

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in the Walamai Room, Civic Centre, Dee Why

WEDNESDAY 18 DECEMBER 2019



Ashleigh Sherry
Manager Business Systems and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 18 December 2019
in the Walamai Room, Civic Centre, Dee Why**

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 11 DECEMBER 2019

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 11 December 2019 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 **MOD2019/0241 - 4 LAURA STREET, SEAFORTH -
MODIFICATION OF DEVELOPMENT CONSENT DA148/2014
GRANTED FOR ALTERATIONS AND ADDITIONS TO AN
EXISTING DWELLING INCLUDING A SEA WALL**

REPORTING MANAGER **Steve Findlay**
TRIM FILE REF **2019/704780**
ATTACHMENTS **1 Assessment Report**
 2 Site Plan & Elevations

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Mod2019/0241 for Modification of Development Consent DA148/2014 granted for alterations and additions to an existing dwelling including a sea wall on land at Lot 4 DP 249261, 4 Laura Street, Seaforth, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0241
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 4 DP 249261, 4 Laura Street SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent DA148/2014 granted for alterations and additions to an existing dwelling including a sea wall
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Marcelle Carr
Applicant:	Space Landscape Designs Pty Ltd
Application Lodged:	22/05/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/06/2019 to 17/06/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The application seeks to modify the existing Development Consent No.148/2014 at 4 Laura Street, Seaforth.

The Modification Application is referred to the Development Determination Panel, as the original application was determined by the Manly Council Development Assessment Unit on 25 February 2015.

The modified works includes the demolition of the existing boatshed and external rear access stairs, as well as the construction of an inclinor, additional sections of a sea wall, a recessed storage shed, access ramp and additional landscaping.

The site is a large (976.2m²) waterfront parcel of land, with the rear of the site having a steep slope of over 40 degrees from the top to bottom, where the site is bordered by Middle Harbour.

The proposal is permissible with consent in the E3 - Environmental Management zone under Manly Local Environmental Plan 2013, and makes no change to the previously approved building height or floor space ratio.

The proposal involves minor variations to the built form controls under the Manly Development Control Plan 2013 in relation to foreshore building line and rear setback. In this regard, the proposal will not detrimentally impact on the amenity of neighbouring properties or the character of the Sydney Harbour foreshore.

The proposal was referred to the Foreshores and Waterways Planning and Development Advisory Committee who has no additional matters to raise with respect to the proposed development.

The proposed development was notified and no submissions were received.

The modified redevelopment represents a modernised and improved built form on the site and is compatible and consistent with surrounding residential developments.

Accordingly, the modified application is recommended for approval subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for the following works:

- Removal of the existing boat shed,
- Removal of the timber seawall logs and replaced with sandstone, to create a new sections of sea wall,
- Removal of external rear access stairs on the western boundary and adjoining the foreshore deck area,
- Construction of a new storage shed,
- Construction of a new external access from the foreshore, and
- Construction of a new inclinor on the western side of the property.

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

Assessment - Foreshore and Waterways Planning and Development Advisory Committee
 Manly Local Environmental Plan 2013 - 5.7 Development below mean high water mark
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.9 Mechanical Plant Equipment
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 5.4.1 Foreshore Scenic Protection Area

SITE DESCRIPTION

Property Description:	Lot 4 DP 249261 , 4 Laura Street SEAFORTH NSW 2092
Detailed Site Description:	<p>The property is legally described as Lot 4, within Deposited Plan 249261, and is known as 4 Laura Street, Seaforth. The site is located within the E3 Environmental Management zone under the Manly Local Environment Plan 2013 (MLEP2013) and also within the Sydney Harbour Catchment Area under the Sydney Harbour Catchment Regional Environment Plan, 2005 and the Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005.</p> <p>The site is located on the southern side of Laura Street and has a north-south orientation. The site has a steep slope of over 40 degrees from the middle of the site to the rear foreshore line adjoining Middle Harbour.</p> <p>The site has an irregular shape with a total area of 976.2 m². The site measures 4.875 metres wide at the Larura Street frontage with side boundaries being a total of 61.525 metres on the eastern side and 52.755 metres on the western side to the rear mean high water mark. The Middle Harbour foreshore rear boundary is approximately 29.7 metres in length. Total site area is calculated deducting the area over the water, as demonstrated on the deposited plan.</p> <p>The subject property and surrounding sites are all orientated to take advantage of the expansive views to Middle Harbour.</p> <p>Existing structures on the site include a four level dwelling with an attached garage, swimming pool, stairs to foreshore</p>

waterfront, a boatshed and two jetties.

Surrounding sites consist of multi-level dwelling houses spread across the steep topography, within densely landscaped settings.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant development applications for the property:

- Building Certificate No. **BC2019/0071** for the changes to the RL levels of the lower ground, ground, first and second floor where approved by Council on the 20 September 2019.
- Development Application No. **10.2014.148** for the alterations and additions to an existing dwelling, including a new masonry sea wall and retaining walls to replace existing timber logs, new timber stairs, new deck areas, new decked landings, new walkways and increasing the depth of the existing boatshed was approved by the Manly Council Development Assessment Unit on the 25 February 2015.
- Development Application No. **11.2010.198.1** for alterations and additions to an existing dwelling, including a second floor addition, new roof and extend garage was approved by the Manly Council Development Assessment Unit on the 26 October 2010.

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 Development Assessment 148/2014, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under Development Application No.10.2014.148.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application 148/2014 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Environmental Plan 2013 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development	See discussion on "Notification & Submissions Received" in this report.

Section 4.55 (2) - Other Modifications	Comments
control plan, as the case may be.	

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p>

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

Internal Referral Body	Comments
Landscape Officer	Council's Landscape section have assessed the application against the landscape controls of Manly Development Control Plan 2013, Section 3: General Principles of Development, and Section 4: Development Controls and Development Types.

Internal Referral Body	Comments
	<p>The landscape component of the modification proposal is acceptable, subject to the protection of existing vegetation and the completion of landscape works.</p>
NECC (Bushland and Biodiversity)	<p>The Council's Officer has no objections to the proposal subject to inclusion of the original conditions of consent.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The applicant has submitted a revised Statement of Modifications, prepared by the Space Landscape Designs Ltd. dated 10 September 2019, which addressed issues related to the Coastal Management Act 2016 and SEPP (CM) 2018.</p> <p>Coastal Management Act 2016</p> <p>The applicant has proposed construction of additional areas of a seawall. Hence the proposed development must satisfy the requirements of the Section 27 of the Coastal Management Act 2016.</p> <p>To satisfy the requirements of the Section 27 of the Coastal Management Act 2016, the applicant has shown and stated that 'No beach or adjacent beach' will be affected. The new works are to be funded and maintained by the owner through the revised Statement of Modifications, prepared by the Space Landscape Designs Ltd. dated 10 September 2019. Council accepts the justifications and the statement as a condition of consent.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>The subject land has been located on both the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence Clauses 13, 14 and 15 of the CM SEPP are relevant.</p> <p>However, as the subject land is located under the Sydney Harbour Foreshores and Waterways Area, Clauses 13 and 14 do not apply. Requirements of the Clause 15 have shown to be complied with in the revised Statement of Modifications, prepared by the Space Landscape Designs Ltd. dated 10 September 2019. Council accepts the justifications</p> <p>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, and Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005</p>

Internal Referral Body	Comments
	<p>The subject land has been located within the Sydney Harbour Catchment Area. On internal assessment, the application has been assessed to have satisfied the requirements of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005.</p> <p>As such, the modified works can be approved subject to conditions.</p>
Strategic and Place Planning (Heritage Officer)	The Heritage referral comments and any recommendations will be submitted via a supplementary report for consideration by the Northern Beaches Council Development Determination Panel.

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.
Aboriginal Heritage Office	<p>Aboriginal Heritage - National Parks & Wildlife Act 1974</p> <p>The provisions of the NP & W Act (1974) provide protection for Aboriginal objects (material evidence of indigenous occupation) and Aboriginal places (areas of cultural significance to the Aboriginal community).</p> <p>The following sections from Part 6 of the Act are particularly relevant for this application:</p> <ul style="list-style-type: none"> Section 89A states that anyone who discovers an Aboriginal object is obliged to report the discovery to Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC). Section 86 states that it is an offence to harm or desecrate an Aboriginal object or Aboriginal place. <p>The property is listed as High to Very High potential for Aboriginal heritage.</p> <p>The original development application was referred to the Aboriginal Heritage Office, who had the following comments:</p> <p><i>"There are known Aboriginal sites in the area. The area of the proposed development is identified as having high potential for unrecorded Aboriginal sites. From the development application photographs taken show a high likelihood of Aboriginal archaeological evidence present on the proposed development area. The Aboriginal Heritage Office recommends a preliminary inspection ('due diligence' under the National Parks and Wildlife Act 1974) by a qualified Aboriginal heritage professional. The assessment would provide information on what potential Aboriginal heritage issues exist on the</i></p>

