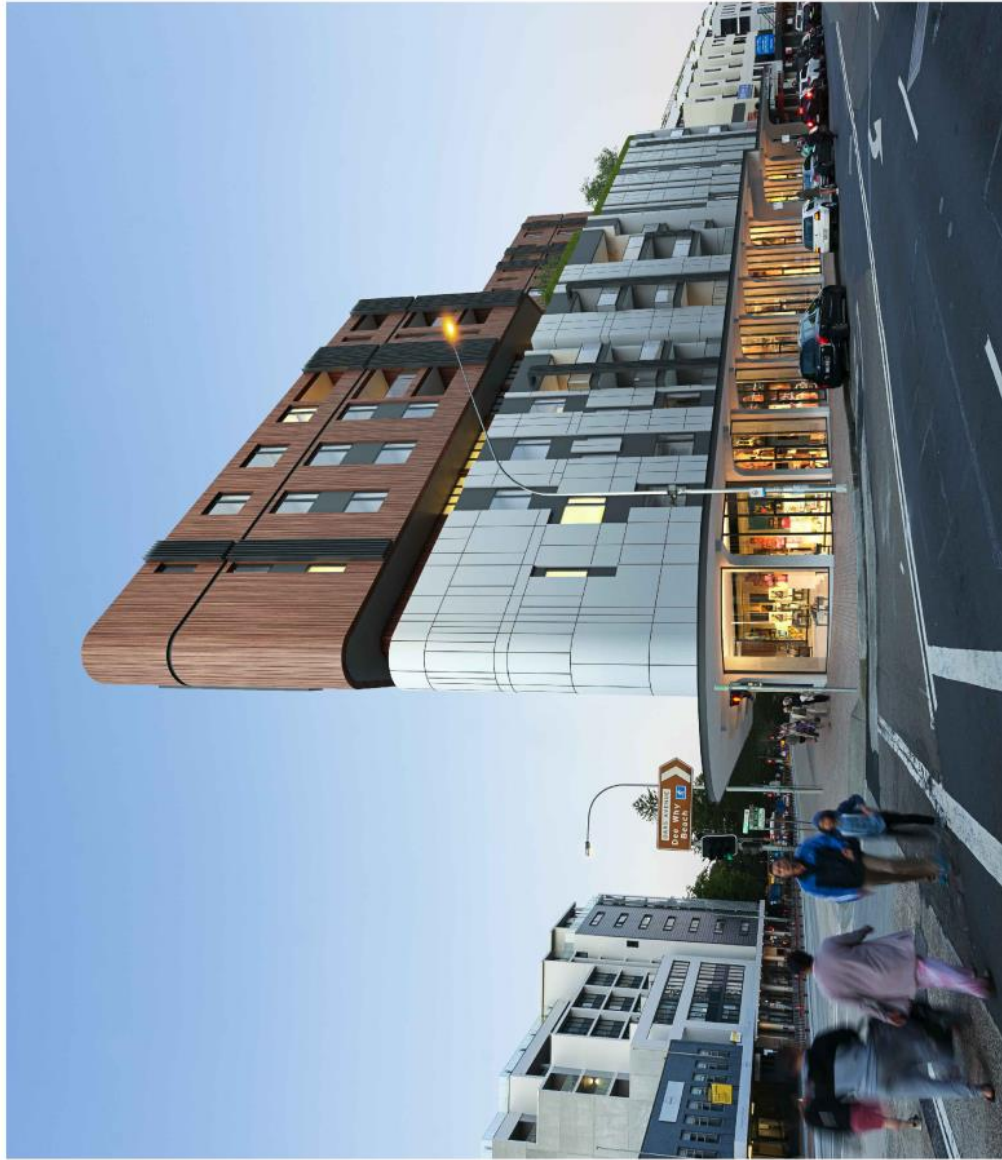




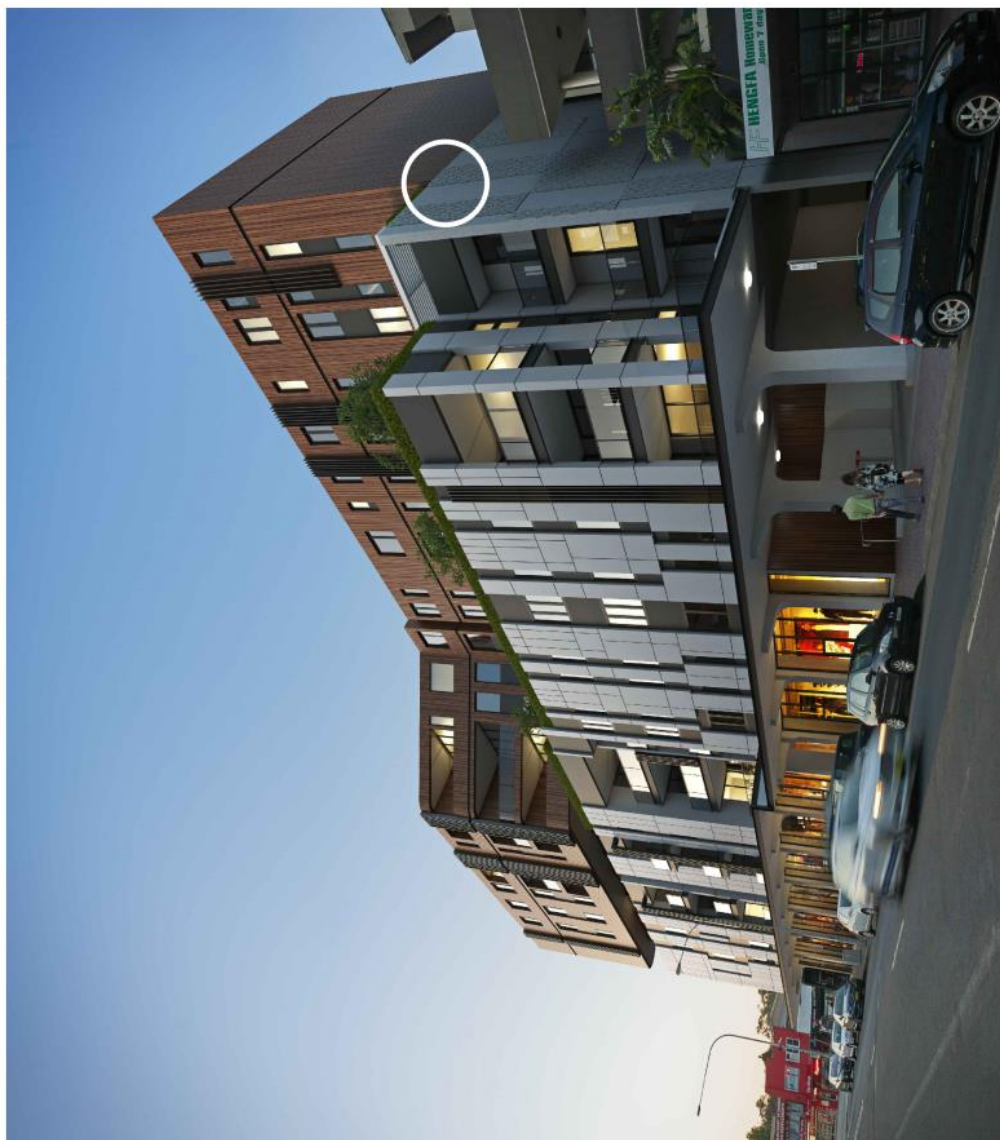








ALL DIMENSIONS ARE IN METRES UNLESS OTHERWISE SPECIFIED CONSTRUCTION TO BE COMPLETED BY 31/12/2021 DRAWING NO. 18041 A211 - 01/12/2019 DRAWING NO. 18041 A211 - 02/12/2019 DRAWING NO. 18041 A211 - 03/12/2019 DRAWING NO. 18041 A211 - 04/12/2019 DRAWING NO. 18041 A211 - 05/12/2019 DRAWING NO. 18041 A211 - 06/12/2019 DRAWING NO. 18041 A211 - 07/12/2019 DRAWING NO. 18041 A211 - 08/12/2019 DRAWING NO. 18041 A211 - 09/12/2019 DRAWING NO. 18041 A211 - 10/12/2019 DRAWING NO. 18041 A211 - 11/12/2019 DRAWING NO. 18041 A211 - 12/12/2019 DRAWING NO. 18041 A211 - 13/12/2019 DRAWING NO. 18041 A211 - 14/12/2019 DRAWING NO. 18041 A211 - 15/12/2019 DRAWING NO. 18041 A211 - 16/12/2019 DRAWING NO. 18041 A211 - 17/12/2019 DRAWING NO. 18041 A211 - 18/12/2019 DRAWING NO. 18041 A211 - 19/12/2019 DRAWING NO. 18041 A211 - 20/12/2019 