External Referral Body	Comments
	<p><i>land and recommendations for any further action if required."</i></p> <p>As a result a Aboriginal Due Diligence Assessment was undertaken by Artefact Heritage, dated 12 December 2014, and the assessment uncovered the following:</p> <ul style="list-style-type: none"> • No previously recorded Aboriginal sites are located within the study area. • No new Aboriginal sites were recorded during site survey for the current study. • The study area has been extensively modified as a result of European development. • The study area has been assessed as having low archaeological potential. <p>As a result the Aboriginal Due Diligence Assessment concluded and recommended the following:</p> <ul style="list-style-type: none"> • There are no constraints on the proposed works with regard to Aboriginal Heritage. • If changes are made to the proposed works that may result in impacts to areas not covered by this assessment, further archaeological assessment may be required. • If unexpected Aboriginal sites are located during the proposed works, all work in the area must stop immediately and the OEH, Local Aboriginal Land Council and a qualified archaeologist must be contacted. Further assessment and permits may be required before works can commence. • If human remains are found, work MUST cease, the site must be secured and the NSW Police and the Office of Environment and Heritage should be notified. <p>As a result, the additional works are to be located in areas covered by the Aboriginal Due Diligence Assessment. Therefore, no further referral assessment or archaeological assessment is required to be undertaken.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**SEPP 55 - Remediation of Land**

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

SEPP (Infrastructure) 2007Ausgrid

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

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

Comment:

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposed modifications are considered to satisfy Clause 2,
- The proposed modifications are considered to satisfy Clauses 13 & 14,
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in Clause 21 (a) to (i),
- The proposed modifications are considered to satisfy Clause 22(a) to (e),
- The proposal has been designed and appropriately sited on the matters listed in Clause 25(a), (b) and (c), and
- The proposal has been designed and appropriately sited to ensure protection of the matters listed in Clause 26(a),(b) and (c) (relating to maintenance, protection and enhancement of views).

The proposal is considered to be consistent with the above provisions of the Sydney Harbour Catchment Regional Environmental Plan 2005 (REP).

SEPP (Coastal Management) 2018

Portions of the site are located within the Coastal Use Area and Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Therefore, provisions of this policy are applicable in relation to the proposal.

However, as the subject land is located under the Sydney Harbour Foreshores and Waterways Area, Clauses 13 and 14 of the CM SEPP 2018 do not apply but have been considered.

Following detailed assessment of the development, Council can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP,
- the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP,
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land as listed in clause 15 of the CM SEPP.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	2.9m (Boatshed)	0.8m Raised piers for the inclinator track 2.6m Retaining wall/shed	- -	Yes Yes

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.7 Development below mean high water mark	Yes
6.2 Earthworks	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes

Detailed Assessment

5.7 Development below mean high water mark

The site is identified as being within located within the Foreshore Scenic Protection Area Map of Manly Development Control Plan (MDCP) 2013, and adjoins the mean high water mark of Sydney Middle Harbour. Therefore, the objectives of the clause are applicable in relation to the modified proposal.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- All works as part of the modification are above the mean high water mark. The proposed works have been appropriately environmentally assessed, designed, and sited to avoid adverse impacts on the matters listed in clause 1 and 2.

It is considered that the proposal is consistent with the matters prescribed by sub-clauses clauses 1 and 2 of Clause 5.7 Developments below Mean High Water Mark within the MLEP 2013.

6.2 Earthworks

A Geotechnical Report has been prepared by White Geotechnical Group, Reference No. J0220A, dated 7 May 2018 and submitted with the application. This report and its recommendations are included within the conditions to ensure there is no adverse impacts to the surrounding properties resulting from the proposals required excavation.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal is not likely to cause disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development as listed in clause 3(a),
- The proposal is not likely to effect of the development on the likely future use or redevelopment of the land as listed in clause 3(b),
- The proposal is not likely to cause disruption to the quality, source or destination of the fill or the soil to be excavated, or both as listed in clause 3(c) & (e),
- The proposal is not likely to effect of the development on the existing and likely amenity of adjoining properties as listed in clause 3(d),
- There are no relics on the site, therefore clause 3(f) is not applicable,
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(g), and
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(h).

Accordingly, Council's Landscape and Biodiversity officers have concluded that the impact of the earthworks will not unreasonably disrupt vegetation on the property.

The conditions applied within the original development application, No.10.2014.148.1, such as the sediment control plans, Aboriginal heritage and recommended ameliorative conditions are still valid and will continue to satisfy the matters identified in Clause 6.2 Earthworks.

As such, the modified proposal is considered to be consistent with the provision and the matters prescribed by sub-clauses 1, 2 and 3 of Clause 6.2 Earthworks within the MLEP 2013.

6.8 Landslide risk

The site is identified as being within the G3 & G4 Landslip Hazard Map in MDCP 2013. Therefore, the objectives of this clause are applicable in relation to the proposal.

A Geotechnical Report prepared by White Geotechnical Group, Reference No. J0220A, dated 7 May 2018 was submitted with the application. This report and its recommendations are included as a condition to ensure there is no adverse impacts to the surrounding properties resulting from the proposals required excavation.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal design has taken into account the existing layout and access as listed in clause 3(a),
- The proposal is not likely to effect unreasonably impact the site or the surrounding sites through the design of the proposal, and the construction; methods satisfying the matters as listed in clause 3(b),
- The proposal is not likely to cause disruption to the quality, source or destination of the fill or the soil to be excavated, or both as listed in clause 3(c),
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(d),
- The proposal has reasonably addressed the existing geotechnical constraints of the site as listed in clause 3(e),
- The proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 3(f), and
- The proposal has been designed, sited and will be managed, to avoid adverse impacts on the matters listed in clause 4(a)(b) & (c).

As such, the modified proposal is considered to be consistent with the matters prescribed by sub-clauses 1, 2, 3 and 4 of Clause 6.8 Landslide Risk, within the MLEP 2013.

6.9 Foreshore scenic protection area

The site is identified as being within located within the Foreshore Scenic Protection Area Map of MDCP 2013, and the objectives of this clause are applicable in relation to the proposal.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The proposal is unlikely to have unreasonable impacts to the visual amenity of the harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore, therefore satisfying the matters as listed in clause 3(a),
- The proposal is not likely to cause disruption to the scenic qualities of the foreshore as listed in

- clause 3(b),
- The proposal has been designed, and sited to avoid adverse impacts on the matters listed in clause 3(c), and
- There is no conflict between the proposal and water based activities as listed in clause 3(d).

It is considered that the modified proposal is consistent with the matters prescribed by sub-clauses 1, 2, and 3 of Clause 6.9 Foreshore Scenic Protection, within the MLEP 2013.

6.10 Limited development on foreshore area

The site is identified as being within located within the Foreshore Scenic Protection Area Map of MDCP 2013, and the modified works are within the foreshore area of the site. Therefore, the objectives of this clause are applicable in relation to the proposal.

Following detailed assessment of the proposed development, Council can be satisfied of the following:

- The modified works are for the removal of the existing access stairs and boatshed, with the addition of the recessed storage shed, retaining walls and inclinator, therefore satisfying clause 2 (a), (b) and (c),
- The proposal satisfies the E3 Environmental Management zone objectives, and is unlikely to have unreasonable impacts to the visual amenity of the harbour foreshore area, therefore satisfying the matters as listed in clause 3(a) to (h), and
- The proposal has no public access from the foreshore area, therefore clause 4(a) to (e) do not apply.

As such, it is considered that the modified works are consistent with the matters prescribed by sub-clauses 1, 2, and 3 of Clause 6.10 Limited Development on Foreshore area, within the MLEP 2013.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 976.3sqm	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1150sqm area per dwellings	976.3sqm (existing) of site area	No change	Yes
4.1.2.1 Wall Height	Wall on Boundary Height	2.9m Boatshed	2.6m Storage Shed	Yes
	Wall on Boundary Length 21.65m	6.0m 27% Boatshed	0.0m Storage Shed (excavated into the site)	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	1.5m Pool	3.4m Pool	3.5m Retaining Wall Boat Shed 1.2m Inclinorator Track	Yes
4.1.4.4 Rear Setbacks	8.0m	9.4m Spa Pool Boat Shed	5.2m Storage Shed 0.4m - 1.6m Seawall	No* Yes** No

			0.5m - 1.2m Inclinator track	
4.1.4.5 Foreshore Building Lines and Foreshore Area	15.0m	9.4m Pool Boat Shed within foreshore building line/area	5.2m Storage Shed	No*
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (585.78sqm)	69% (676sqm)	No change	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (234.31sqm)	25% (147sqm)	No change	Yes
	3 native trees	6 trees	9 trees	Yes

* Whilst the proposal does not comply, the storage shed provides greater rear setbacks than previously approved.

** Seawall location previously approved.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	No	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

There is no change to the existing presentation of the residential dwelling house to Laura Street.

3.4.2 Privacy and Security

Having regard to the localised situation, the assessment of privacy is to be based on the principle of not creating additional unreasonable impacts on the existing level of privacy between the subject site and the neighbouring properties.

Due to the significant sloping topography, and the western side setback distance of the 1.2m for the proposed inclinator track, additional overlooking could occur.

Therefore, the proposed inclinator is considered against the underlying objectives of the Privacy and Security Control as follows:

- *Objective 1) To minimise loss of privacy to adjacent and nearby development by:*
 - *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings;*
 - *and mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The proposed inclinator track is adequately separated from the adjoining dwelling house to the west mitigate any privacy impacts (acoustic and visual). The proposed inclinator track is sited at a lower topography than the western adjoining dwelling house and will also be located over the existing access stairs on the western boundary. This location maintains the existing transitional area on the site, minimising any additional privacy impacts.

The proposed inclinator track runs largely parallel to the western side boundary, where existing overlooking exists. Screening landscaping adjoins the western side boundary to property, No. 5 Laura Street thereby mitigating direct viewing between the properties. See photo 1, 2 and 3 below.



Photo 1. Existing overlooking from the top terrace area to the western property.

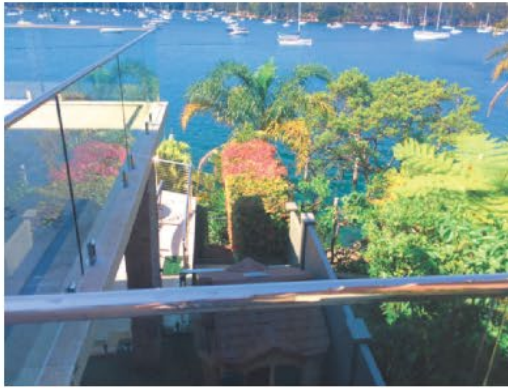


Photo 2. Current view of the existing screening vegetation adjoining the proposed inclinator track location.



Photo 3. Existing screening vegetation on the western side boundary adjoining the proposed inclinator track location.

- Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The inclinator is a relatively minimal structure with the largest element being the open cage carriage to carry people up and down the steepest part of the site. The rail will be located as close as possible to ground level depending on the topography. Therefore, the inclinator has no impact on the existing level of sunlight access to the western adjoining property.

The inclinator upper stopping station will adjoin the existing upper rear terrace area where a degree of overlooking currently exists to the western adjoining site, see photo 1 above. The location of the upper stopping station will no create any additional overlooking impacts, and displays no unreasonable overlooking to the habitable or open space of the western adjoining site.

The other inclinator station stops are located over the existing access stairs, and adjoin the existing screening landscaping, minimising additional privacy impacts to the western adjoining property.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported.

3.9 Mechanical Plant Equipment

The development is not expected to produce an unreasonable noise level above the level of normal residential use that is produced on all other similar sites that include inclinator. The noise from the inclinator has been conditioned to require that the mechanic motor for the inclinator is not to exceed 5dB (A) over the ambient background noise level when measured at the nearest property boundary.

Therefore, the proposed inclinator is not likely to result in unreasonable noise issues and reasonable levels of acoustic amenity should be maintained.

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

The proposed inclinator demonstrates a setback of 0.5m to 1.2m from the rear mean high water mark.

The inclinator is a relatively minimal structure, with the largest element being the carriage to carry people up and down the steeper topography of the site. The rail will be located as close as possible to ground level depending on the topography of the very steep site, consistent with other inclinator located in the area.

The carriage will predominantly be at a resting location at an existing dwelling house terrace level, minimising any additional visual dominance in the site.

The proposal includes the removal of the existing access stairs within the rear setback to accommodate the inclinator track. Therefore, built form structures will be reduced within the rear setback area of the site, and additional low level planting will be incorporated to soften the inclinator track area.

The construction of a minor ramp adjoining the the foreshore decking area, will have no amenity impacts to the adjoining neighbours or to the foreshore area.

The solar access and privacy impacts to the western adjoining site will be maintained, as the inclinator track will be located as close as possible to ground level depending on the topography of the very steep site, with existing vegetation screening the inclinator.

The proposed inclinator, which is primarily constructed on piers, is a sensitive solution for the constrained site that preserves the amenity to the adjoining western property, the natural features and biodiversity onsite, while significantly improving amenity for occupants of the subject site.

5.4.1 Foreshore Scenic Protection Area

The inclinator, seawall additions and storage shed area located within the foreshore building setback, as demonstrated in photo 1 below.

However, the site is exceptionally steep with a gradient of over 40% at the rear of the site constraining the location of the storage facility, and creating a need to improve access to the foreshore area.



Photo 4. Location of the existing structures within the foreshore area on behalf of the submitted SEE, dated 6 May 2019.

The inclinator is to enable access to the foreshore area of the site, without having to use the large amount of external stairs. The inclinator will improve access and allow access for people with physical disabilities to the foreshore area of the site.

The proposed inclinator will not have an unreasonable impact on the scenic amenity of the foreshore. The inclinator is a minimal structure that sits close to the ground level, and is consistent with other inclinator within the immediate area. The carriage will predominately be located at the stopping stations adjoining the dwelling house terrace levels. Therefore the carriage has a minimal impact on the scenic quality of the site when viewed from the waterway.

The scenic quality of the site is improved with the removal of the boatshed, and recessing the storage shed into the existing terraces so only the front access doors are visible from the waterway. The new storage shed will also be screened with additional landscaping to soften the built form.

The removal of western side boundary stairs will improve the foreshore creating by creating additional landscaped areas.

The removal of the stairs adjoining the rear foreshore decked area will have negligible additional visual impact on the foreshore area to what was previously approved.

The inclinator, recessed storage shed, stair removal and increased landscaping will enhance the scenic amenity of the foreshore by allowing greater, and safer access to middle harbour, within an improved landscaped setting.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

This Modification Application has been assessed having regards to the original approval at 4 Laura Street, Seaforth.

Public Exhibition

The public exhibition of the application resulted in no submissions.

Referrals

The application was referred to five (5) internal departments and two (2) external authorities and there were no objections raised subject to the conditions of the original proposal being maintained as part of

the consent.

A referral response was received by the Foreshore and Waterways Planning and Development Advisory Committee who had no additional concerns or conditions.

Assessment of the Proposal

The proposal complies with the objectives of the E3 Environmental Management zone, and makes no change to the building height or floor space ratio.

In addition, the assessment of the proposed development against the provisions of the Manly DCP 2013 has found that the proposal does not comply with certain controls, being the foreshore building line and rear setback. Given the constraints on the development by virtue of the escarpment location and the presence of significant environmental features, some flexibility in applying these controls is necessary. Subject to additional conditions for the inclinor, there will not be any unreasonable amenity impacts on adjoining properties and the proposal will be consistent with the character of Laura Street and the Middle Harbour foreshore locality.

Recommendation - Approval

In summary, the proposal is recommended for approval as the siting and design of the additional inclinor, storage shed and access ramp is site responsive and logical and will not result in any unreasonable amenity impacts on surrounding developments or the streetscape and foreshore character.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0241 for Modification of Development Consent DA148/2014 granted for alterations and additions to an existing dwelling including a sea wall on land at Lot 4 DP 249261,4 Laura Street, SEAFORTH, subject to the conditions printed below:

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

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

a) The plans and documents listed in the "Notice of Determination" issued on the 8 February 2019 in relation to DA2014/0148, as modified by,

b) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan L-01 Rev E	30/04/2019	Space Landscape Designs
Section Elevations L-02 Rev E	30/04/2019	Space Landscape Designs

Inclinor and Storage Shed Plan L-03 Rev B	30/04/2019	Space Landscape Designs
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Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Amendment Geoetchnical Investigation	7 May 2019	White Geoetchnical Group

c) 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
Landscape Plan L-04 Rev E	30/04/2019	Space Landscape Design
Planting Plan L-05 Rev E	30/04/2019	Space Landscape Design

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

B. Add Condition 10A - Inclinor Acoustic Impact to read as follows:

The inclinor is to be acoustically treated so that it does not emit any noise of 5dba above background noise at the nearest residential receiver.