DRAWING NO. 18041 A211 - 21/12/2019 DRAWING NO. 18041 A211 - 22/12/2019 DRAWING NO. 18041 A211 - 23/12/2019 DRAWING NO. 18041 A211 - 24/12/2019 DRAWING NO. 18041 A211 - 25/12/2019 DRAWING NO. 18041 A211 - 26/12/2019 DRAWING NO. 18041 A211 - 27/12/2019 DRAWING NO. 18041 A211 - 28/12/2019 DRAWING NO. 18041 A211 - 29/12/2019 DRAWING NO. 18041 A211 - 30/12/2019 DRAWING NO. 18041 A211 - 31/12/2019		CLIENT: DEVELOPMENT LINK PROJECT: MIXED USE DEVELOPMENT LOTS 1, 2, 3, 4 - 12 P 8800 8 OAKS AVENUE, DEE WHY NSW 2089		DATE: 18/12/2019 DRAWN: J. SMITH CHECKED: J. SMITH STATUS: DA		PROJECT NUMBER: 18041 A211 DRAWING NUMBER: D		PHOTOMONTAGE VIEW 2 - BEFORE AND AFTER		SCALE: 1:100 NORTH		18041 A211 D		crawford architects	
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20 November 2019

Request for variation of a development standard pursuant to clause 4.6 of the Warringah Local Environmental Plan 2011 (WLEP).

The proposed development

This amended cl.4.6 request accompanies an amended development application for demolition of the existing buildings across the site, excavation for basement parking and associated building services and construction of a mixed-use development comprising of 12 ground floor retail/commercial tenancies and 78 apartments, comprising 3 studios, 34 x 1-bed and 6 x 1-bed + study, 32 x 2-bed and 2 x 3-bed apartments. Landscaping, larger than required private open space areas and public domain improvement works are also proposed.

The variation sought

The proposed development complies with the development standards and policies of the Council, except for non-compliance with Height of Buildings standard set out in cl. 4.3 of Warringah Local Environmental Plan 2011 (WLEP).

The permitted height of a building under the WLEP is 24 m; the proposed height of the building is 27 m (RL 44.96), including plant and lift overrun.

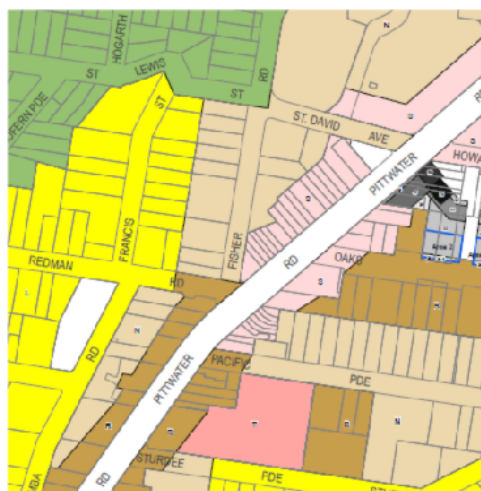


Figure 1: Height of Buildings Map, Warringah LEP 2011

This Request will demonstrate that the variation sought meets the requirements of cl. 4.6 and is appropriate for approval.

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Hamptons Property Services Pty Ltd | ABN 66 141 622 433

Height of Buildings Map - Sheet HOB_010AA
Height of Buildings Map - Sheet HOB_010AB

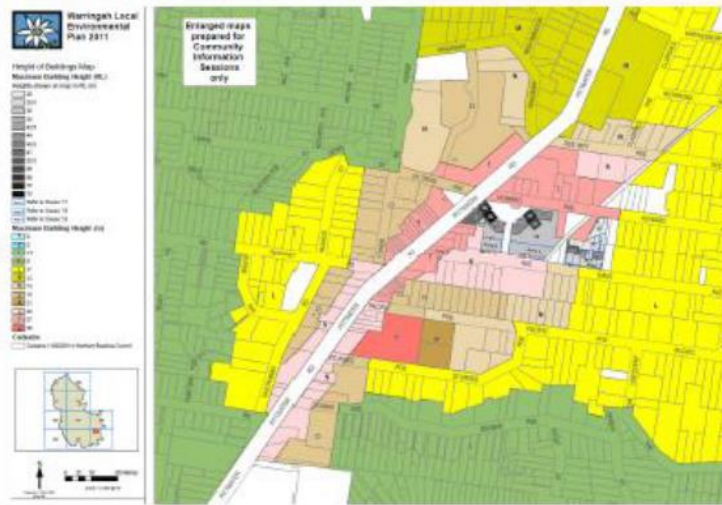


Figure 2: Proposed Height of Buildings Map, pursuant to planning proposal PP_2015_WARRI_003_02 (Source: NSW Department of Planning)

The site is subject to PP_2015_WARRI_003_02 which proposes, among other items, to increase the permitted building height to 27m. We are advised by the Council that this amendment to the WLEP was likely to be gazetted by in February 2019;

however, at the time of writing this is yet to occur. The proposal complies with the draft standard for height and is therefore consistent with the future planning controls and the inherent desired future character of the area.

Reliance on the draft building height provisions cannot be discounted, having regard to s. 4.15 of the Environmental Planning & Assessment Act 1979 (EP & A Act), which states, *inter alia*, as follows:

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—

(a) the provisions of—

- (i) ..., and*
- (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

Public consultation has been undertaken in accordance with the EP & A Act requirements and no notification has been received by the consent authority that the instrument has been deferred indefinitely or has not been approved. As such, it remains a relevant consideration in accordance with the requirements of s.4.15



in determining a development application, despite that it does not have determinative weight as established in *Yessaiean v City of Ryde [2018] NSWLEC 1474*, at Paragraph 60 states that:

There is a body of case law which refers to circumstances where a draft LEP is a “matter for consideration”, equivalent to the current provisions at s 4.15(1)(a)(ii) of the EPA Act, and with savings clauses similar to cl 1.8A above (see for example Terrace Tower Holdings Pty Limited v Sutherland Shire Council [2003] NSWCA 289 (‘Terrace Tower’) [46-47] and Blackmore Design Group Pty Ltd v North Sydney Council [2001] NSWLEC 279 (‘Blackmore’) [22-28]). Provided the threshold test of imminence and certainty is met, and while it is a matter for the circumstances of individual cases, it is not for the notionally draft local environmental plan to be afforded determining weight in the cases.