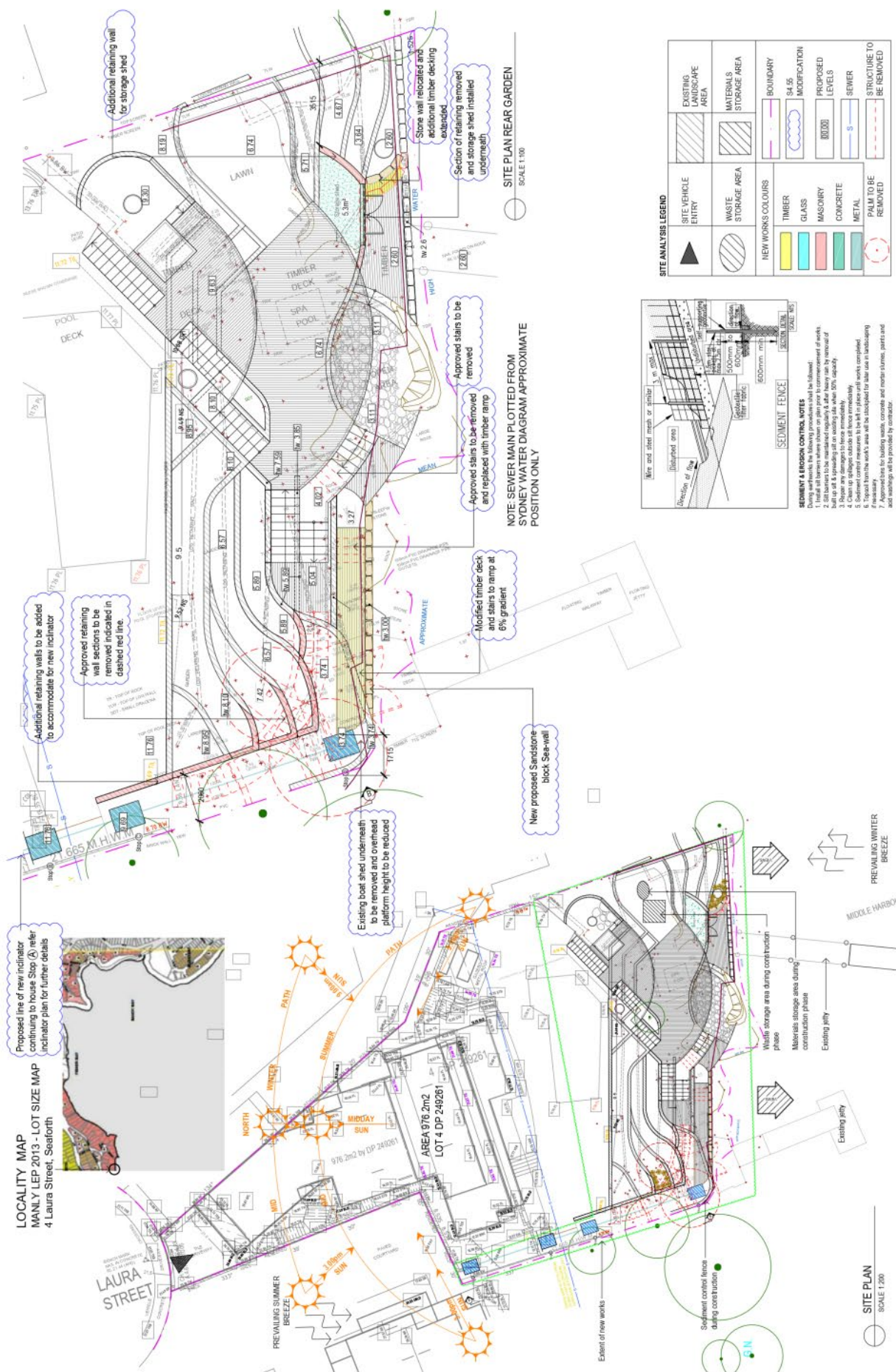
Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.
















Reason: To ensure the acoustic amenity of the neighbouring residents.

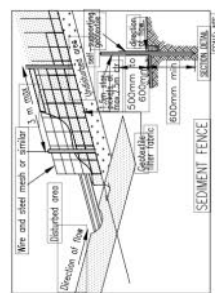
C. Add Condition 40A - Lighting of the Inclinor to read as follows:

No bright lighting is to be installed to the carriage of the inclinor. A modest amount of low level lighting may be used for safety purposes only.

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



SITE ANALYSIS LEGEND			
	SITE VEHICLE ENTRY		EXISTING LANDSCAPE AREA
	WASTE STORAGE AREA		MATERIALS STORAGE AREA
NEW WORKS COLOURS			
	TIMBER		BOUNDARY
	GLASS		54.55 MODIFICATION
	MASONRY		PROPOSED LEVELS
	CONCRETE		SEWER
	METAL		STRUCTURE TO BE REMOVED
	PALM TO BE REMOVED		

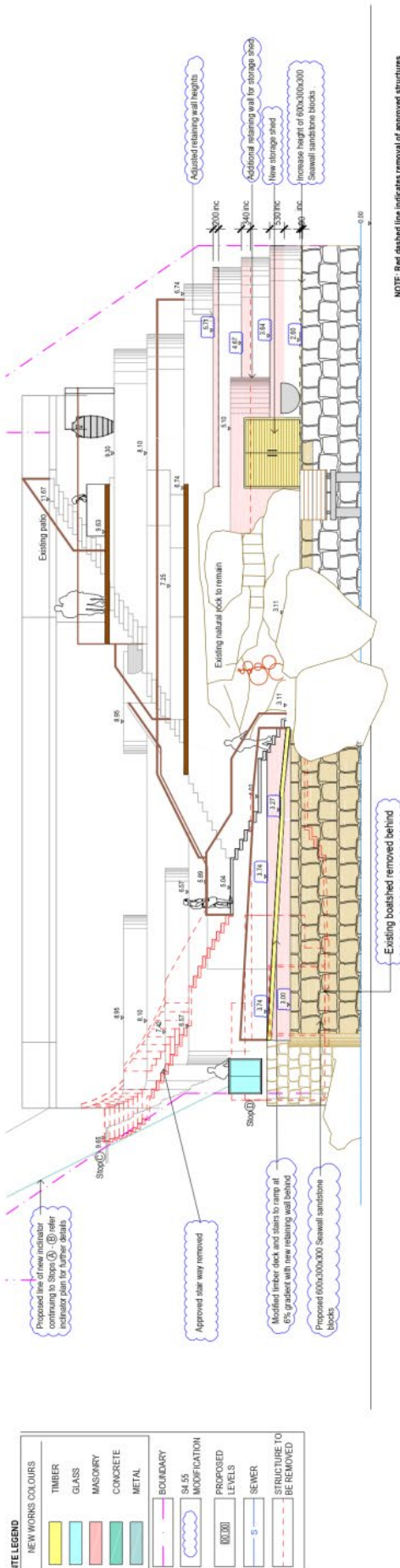


SEDIMENT & EROSION CONTROL NOTES

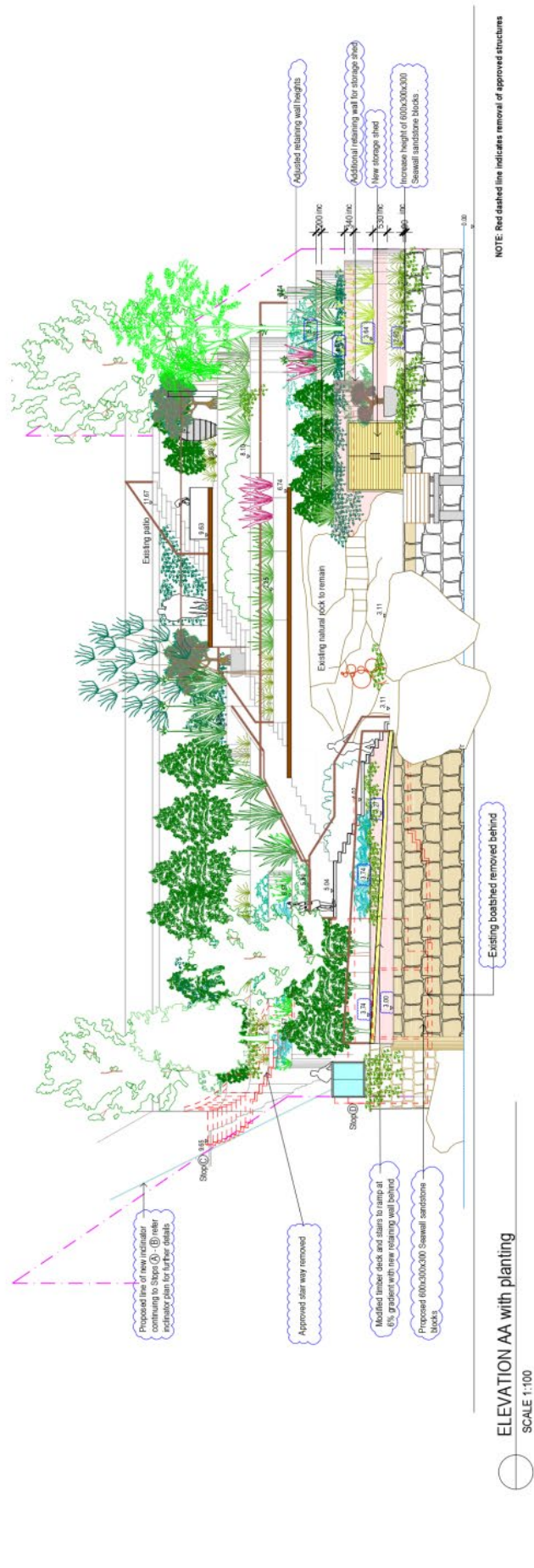
During earthwork, the following provisions shall be followed:

1. Initial soil barriers shown on plan prior to commencement of work.
2. Silt barriers to be maintained regularly & after heavy rain by removal of accumulated sediment.
3. Start up all & spreading all on working area when 50% capacity.
4. Repair any damages to fence immediately.
5. Clean up spillages outside of fence immediately.
6. Sediment control measures to be left in place until work completed.
7. Topsoil between the work's area will be replaced for all use in landscaping.
8. Approved plans for building waste, concrete and mortar flows, paints and oils.
9. Approved plans for building waste, concrete and mortar flows, paints and oils.
10. Approved plans for building waste, concrete and mortar flows, paints and oils.

[illegible]



SECTION ELEVATION AA showing structures
SCALE 1:100



ELEVATION AA with planting
SCALE 1:100

NOTES:
- Contractors to check and verify all dimensions and all levels in situ prior to any works.
- All work to comply with E.L.A. (Building Substantive and General Building Standards).
- Contractors responsible for safety. If measurements are in metres.