Warringah Local Environmental Plan 2011

Cl. 4.3 provides that:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

WLEP 2011 defines building height, in the Dictionary, as:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

Clause 4.6 of the WLEP

Cl. 4.6 of WLEP provides, so far as relevant:

- (1) The objectives of this clause are as follows:*
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - b. that there are sufficient environmental planning grounds to justify contravening the development standard.*



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

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

(5) In deciding whether to grant concurrence, the Secretary must consider:

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

Is height of buildings a development standard?

Cl. 4.6 can only be used to vary a control that is a development standard. Development standards are relevantly defined in s 1.4 of the *Environmental Planning & Assessment Act 1979* (EP & A Act) as follows:

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

(a) ...

(b) the proportion or percentage of the area of a site which a building or work may occupy, ...

Being a provision of the WLEP in relation to the carrying out of development, under which a requirement is fixed in respect to the height of buildings in the relevant zone, cl. 4.3(2) of the WLEP is a development standard. Accordingly, cl. 4.6 can be used to approve a variation to the standard.

As noted by the Chief Judge of the Land & Environment Court of NSW in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, [*Initial Action*], cl. 4.6 is facultative in permitting a consent authority to grant consent for development even though that development would contravene a development standard imposed by an environmental planning instrument. However, cl. 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Clause 4.6(4)

In order for the Court to grant a variation to the development standard under cl. 4.6, it must be satisfied:



1. That this cl. 4.6 Request adequately addresses the matters required by cl. 4.6(3), namely that compliance with the standard is unnecessary or unreasonable in the circumstances of the case and secondly that there are sufficient environmental planning grounds to justify contravening the development standard; and
2. That the proposed development will be in the public interest because it is consistent with the objectives of the standard and zone; and
3. That the concurrence of the Secretary has been obtained.

Clause 4.6(4)(a)(i) - Whether request adequately addresses requirements

This request is comprehensive in its discussion of whether compliance with the zone and objectives of the standard is unreasonable or unnecessary and whether there are sufficient environment planning grounds for varying the standard. Both issues are discussed below.

Clause 4.6(3)(a) Unnecessary or unreasonable

The common approaches for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. Cases such as *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, *Randwick Council v Micaul Holdings Pty Ltd* [20176] NSWLEC 7 and, most recently, *Initial Action*, have confirmed that adopting the Wehbe principles remains an appropriate approach.

The first option and applicable in this case, is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Set out below is an extract from the judgement in *Wehbe* that explains the rationale for adopting this approach in the context of clause 4.6.

The rationale is that development standards are not ends in themselves but means of achieving ends...The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).



Compliance with the Objectives for the Height of Buildings Standards

The proposal's compliance with the objectives for the height of buildings standard is addressed below.

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

To establish the compatibility of the proposed height and scale of the non-compliant component of the proposed development, it is important to establish the height and scale surrounding the site.

The site is located on the eastern side of Pittwater Road along the main shopping strip and commercial centre of Dee Why. While traditional 2-storey shops line both sides of the street, current construction activity and recently completed buildings within the vicinity of the site suggest that on-going redevelopment will result in higher, mixed use and contemporary buildings emerging in the future as landowners capitalise on favourable development potential provided for under the current planning regime. The properties immediately surrounding the site have permitted building height of up to 21m and 24m; further, north-west of the site, the recently constructed Meriton development provides for up to 18 storeys. Therefore, there is evidence of change within the locality.

Figure 3: Photomontage of proposed development demonstrating the various building heights such that there is not one consistent building height (Source: Crawford Architects)



Change is also further reinforced through PP_2015_WARRI_003_02, which seeks to increase building height within the Dee Why Town Centre. The proposed increase, which will result in buildings fronting Pittwater



Road benefiting from a height limit of 27 m, means that, from a scale and compatibility perspective, the long term intention for this Town Centre is to establish a robust approach that is defined by strong built form that reflects the attributes of a Town Centre.

As such, the non-compliant component of the building, which is 3 m above the permitted height of building standard, will be consistent with the scale and height of emerging development, as facilitated by the change in planning controls.

In addition, the non-compliant component of the building form will not be out of context due to the recessive elements of the design at the seventh building levels, to ensure that the building emulates the corner of Oaks Avenue and Pittwater Road, consistent with the desired scale, while the balance of the building at this level is set back from the street frontages to ensure its compatibility with neighbouring development.

The purpose of the additional height is to provide additional accommodation in a highly accessible location.

The scale of Level 7 is modest and recessive to ensure that there is a refined architectural presence that makes the balance of the building peel away from the principal corner, such that the additional, non-compliant height will not appear excessive in scale, and is set well back from the street frontage to ensure an appropriate measure of compatibility with adjoining sites as one moves away from the corner.

The position of the lift and services overrun which extends above the permitted building height of 24m (but not 27m), ensures that the building remains accessible to all residents of the development, without being contrary to the desired scale appropriate to the context of the site. The draft development standard also defines a higher outcome than currently applies, setting the future inferred and desired character of the locality. To raise the building height to the maximum point possible ensures that it is compatible with future development on surrounding sites and is not unfairly impeded, nor does it unfairly impede, future development on neighbouring sites.

Therefore, given that the non-compliant component of the building is recessive in certain sections, softened with planting to its street frontages on the lower levels of the building, and enable access to the whole of the development, the outcome is acceptable in terms of scale and compatibility. Further, the non-compliant component of the building reflects the desired scale of buildings in the Dee Why Town Centre; as such, the proposal will be consistent with the built form anticipated on sites within the vicinity.

The NSW Land & Environment Court has adopted a planning principle to assist in determining the compatibility of a proposal with its context. This is forthcoming in the matter of *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*. Then Senior Commissioner Roseth provided the following to assist in establishing a test for compatibility:



Planning principle: compatibility in the urban environment

22 *There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.*

23 *It should be noted that compatibility between proposed and existing is not always desirable. There are situations where extreme differences in scale and appearance produce great urban design involving landmark buildings. There are situations where the planning controls envisage a change of character, in which case compatibility with the future character is more appropriate than with the existing. Finally, there are urban environments that are so unattractive that it is best not to reproduce them.*

24 *Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.*

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

Is the proposal's appearance in harmony with the buildings around it and the character of the street?

25 *The physical impacts, such as noise, overlooking, overshadowing and constraining development potential, can be assessed with relative objectivity. In contrast, to decide whether or not a new building appears to be in harmony with its surroundings is a more subjective task. Analysing the existing context and then testing the proposal against it can, however, reduce the degree of subjectivity.*

26 *For a new development to be visually compatible with its context, it should contain, or at least respond to, the essential elements that make up the character of the surrounding urban environment. In some areas, planning instruments or urban design studies have already described the urban character. In others (the majority of cases), the character needs to be defined as part of a proposal's assessment. The most important contributor to urban character is the relationship of built form to surrounding space, a relationship that is created by **building height, setbacks and landscaping**. In special areas, such as conservation areas, **architectural style and materials** are also contributors to character.*



- 27 *Buildings do not have to be the same **height** to be compatible. Where there are significant differences in height, it is easier to achieve compatibility when the change is gradual rather than abrupt. The extent to which height differences are acceptable depends also on the consistency of height in the existing streetscape.*
- 28 *Front **setbacks** and the way they are treated are an important element of urban character. Where there is a uniform building line, even small differences can destroy the unity. **Setbacks** from side boundaries determine the rhythm of building and void. While it may not be possible to reproduce the rhythm exactly, new development should strive to reflect it in some way.*
- 29 ***Landscaping** is also an important contributor to urban character. In some areas landscape dominates buildings, in others buildings dominate the landscape. Where canopy trees define the character, new developments must provide opportunities for planting canopy trees.*
- 30 *Conservation areas are usually selected because they exhibit consistency of scale, style or material. In conservation areas, a higher level of similarity between the proposed and the existing is expected than elsewhere. The similarity may extend to **architectural style** expressed through roof form, fenestration and materials.*
- 31 *It should be remembered that most people are not trained planners or urban designers and experience the urban environment without applying the kind of analysis described above. As people move through the city, they respond intuitively to what they see around them. A photomontage of a proposed development in its context provides the opportunity to test the above analysis by viewing the proposal in the same way that a member of the public would.*
- 32 *I apply the above principles to this case. It was common ground that the proposal's physical impact on surrounding development was acceptable. I turn to the question visual compatibility with the streetscape of Foley Street. Foley Street (at least the section between Mona Vale Road and Vineyard Street) does not have an established height, setback or landscape character. The most prominent building is the RSL Club. I note Mr Chambers' finding that the maximum height of the proposed building does not exceed the permissible height in the adjoining residential area.*
- 33 *The applicant has produced a photomontage. In my opinion, most observers would not find the proposed building offensive, jarring or unsympathetic to this section of Foley Street. This is consistent with Mr Chambers' opinion that the proposal is compatible with its surroundings.*



In response to the above, the non-compliant component of the proposal addresses the planning principle as follows:

- The additional building height above the development standard is not the same as those properties that are only two storeys in height and, as such, are not classified as being the *same*. The additional building height does not make the proposed development incompatible. Instead, there is clear evidence within the vicinity of the site of recent construction activity and completed development that suggest the emergence of buildings of a greater density and scale than that which presently exists on other allotments and similar to, the same as, or greater than, the height of the non-compliant component of the proposed development. This is reflected in the current planning regime, which varies across different sites and demonstrates the emergence of the future character that is sought under the various planning instruments (existing and draft).
- In terms of physical impacts, that part of the proposed development that falls foul of the permitted building height, does not constrain redevelopment of neighbouring sites. The proposed setback distances to these adjoining properties respond to their existing and future potential and ensures that design matters such as window placement and location of outdoor open space areas does not impede the privacy of neighbouring properties, nor indeed within the development itself. Further, the non-compliance component of the building does not compromise the solar access of neighbouring sites, instead ensuring that this is retained. Noise impacts associated with the additional density that accrues in association with the proposed building height above the permitted standard are consistent with a residential environment in a mixed-use zone and will not result in any adverse impact. This is evidenced in Chapter 2 of the SEE which defines the character surrounding the site, demonstrating the changes that are occurring in proximity.
- To determine visual compatibility in its urban context, matters such as **height, setbacks and landscaping** are to be considered.