**SPACE
LANDSCAPE DESIGNS**

CLIENT
Ian & Marcelle Carr
4 Laura St SEAFORTH

DATE 14/07/2014
SCALE 1:100@A2
PROJECT NO. 141046

SECTION ELEVATIONS
L-02

Rev **E**

ITEM 3.2**DA2019/0904 - 2033 PITTWATER ROAD, BAYVIEW -
CONSTRUCTION OF A DWELLING HOUSE, SECONDARY
DWELLING AND SWIMMING POOL****REPORTING MANAGER****Matthew Edmonds****TRIM FILE REF****2019/704807****ATTACHMENTS**

- 1 Assessment Report**
- 2 Site Plan, Elevations & View Impact Photos**

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0904 for construction of a dwelling house, secondary dwelling and swimming Pool on land at Lot 1 DP 562577, 2033 Pittwater Road, Bayview, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0904
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 1 DP 562577, 2033 Pittwater Road BAYVIEW NSW 2104
Proposed Development:	Construction of a dwelling house, Secondary dwelling and Swimming Pool
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Paul Oppedisano
Applicant:	Paul Oppedisano
Application Lodged:	22/08/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	26/09/2019 to 10/10/2019
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,820,000.00

EXECUTIVE SUMMARY

Council is in receipt of development application DA2019/0904 for construction of a dwelling house, secondary dwelling, and swimming pool at 2033 Pittwater Road, Bayview.

This development application is referred to the Development Determination Panel as the application has received more than three (3) submissions and the cost of works exceeds \$1,000,000. The main assessment issue is regarding the view impact resulting from the development, which four (4) properties have raised as a concern. The proposal involves variations to the Pittwater 21 Development Control Plan (DCP) with regard to landscaped area, rear setback and building envelope, which are discussed within the report. Each of the DCP variations are considered to be minor and are supported by the assessing officer following a merit assessment.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of demolition of an existing dwelling and construction of a new dwelling house and swimming pool. Specifically, the proposal consists of:

- Lower ground floor consisting of four car garage, gym, laundry, cellar and entertaining area;
- Upper ground floor consisting of kitchen, dining and lounge room, three bedrooms and a pergola;
- First floor consisting of a two bedroom secondary dwelling accessed via a staircase on the south-eastern extent of the building;
- Swimming pool attached to the proposed outdoor pergola area;
- Two photovoltaic panels located upon the roof; and
- New driveway and associated landscape planting.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 5.4 Controls relating to miscellaneous permissible uses
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.23 Eaves
Pittwater 21 Development Control Plan - D4.6 Side and rear building line
Pittwater 21 Development Control Plan - D4.8 Building envelope
Pittwater 21 Development Control Plan - D4.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 1 DP 562577 , 2033 Pittwater Road BAYVIEW NSW 2104
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-western side of Pittwater Road.</p> <p>The site is irregular in shape with a frontage of 25m along Pittwater Road and a depth of 42.67m. The site has a surveyed area of 1002m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a part one/part two story dwelling house and carport. A concrete retaining wall of approximately 1m in height exists along the rear boundary.</p> <p>The site does not contain any significant canopy trees or landscape planting.</p> <p>The site has a moderate slope from the rear to the street frontage, with an overall fall of 3m.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwelling houses of single storey, double storey and some three storey construction. Immediately to the south-east is a weatherboard brick cottage which is single level with a garage beneath. To the south-west is a two storey dwelling. Behind the subject site accessed via a battle-axe handle is a two storey dwelling house. Across the road are two storey dwelling houses which front the Pittwater waterway.</p>

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:

- N0281/15 Development application for alterations and additions to an existing dwelling, including upper floor addition and garage was submitted to Pittwater Council on 9 July 30 July 2015. The application was subsequently withdrawn on 1 September 2015.

The relevant history of the assessment of the development application is as follows:

- On 4 October 2019 Council requested the applicant erect height poles.
- On 6 November 2019, the applicant provided certification from a registered surveyor that the height poles had been erected in the location requested by Council.
- On 18 November 2019, the assessing officer conducted a site inspections from the properties 2031 Pittwater Road and 14 Noolinga Road to assess the impact upon views. The site inspections were conducted in the presence of the affected property owners.
- On 19 November 2019, the assessing officer conducted a site inspection from the property 2035 Pittwater Road to assess the impact upon views. The inspection was conducted in the presence of the property owner and planning consultant who acted on behalf of the property owner.
- On 26 November 2019, the assessing officer conducted a site inspection from the property 2029 Pittwater Road to assess the impact upon views. The inspection was conducted in the presence of one of the property owner.
- On 28 November Council requested the applicant amend the proposal to delete the blade wall associated with the staircase which protruded north-east of the front facade. Council also requested that the material selection 'green glazed tiles' be amended to a more recessive finish and the angled solar panels upon the roof either reduced in height
- On 3 December the applicant provided the updated plans to address the concerns above which deleted the majority of the blade wall protruding north-east of the facade, reduced the height of the photovoltaic panels and amended the material selection to standing seam copper cladding.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions"

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

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 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 5 submission/s from:

Name:	Address:
Turnbull Planning International Pty Ltd	2301 / 4 Daydream Street WARRIEWOOD NSW 2102
Mr Neville Brian Wells	Po Box 491 MONA VALE NSW 2103
Graham B Morley	14 Noolinga Road BAYVIEW NSW 2104
James de Soyres & Associates Pty Ltd	PO Box 657 NEWPORT BEACH NSW 2106
Ms Meryl Doris Kershaw	2029 Pittwater Road BAYVIEW NSW 2104

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

- The proposal will have an impact upon views for surrounding properties.
- The walls protruding forward of the north-eastern facade alongside the staircase are unnecessary and create an additional view impact due to their height and length. The height poles are not representative of the walls projecting forward of the south-east facade and create an additional view impact.
- The choice of 'green glazed tiles' on the upper floor is unsympathetic and will result in glare.
- The proposed development will have an impact upon solar access for 2035 Pittwater Road and

2031 Pittwater Road.

- The rear deck is non-compliant with the rear setback and is nominated at 2.3m.
- The proximity of the excavation to the rear boundary is not known and not detailed upon the plans. We request Council carefully consider the extent and proximity of the excavation to the rear boundary.
- The proposal is deficient in landscaped area.
- The proposal does not comply with the building envelope control.
- The south-eastern side of the building consisting of privacy walls presents a plain sheer flat surface which will have a barrier like appearance when viewed from the pedestrian pathway.
- The proposed photovoltaic system located on the roof will be unattractive and appears to be above the building height. The solar panels should be placed on the lower roof areas.

The matters raised within the submissions are addressed as follows:

- *The proposal will have an impact upon views for surrounding properties.*

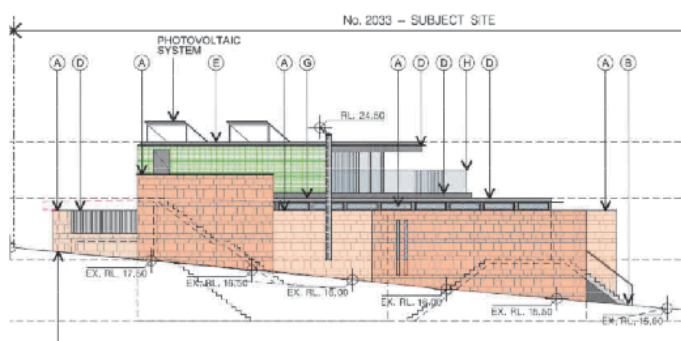
Comment:

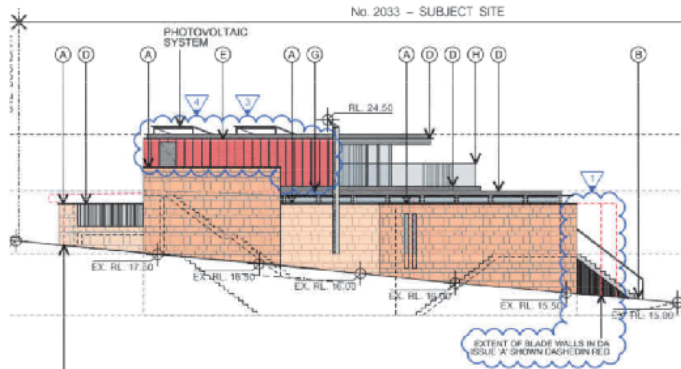
A detailed assessment of the view impact for surrounding properties has been undertaken later within this report, under Part C1.3 View Sharing. Overall, the proposed development is considered to be reasonable in the context and results in a satisfactory view sharing outcome.

- *The walls alongside the staircase projecting from the front facade are unnecessary and create an additional view impact due to their height and length. The height poles are not representative of the projecting wall element from the front facade and create an additional view impact.*

Comment:

It is correct that the height poles erected represent the most north-eastern extent of the building facade, with the projecting wall element further forward of the height pole location. However, Council has requested that the applicant delete the section of wall projecting forward of the building facade towards the north-east as this element of the proposal would result in an unreasonable and unnecessary view impact. The below figure represents the amended facade with the projecting wall deleted. Therefore, the view impact assessment is considered to be satisfactory for the extent of the view impact looking north and north-west having deleted the projecting blade wall.





- *The choice of 'green glazed tiles' on the upper floor is unsympathetic and will result in glare.*
Comment:
The applicant has deleted the use of green glazed tiles and replaced with standing seam copper cladding which is non-reflective and is more sympathetic to the surrounding landscape.

- *The proposed development will have an impact upon solar access for 2035 Pittwater Road and 2031 Pittwater Road.*

Comment:

The development will result in some overshadowing of the front yard and garage of 2035 Pittwater Road during the morning period, with all sunlight retained during the afternoon.

The development will result in some overshadowing of the adjacent building on 2031 Pittwater Road between 12pm and 3pm due to the site orientation. The DCP requires a minimum of three hours solar access to be retained for the windows and private open space of adjoining dwellings. The provided shadow diagrams demonstrate that the dwelling on 2031 Pittwater Road will retain 3 hours of solar access to windows and private open space between 9am and 12pm. Therefore, the proposal is compliant with the controls and is not considered to result in an unreasonable overshadowing impact.

- *The rear deck is non-compliant with the rear setback and is nominated at 2.3m.*

Comment:

The deck is proposed to be located 3.22m from the rear boundary, which is depicted on the ground floor plan submitted to Council (not available for public notification). The reference to 2.3m is the existing dwelling to be demolished, as shown on DA-1002 Site Plan. Council have undertaken an assessment of the rear deck against the objectives of the rear setback control and consider the variation worthy of support. The deck is a low scale structure which is to be screened by landscape planting and is adjacent to the garage on 2035 Pittwater Road. The deck is not considered to result in an unreasonable impact, notwithstanding the numerical non-compliance.

- *The proximity of the excavation to the rear boundary is not known and not detailed upon the plans. We request Council carefully consider the extent and proximity of the excavation to the rear boundary.*

Comment:

The proximity of the excavation is detailed within the section plan submitted to Council (not available during public notification). The section plan demonstrates the excavation for the lower ground floor is 6.5m away from the rear boundary. This is considered to be sufficient separation and in accordance with the rear setback control.

- The proposal is deficient in landscaped area.*
Comment:
 A detailed assessment of the development against the landscaped area control is contained later within this report. The proposal has been found to meet the outcomes of the control, including providing a detailed landscape plan which demonstrates additional landscape planting throughout the site. Further, no canopy trees are proposed to be impacted via the proposal.
- The proposal does not comply with the building envelope control.*
Comment:
 The development results in a minor variation to the building envelope on the south-eastern facade, limited to a minor portion of the wall adjoining the staircase. A detailed assessment has been undertaken later within this report and found the proposal to be consistent with the outcomes of the control and the area of non-compliance resulting in no unreasonable impact with regards to privacy, views or overshadowing.
- The south-eastern side of the building consisting of privacy walls to the staircase presents a plain sheer flat surface which will have a barrier like appearance when viewed from the pedestrian pathway.*
Comment:
 The overall building and south-eastern elevation is considered to be well articulated through the varied use of building materials, recessing and projecting architectural elements and the top level recessed back from the south-eastern boundary. Overall, the proposal is not considered to have an excessive visual impact from the pedestrian pathway.
- The proposed photovoltaic system located on the roof will be unattractive and appears to be above the building height. The solar panels should be places on the lower roof areas.*
Comment:
 The pitch of the photovoltaic system has been lowered and the height reduced to half or what was originally proposed. This will ensure the panels will achieve a balance of optimal functionality for the resident, whilst having as minimal impact as possible in their current location. The panels are located below the LEP height limit of 8.5m.

REFERRALS

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

Internal Referral Body	Comments
	The DA is considered acceptable with regard to the relevant controls relating to landscape issues, subject to conditions.
NECC (Development Engineering)	<p>Recommendation: Approval with conditions</p> <p>The subject site is adjacent to a Council pipeline. Suitable conditions to protect this infrastructure have been included. The existing driveway crossing is to remain and the proposed internal driveway is satisfactory. Stormwater is to be connected to the Council system and the submitted Geotechnical report addresses the relevant DCP controls. No objection to approval, subject to conditions as recommended.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 10269250M dated 7 August 2019).

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

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Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	52

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.

SEPP (Coastal Management) 2018

The site is classified as coastal environment area and coastal use area under the SEPP Coastal Management (2018). Accordingly, an assessment of the relevant clauses 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:*
- the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - coastal environmental values and natural coastal processes,*
 - 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,*
 - 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 proposed development will not have a detrimental impact upon the coastal environment in relation to the matters listed above. The subject site is located across the road from the foreshore area and does not contain any marine vegetation, Aboriginal heritage or provide direct access to the foreshore area.

- (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 Council is satisfied the proposal will avoid adverse impacts.

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 proposal will not unreasonably impact on the matters listed above. The proposal will not overshadow the foreshore, restrict access or cause an unreasonable visual impact.

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

hazards

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

Comment:

The proposal is not likely to cause an increase in risk of coastal hazards.

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

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:	8.5m	8.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

Detailed Assessment

5.4 Controls relating to miscellaneous permissible uses

The total floor area of the principle dwelling is 441.2sqm. Therefore, the maximum floor area of the secondary dwelling may be 110.3sqm.

The secondary dwelling is proposed at 110.3sqm, or 25% of the floor area of the principle dwelling. This is compliant with the control 5.4(9).

7.2 Earthworks

In accordance with subclause (3) the following matters have been considered:

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

Comment: Council's development engineers have reviewed the proposal with regard to storm water drainage and it is considered the site is capable of disposing of storm water to a suitable location, without a detrimental impact for adjoining properties.

- *the effect of the development on the likely future use or redevelopment of the land,*

Comment: The proposed amount of excavation is a suitable level to provide for the a parking area and lower ground floor, without impacting any future land uses.

- *the quality of the fill or the soil to be excavated, or both,*

Comment: The site has been used for residential purposes for an extended period of time and the fill to be excavated is not likely to contain contaminants.

- *the effect of the development on the existing and likely amenity of adjoining properties,*

Comment: No unreasonable impacts are considered to arise as a result of the proposed development, as discussed in detail within this report.

- *the source of any fill material and the destination of any excavated material,*

Comment: A portion of excavated material is to be reused on site for creating a building platform, with the remainder to be disposed of at landfill in accordance with the submitted Waste Management Plan.

- *the likelihood of disturbing relics,*

Comment: There are no known relics within the site.

- *the proximity to, and potential for adverse impacts on any waterway, drinking water catchment or environmentally sensitive area,*

Comment: The amount of excavation proposed will not have a detrimental impact on the waterway. The site is not identified within an environmentally sensitive area.

- *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*

Comment: Soil erosion and sediment control measures are proposed to be implemented during construction. The proposed excavation will allow the dwelling to be sited within the slope of the land, minimising view impacts.

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

Comment: There are no known archaeological sites which will be impacted, nor is the proposal near a heritage item or HCA.

7.6 Biodiversity protection

1. Before determining a development application for development on land to which this clause applies, the consent authority must consider:
 - a. whether the development is likely to have:
 - i. *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*

Comment: The proposal results in no tree removal, with new native planting proposed.
 - ii. *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*

Comment: No significant vegetation is removed as part of the application.
 - iii. *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*

Comment: The proposal will result in new additional landscape planting to contribute to the area.
 - iv. *any adverse impact on the habitat elements providing connectivity on the land, and*

Comment: The proposed development will not have an adverse impact upon habitat connectivity, with new plantings to provide additional opportunity.
 - b. *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: Impacts have been avoided through no tree removal.
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 any significant adverse environmental impact, or*
 - b. *if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
 - c. *if that impact cannot be minimised - the development will be managed to mitigate that impact.*

Comment: The proposal has been designed to avoid impact to vegetation

7.10 Essential services

Services are available to the site and can be augmented as necessary to accommodate the proposed new dwelling.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	10m	11.8m	N/A	Yes
Rear building line	6.5m	6.5m Dwelling Wall 3.22m Deck	N/A 50%	Yes No
Side building line	2.5m	2.5m NW	N/A	Yes
	1m	1m SE	N/A	Yes
Building envelope	3.5m	Within NW	N/A	Yes
	3.5m	Outside envelope SE	Up to 600mm	No
Landscaped area	60%	50% *54.9% with variation clause	16%	No

***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
A4.4 Church Point and Bayview Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5.3 Greywater Reuse	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.8 Stormwater Management - Water Quality - 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
B6.6 On-Street Parking Facilities	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.1 Landscaping	Yes	Yes
C5.17 Pollution control	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	Yes	Yes
D4.6 Side and rear building line	No	Yes
D4.8 Building envelope	No	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D4.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

Merit consideration

Council's assessing officer undertook four (4) separate site inspections to ascertain the view impact from each objecting property. The applicant erected height poles to represent the height and location of the proposed new dwelling and the height pole locations have been certified by a registered surveyor.

An assessment of the view impact from each property is undertaken below. All relevant view impact photos are contained within Appendix 1 attached to this report.

In considering the view impact to each property, the development is considered against the underlying outcomes of the control as follows:

A reasonable sharing of views amongst dwellings.