In relation to **height**, the photographs forming part of this application demonstrate that there are differences in height within the immediate vicinity. As evidenced by Paragraph 27, the additional building height is not *abrupt* in its proposed scale, instead modest, and provides a consistent visual form with the levels below in terms of horizontal and vertical elements, to ensure that the building façade is not obtrusive. Further, the **setback** distances that derive above Level 4, including that part of the building that exceeds the development standards, means that the height of that part of the building above the development standard is not obtrusive in terms of neighbouring properties; it is only the corner element



that is set forward to provide a strong form and character to the development. This is a consistent approach to treating built form on corner sites in mixed use locations.

The proposed side setback distance of the non-compliant Level 7 is addressed above in terms of the neighbouring sites. At the street front of Pittwater Road and Oaks Avenue, the proposed development provides a consistent street wall frontage with the adjoining properties and responds to the public domain outcomes that are established for these in terms of works, including street **landscaping**. The additional building height does not prevent any of these aspects being achieved. Further, the buildings provide a visual connection to the neighbouring sites, being set to the property boundaries, to ensure that there is no break in form that discontinues the continuity achieved to the street wall.

The additional building height does not preclude the introduction, nor effectiveness of landscaping elements introduced at Level 4 to harmonise the site's relationship with the adjoining properties, while ensuring the dominant built form element emulates the corner of Pittwater Road and Oaks Avenue, providing a strong architectural form to this. Given the density of the locality, the use of landscaping to the street frontages in the public domain, which are in no way compromised by the additional building height, soften the urban character that is presented on many other sites in the immediate vicinity and provide a sense of visual relief that is not availed in the immediate locality.

The provision of landscaping does not mean that the proposed form becomes incompatible, instead providing elements that are important in an urban context that are not necessarily embedded on other buildings. Availability for canopy trees is evident through the public domain works and not compromised by the additional building height.

To utilise the comments of SC Roseth, at Paragraph 33, given the context of surrounding sites, one could not consider the proposed additional building height as being *offensive, jarring or unsympathetic* such that it would not be *compatible with its surroundings*.

Accepting that the proposed development is compatible with the surrounding context, as required by objective (a), the additional building height satisfies the criteria as set out in the planning principle of the aforementioned case.

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

In terms of visual impact and the effect of the non-compliant portion of the building, this has been addressed above.





In terms of potential disruption to views, the building positioned to the east of the site, adjacent on the Oaks Avenue frontage, maintains its principal vantage over Oaks Avenue, to the south of the site; the façade interfacing with the subject site generally comprises a blank wall, but for a small opening on the top floor. Therefore, the potential effect on any views is not impeded as a result of the non-compliant built form. Further, the height of this form at No. 10 Oaks Avenue sits below that part of the proposed building that exceeds the development standard; therefore, the upper floors of the proposed building sit above the height of that adjoining built form and the non-compliant element of the proposed structure has no effect whatsoever in terms of potential view loss.



Similarly, for the building to the north of the site, on Pittwater Road, the southern façade of the adjoining property is generally of a blank configuration, but for window openings contained within the

light well. These windows, due to their material composition, do not provide a view in a southerly direction. Therefore, that part of the building which does not comply with the development standard for height, will not result in a loss of view enjoyed from the building directly north of the site.

In terms of built form located on the southern side of Oaks Avenue that has been constructed, while the proposal will result in a change in view when considered from these properties, the effect of the non-compliant component of the building will be no greater than the view corridor that is impeded as a result of development along Howard Avenue, which is of a greater density, form and scale than that proposed on the subject site above the development standard. Again, therefore, there will be no additional loss of view.

Therefore, the non-compliant component of the building will not result in any view loss from surrounding properties.



The non-compliant section of the proposed built form will not result in any loss of privacy to the neighbouring properties, particularly those located to the north and east of the site.

On the northern side of the site, Level 7, which is the non-compliant component of the building, is constructed adjacent to the boundary with 890 Pittwater Road, to mirror the same building alignment to the street. That wall then terminates where the building void is located at No. 890 to ensure that there is no visual intrusion, nor privacy impact, across this portion of the adjoining site as a result of the non-compliant form.

Measured from the property boundary, the southern building portion at Level 7 complies with the shared separation distance of 9m, as the minimum requirement, despite that the adjoining property does not satisfy the minimum Apartment Design Guide (ADG) separation distance for privacy purposes.

The visual corridor from the western section of the upper floors, is in an easterly direction and, given the location of walls, there is no, or very limited, opportunity to look into, or towards, the light well of No. 890. Even if this were to occur, the openings into the lightwell are constructed of glass blockwork and therefore have limited, if any, visual openings into those properties. Therefore, from that vantage, there is no adverse visual privacy conditions that will result from the non-compliant component of the building.

There will be no adverse impacts on the western corner of the site from the non-compliant section of the building as this interfaces with a major intersection.

In relation to the loss of solar access, the solar analysis prepared by Crawford Architects demonstrates that the extent of the additional shadow to those properties on the southern side of Oaks Avenue is generally contained within the shadow affectation of existing built form on the northern side of Oaks Avenue, behind the subject site. Therefore, the additional impact caused by the non-compliant component of the development, does not give rise to an unnecessary level of affectation, over and above the existing situation.