Comment:

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

View impact assessment 2031 Pittwater Road, Bayview

1. Nature of the views affected

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

Comment to Principle 1:

The views to be affected include views of the Pittwater and partially the land-water interface between the Pittwater and Scotland Island.

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

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

Comment to Principle 2:

The main view that is to be impacted is obtained from the living room and obtained across the side boundary (Figure 1) looking towards the north-west. The views are obtained from both a standing and seated position. The view is also impacted from a bedroom (Figure 2) which has the same aspect as the living room windows and obtained from a standing and seated position.

3. Extent of impact

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

Comment to Principle 3:

The extent of the impact is considered to be moderate for the following reasons:

- The view impacted is valuable containing water and a portion of land-water interface;
- However, the view impacted makes up a minor portion when compared to the views which are retained. The views to be retained are the full land-water interface to the north and north-eastern aspect from the living room, obtained from both a seated and standing position. The view

retained from the bedroom towards the north and north-east are also retained. The main view corridor which contains both the western and eastern foreshore of the Pittwater is retained, which is considered to be a highly valued view.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The portion of the building that creates the view impact is the north-eastern extent of the building facade. The DCP requires the building to be setback 10m from the front boundary. This portion of the building is setback 11.8m and compliant with the control. This portion of the building is compliant with both building height and building envelope. Therefore, the proposed development is considered to be of a reasonable size and compliant with the controls.

The proposed development is cited in a way to achieve optimal amenity with living rooms orientated north, with the mass and bulk of the building orientated towards the rear of the site to limit the view impact through to the north-west. Therefore, the orientation of the dwelling is considered to afford good amenity whilst limiting the view impact on the surrounding properties whilst considering the context and site orientation through a sufficiently skillful design. A protruding blade wall element has been deleted from the proposal to reduce the view impact, whilst maintaining a well presented facade.

Concluding Comment:

The proposed development results in a reasonable view sharing scenario for 2031 Pittwater Road given the view impact towards the north-west is a result of a compliant portion of the building, is obtained across a side boundary and the majority of views towards the north and north-east are retained. The views retained comprise of the western and eastern foreshore areas of the Pittwater from the living room and bedroom, as well as a large portion of Scotland Island land-water interface and for this reason, the outcome is acceptable.

View impact assessment assessment 14 Noolinga Road, Bayview

1. Nature of the views affected

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

Comment to Principle 1:

The view to be affected is a water view, specifically a central portion of the Pittwater. The view corridor is over the dwelling located on 2033 Pittwater Road facing north.

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

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

Comment to Principle 2:

The views are obtained from the kitchen, deck adjoining the kitchen, lower ground floor living room, upper floor living room, deck adjoining the upper floor living room, bedrooms and the pool area. The views are obtained both over the rear and side boundaries with the subject site located to the north of 14 Noolinga Road. The views are currently available from a seated and standing position.

3. Extent of impact

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

Comment to Principle 3:

The view impact is considered moderate from the kitchen (figure 3), deck adjoining the kitchen (figure 4) and bedrooms. A central portion of the water view is impacted, however, all available areas of land-water interface including the view of the eastern and western foreshore of the Pittwater area retained. Full views towards Scotland Island are retained including the land-water interface.

The view impact from the upper floor living area (Figure 5) is considered minor, with a central portion of the water impacted. However, all available areas of land-water interface including the view of the eastern and western foreshore of the Pittwater retained. Full views towards Scotland Island are retained including the land-water interface.

The view impact from the lower ground floor area (Figure 6) living area is considered to be severe, with the majority of the water impacted from this room. However, as this living room is located upon the lowest level of the building and views are obtained mostly over the side boundary, this area is more susceptible to a view impact.

Overall, the highly valued views of the land-water interface between the western and eastern foreshore of Pittwater, as well as Scotland Island, are retained from all rooms except the lower ground floor living room which is the most impacted room. On balance, with the majority of the valuable views retained from all rooms except the lower ground floor living room, the overall impact is considered moderate.

4. Reasonableness of the proposal that is causing the impact

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

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

Comment to Principle 4:

The portion of the building which results in a view impact is the upper floor of the dwelling which is compliant with regard to building height, building setback and building envelope. The building is designed in an 'L' shape to capture northern sunlight and views towards the northern aspect for optimal amenity. As the portion of the building having an impact is compliant with the controls and the view impact is moderate, the design is considered reasonable in the context. The bulk and mass of the upper floor is located in the south-west half (rear) of the site which assists in maintaining long distance views through to the north. A flat roof has been used to further minimise view impacts. Overall, the design is an appropriate response to the context and needs of the occupants and is considered to be a skilful design in regards to the maintenance of views.

Concluding Comment

Overall, the proposed development is considered to result in a reasonable view sharing scenario for the Dwelling upon 14 Noolinga Road, with the most affected room being located upon the lower ground floor. However, on balance, the majority of the remaining rooms (kitchen, bedroom, upper floor living room, deck adjoining kitchen) maintain the majority of highly valued views of the Pittwater, views towards Scotland Island and land water interface which are currently enjoyed from the property.

View impact assessment 2029 Pittwater Road, Bayview

1. Nature of the views affected

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

Comment to Principle 1:

The view to be affected is a water view towards the north-western aspect.

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

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

Comment to Principle 2:

The views are obtained from the living room, dining room and deck. The area of impacted view is obtained across a side boundary from a seated and standing position looking towards the north-west (Figure 7).

3. Extent of impact

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

Comment to Principle 3:

The vast majority of water views from the living room, dining room and deck including land-water interface and Scotland Island are retained for the dwelling, with only a minor portion of water views impacted to the north-west. Overall, the impact is considered to be minor when considering the vast majority of views are to be retained.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The portion of the building that creates the view impact is the north-eastern extent of the building facade. The DCP requires the building to be setback 10m from the front boundary. This portion of the building is setback 11.8m and compliant with the control. This portion of the building is compliant with both building height and building envelope. Given the minor view impact from the proposal, a more skillful or amended design would not be considered to make a noticeable difference for 2029 Pittwater Road.

Concluding Comment:

The view impact is considered to be minor and is results from a portion of the building which complies with the development controls. The view is obtained over a side boundary which is considered hard to protect given the reasonable development potential of 2033 Pittwater Road. Therefore, the development will result in a reasonable view sharing scenario for the dwelling upon 2029 Pittwater Road.

View impact assessment 2035 Pittwater Road, Bayview

1. Nature of the views affected

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

Comment to Principle 1:

The affected view corridor is looking towards the north-east over the subject site. The view impacted comprises of part of the Pittwater, Salt Pan Cove and yacht club. Part of this view comprises of land-water interface within Salt Pan Cove. This view is currently obtained over the roof of the existing dwelling on 2033 Pittwater Road.

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

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

Comment to Principle 2:

The views are obtained over the rear boundary of 2035 Pittwater Road. The views are obtained from both a seated and standing position. A number of areas within the dwelling are impacted including the kitchen (figure 8), ground floor living room (figure 9), upper floor living room (figure 10), upper floor balcony (figure 11), upper floor master bedroom (figure 12) and upper floor bedroom (figure 13).

3. Extent of impact

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

Comment to Principle 3:

The view impact from the kitchen and ground floor living room is considered to be minor when considering the extent of water views which will be impacted compared with those which will be retained. The view corridor to the north containing the western and eastern foreshore of the Pittwater, along with Scotland Island, is largely retained. Views of the Pittwater towards the north-east are already impacted by the existing dwelling on 2033 Pittwater Road.

The view impact from the upper floor living room, master bedroom and balcony is considered moderate considering the impact looking north-east. The view impacted comprises of water, land-water interface and the yacht club within Salt Pan Cove. However, expansive views are retained looking north and north-west which include retention of a large area of water and land-water interface for a long distance looking north.

The view impact from the bedroom is considered to be moderate, with the proposed first floor impacting views looking north and north-east. However, a substantial area of water and land-water interface are retained looking north-west. In accordance with the planning principle, views obtained from kitchens or living rooms are more valued than those obtained from a bedroom.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The portions of the proposed building which create the impact are the top level and the north-western extent of the dwelling. The building height is compliant with the maximum 8.5m building height, compliant with the minimum 2.5m setback control and compliant with the building envelope on the north-western side. The upper floor includes a substantial setback of 6m from the north-western boundary to retain the view corridor looking north and north-west from the dwelling upon 2035 Pittwater Road. This corridor will remain open due to the existing driveway which services 2035 Pittwater Road. A flat roof has been proposed to limit the impact of the development upon views over the proposed building. Overall, it is considered the proposal has demonstrated a skillful design which responds to the needs of the occupants, whilst maintaining important views for 2035 Pittwater Road and in particular the retention of the view corridor through to the north and north-west by a large upper floor setback to the north-west boundary.

Concluding Comments

It is considered the proposed development will result in a moderate view impact from some portions of the dwelling looking towards the north-east due to the proposed first floor. However, a key view corridor is retained from the kitchen, living rooms and balconies looking north and north-west which contains a large amount of water views and land-water interface. The design is considered to result in a reasonable view sharing scenario for the dwelling upon 2035 Pittwater Road with a substantial amount of valuable views retained.

- *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 proposal will not result in an unreasonable impact of views towards the Pittwater from a public place.