Therefore, the non-compliant component of the building, will not give rise to contravening this objective of the development standard. Further, the development achieves the planning principle as established in *Project Venture Developments*, as to compatibility on these aspects.

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

No adverse impact on the scenic quality of Warringah's coastal bushland is expected to result from the non-compliant component of the proposed development, as the site is located in the Dee Why Town Centre. Level 7 is nestled around existing and new urban development and poses no threat to existing views to or from neighbouring properties due to the location and size of surrounding buildings.



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

The composition of Level 7 of the building is consistent with the prescribed setbacks for built form which dictate the visual expectations of the development when viewed from the road network surrounding the site. The architectural composition of the building is consistent in materials and features with the principal building form such that it does not result in an adverse visual impact that is befitting to the balance of the site.

Therefore, the non-compliant component of the building will have no adverse visual impact and is consistent with this objective.

Having regard to the above, the non-compliant component of the building will achieve all of these objectives to at least an equal degree as would be the case with a development that complied with the building height standard. By allowing for the non-compliance provides additional accommodation is consistent with the draft development standard for building height.

Compliance with the Zoning Objectives

The non-compliant component of the proposal achieves the objectives of the zone as set out below.

Zone B4 Mixed Use	Comment
1 Objectives of zone - To provide a mixture of compatible land uses. - To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling. - To reinforce the role of Dee Why as the major centre in the sub-region by the treatment of public spaces, the scale and intensity of development, the focus of civic activity and the arrangement of land uses.	- The non-compliant component of the building provides for residential use that will complement not only the site itself, which contains both residential and retail land uses, but also the locality surrounding the site. - The provision of residential accommodation in the non-compliant component of the development provides for additional dwellings in a highly accessible location that is close to public transport availability, such that reliance on private motor vehicles can be potentially reduced. - The intensity of the non-compliant component of the development is relative to the site and will assist to reinforce the role of Dee Why as a major centre, particularly that which is encouraged by the additional height that is sought under the planning proposal.



• To promote building design that creates active building fronts, contributes to the life of streets and public spaces and creates environments that are appropriate to human scale as well as being comfortable, interesting and safe. • To promote a land use pattern that is characterised by shops, restaurants and business premises on the ground floor and housing and offices on the upper floors of buildings. • To encourage site amalgamations to facilitate new development and to facilitate the provision of car parking below ground.	• The non-compliant component of the development will accord with the balance of the building form and contribute to the life of the surrounding street network through additional opportunities for passive surveillance as a result of the additional accommodation proposed. The non-compliant component of the building does not affect the human scale of the lower levels of the building and will be consistent with the overall visual interest that is attributable to the architectural design of the site. • Housing is proposed in the non-compliant section of the building, consistent with this objective. • The site has been amalgamated with 874 Pittwater Road to facilitate a more effective development outcome and an efficient basement design so as not to compromise access arrangements given the site's proximity to Pittwater Road. The amalgamation of the site also provides a more consistent and effective urban design solution through the consolidation of the allotments. Therefore, this objective will be achieved.
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The non-compliant component of the development, as it relates to building height, demonstrates consistency with the objectives of the B4 Mixed Use zone and the height of building objectives. Adopting Preston CJ's language in *Wehbe*, development standards are means to an end, not ends in themselves. The non-compliant component of the development will comprehensively achieve all of the objectives notwithstanding non-compliance. Compliance with the standard is therefore unreasonable and unnecessary.

Clause 4.6(4)(b) – Sufficient environmental planning grounds

The second element of clause 4.6(3) on which the Court must be satisfied is that there are sufficient environmental planning grounds to justify contravening the development standard.

The environmental planning grounds relate to the subject matter, scope and purpose of the *Environmental Planning & Assessment Act [EP&A Act]* including the objects of the EP&A Act (*Wehbe* para 23).

As Preston CJ explains in *Wehbe*:

".. the focus of clause 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on



environmental planning grounds. The environmental planning grounds in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole. Second the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under clause 4.6(a)(i) that the written request has adequately addressed the matter."

The requested variation consists of an increase to the permitted building height. This Request demonstrates that the variation sought will have no adverse environmental or other impacts, that all of the zone and standard objectives will be met, notwithstanding the variation and that there is no environmental planning reason not to vary the standard.

With regard to the Objects of the EP & A Act, as set out at s. 1.3, the proposed non-compliance of the development with the height of buildings standard:

- will continue to promote the social and economic welfare of the community as that section of the building will provide additional accommodation that will underpin the Dee Why Town Centre, by providing additional population such as to encourage social interaction and economic expenditure to support local businesses in a location where the desired future character seeks to achieve a building form that is of the proposed height. In doing so, this intrinsically considers the impact of such additional height on existing resources, determining that the proposed height will not compromise natural and other resources
- will provide for ecologically sustainable outcomes that are consistent with the balance of development on the site and provide positive economic and social benefits as set out above. Further, the additional height will not compromise the environmental qualities of the locality, particularly as the increased number of apartments will have a negligible impact on the surrounding road network, in terms of traffic generation, such that adverse consequences of pollution would not result from the proposal. Further, the proximity of the site to local facilities and services, in conjunction with public transport, results in the non-compliant section of the building being positioned in a location that will integrate economic, social and environmental benefits
- will allow for the orderly and economic use and development of the land, particularly as afforded by the draft development standard for building height which derives that the economic use of the land is by virtue of a greater height limit within the Town Centre
- the design of the non-compliant part of the building will be consistent with the balance of the proposed form, which has a high standard of design quality and provides sufficient amenity for future residents and neighbouring properties



- does not provide any opportunity for a building of poor construction to be protected and that future occupants of the building would have the same confidence as for the balance of the building, in terms of the health and safety of occupants.

Further, given that the height standard sought under the draft planning control, which sets the desired future character of the area is achieved, as part of the building proper, the additional height proposed is desirable for the purpose of providing additional accommodation in a highly accessible location, while creating a viable, effective outcome which could not otherwise be derived on the site, due to the constraints imposed by other built form as it directly abuts the site and limits any ground floor areas.

Therefore, given the benefit that attaches to non-compliance with the development standard there are sufficient environmental planning grounds, and more importantly, benefits, associated with this outcome.

Clause 4.6(a)(ii) – public interest

The fourth element that the Court needs to be satisfied with in order to vary the development standard is that the proposed development will be in the public interest if the standard is varied because it is consistent with the standard's and zone's objectives.

Preston CJ in *Initial Action* (para 27) described the relevant test for this requirement as follows:

"The matter in cl 4.6(a)(ii) with which the consent authority or the Court on appeal must be satisfied is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purpose of clause 4.6(4)(a)(ii)."

As demonstrated in this Request, the proposed development will comprehensively meet all of the objectives of the height of buildings development standard and the B4 zone objectives. Non-compliance with the development standard allows for additional residential population and social benefit within the development of a quality nature, in a position, that due to the benefit of solar access, ventilation and sense of openness, will encourage positive social interaction. This then results in positive flow on benefits for residents within the development, whom form part of the broader community. Accordingly, the Council can be satisfied that it is in the public interest to vary the standard for the purpose of this development application.



Secretary's concurrence

By Planning Circular dated 21 February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume concurrence to clause 4.6 requests except in the circumstances set out below:

- Lot size standards for rural dwellings
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The Circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP processes and determinations are subjected to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.



4.0 MEETING GUIDELINES

4.1 ADOPTION OF MEETING GUIDELINES

RECOMMENDATION

That the Panel adopt the Northern Beaches Local Planning Panel Public Meeting Guidelines drafted below to be available on Council's website.

NORTHERN BEACHES LOCAL PLANNING PANEL

PUBLIC MEETINGS GUIDELINES

1. Panel public meetings are usually held twice per month (excluding January) in Council's Dee Why Chambers at 725 Pittwater Road. Anyone may attend. Agendas are available on Council's website, usually five days prior.
 2. The Panel is bound by the Code of Conduct for Local Planning Panel Members approved by the Minister for Planning. As required by the Code, Panel members must sign a declaration disclosing whether they have a conflict of interest in relation to any matter on the agenda for a public meeting. After the meeting, the declarations will be published on Council's website.
 3. Prior to a public meeting the Panel will have been briefed with Council's assessment report, submissions and other relevant documents relating to each agenda item. And the Panel usually will have carried out a site inspection in order to better understand the issues. Submissions generally are not received at site meetings. Council staff may be present as appropriate.
 4. Speakers at a public meeting must be registered to speak, subject to the Chair's discretion to override this restriction. Registrations should be made by 4pm on the day preceding the meeting by contacting the Panel Coordinator on 9942 2360.
 5. Public meetings provide an opportunity to make oral submissions. Written material is generally not accepted since there will have been prior opportunity to provide it. However if a legal representative seeks to make a new submission on a matter of law, it should be in writing. If written material is accepted, it will be published on Council's website.
 6. Public meetings are video and audio recorded. The recordings will be published on Council's website after the meeting.
 7. A speaker will have three minutes to speak (whereupon a bell will ring). An extension may be granted at the Chair's discretion. Where there are a large number of speakers with a common interest, the Panel may hear their representative with a view to discharging the Panel's responsibilities in a timely way.
 8. Objectors will be heard before the applicant. In considering whether the applicant will be granted extra speaking time, the Chair will take into account the number and nature of objectors' submissions to which the applicant may need to respond.
 9. Speakers should be clear and concise. Repeating matters already raised by previous speakers is unnecessary: it is sufficient for a speaker to acknowledge that they hold similar views. Speakers should use respectful language: rude or defamatory language will not be tolerated. At the end of an oral submission the speaker should remain seated to give Panellists the opportunity to ask questions.
 10. Once all speakers in relation to all matters on the agenda have finished, the Panel will close the public meeting and move into closed session to deliberate and determine all matters on the agenda. A closed session will not be recorded. During a closed session the Panel may seek clarification or answers to questions from Council staff or applicants or others, but they are precluded from participating in the Panel's deliberations and determinations.
 11. The Panel usually makes its reasoned determinations on the day. They will be published on Council's website, normally within two working days.
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