- *Canopy trees take priority over views.*

Comment:

No canopy trees are proposed to be removed.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of P21DCP, the Planning Principles set out in *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140* the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

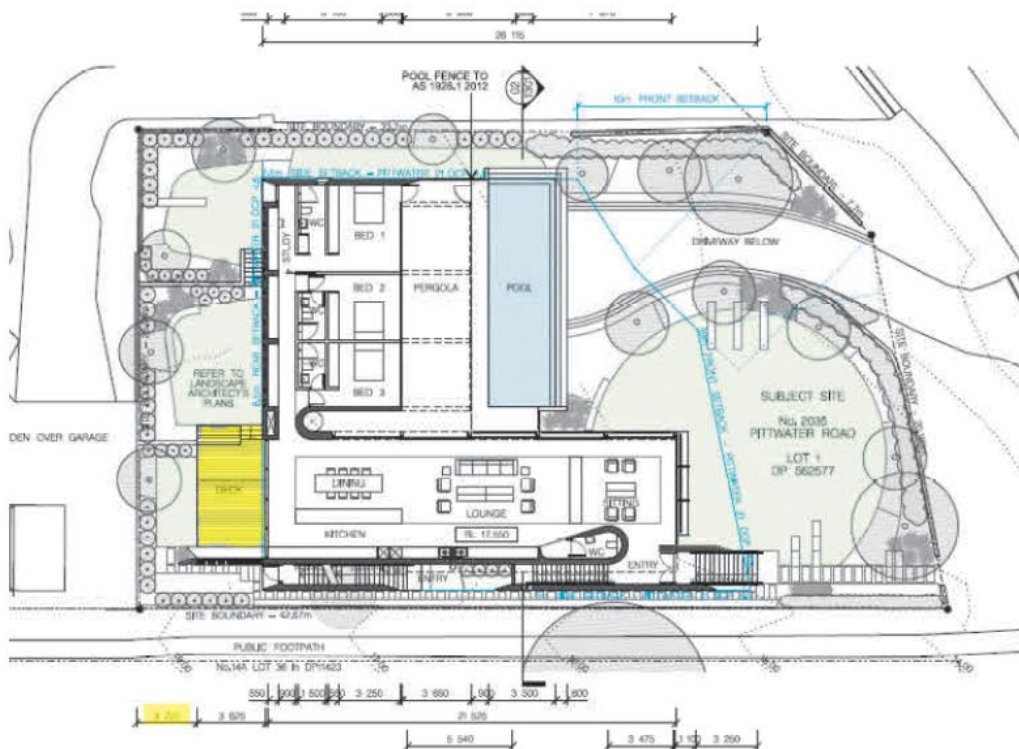
C1.23 Eaves

Eaves and veranda overhangs are incorporated into the northern and western elevation windows to assist in sun shading.

D4.6 Side and rear building line

Description of Non-Compliance

The proposed building complies with the front, side and rear setbacks in accordance with the Pittwater DCP. However, the proposed deck off the ground floor is setback 3.22m which is a variation of 50% of the required 6m control.



Merit Assessment

In assessing the merits of the proposal, the proposal is assessed against the outcomes of the control as follows:

Outcome 1) To achieve the desired future character of the Locality.

Comment: The proposed built form is well articulated with the top level stepped in to reduce the visual impact and bulk and scale. The submitted landscape plan demonstrates there is adequate room for the establishment of landscape planting to achieve the desired character of a building situated within a landscaped setting. The proposed finishes schedule consists of recessive materials to help reduce the visual prominence of the built form within the landscape.

Outcome 2) The bulk and scale of the built form is minimised.

Comment: The built form is well articulated to break up the bulk and scale of building. The proposal is compliant with building height and presents only a minor non-compliance with regard to the building

envelope on the south-eastern elevation. Overall the bulk and scale of the building is considered acceptable and not inconsistent with dwellings within the Bayview locality. The proposed rear deck (which is non-compliant with the rear setback) is not considered to add visual bulk and scale to the building as the structure is located at the ground floor level and not located within a visually prominent location.

Outcome 3) Equitable preservation of views and vistas to and/or from public/private places.

Comment: The proposed development will not result in unreasonable view impact from public places or private places, as discussed elsewhere within this report.

Outcome 4) To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

Comment: The proposed development results in a reasonable view sharing scenario and the rear setback non-compliance does not directly attribute to any view impact of surrounding properties due to the location and low scale nature of the rear deck.

Outcome 5) To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

Comment: The proposed deck area does not directly overlook any adjoining properties. The dwelling contains modest windows on the rear and side elevation which do not present a direct overlooking impact.

Outcome 6) Substantial landscaping, a mature tree canopy and an attractive streetscape.

Comment: A detailed landscape plan has been provided which demonstrates new landscape planting can be achieved throughout the site, in accordance with the DCP controls.

Outcome 7) Flexibility in the siting of buildings and access.

Comment: The proposed deck will not inhibit access to the rear of the dwelling with access around the dwelling achieved.

Outcome 8) Vegetation is retained and enhanced to visually reduce the built form.

Comment: No tree removal is proposed as part of the development. However new landscape planting is proposed to soften the built form.

Outcome 9) To ensure a landscaped buffer between commercial and residential zones is established.

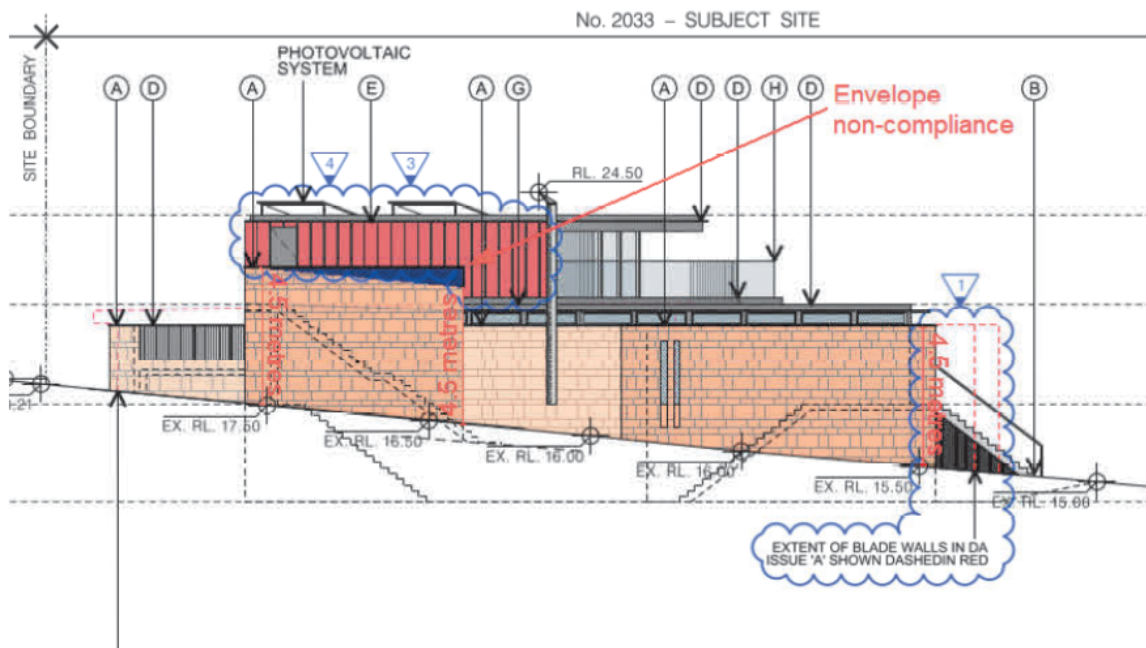
Comment: Not applicable.

The proposed development is considered to achieve the outcomes of the Pittwater DCP and the outcomes of control D4.6 with regard to the rear setback. Therefore, the variation to the control is supported on merit in this particular circumstance based on the above assessment.

D4.8 Building envelope

Description of Non-Compliant

The proposed development has a minor non-compliance of the building envelope upon the south-eastern elevation. The extent of the variation is limited to the wall adjoining the staircase and is depicted in the extract below.



Merit Consideration

In considering a variation to the control, the application is assessed against the outcomes of the control below:

Outcome 1) To achieve the desired future character of the Locality.

Comment: The proposed built form is well articulated with the top level stepped in to reduce the visual impact and bulk and scale. The submitted landscape plan demonstrates there is adequate room for the establishment of landscape planting achieve the desired character of the built form situated within a landscaped setting. The proposed finishes schedule consists of recessive materials to help reduce the visual prominence of the built form within the landscape.

Outcome 2) To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.

Comment: The building will be will below the existing canopy tree level and is consistent with the density of the surrounding development.

Outcome 3) To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

Comment: The proposed dwelling is stepped down and the height reduced across the fall of the site, which is evident in the south-eastern elevation plan. The upper level is setback to provide sufficient breathing space between dwellings. It is noted that the area immediately adjoining the south-east

elevation is a public footpath, which provides existing additional separation between the building on the adjoining site.

Outcome 4) The bulk and scale of the built form is minimised.

Comment: The minor non-compliance with the building envelope is not considered to render the proposed development excessive, with a compliant envelope provided to the upper level secondary dwelling on both elevations. The proposed building is articulated to reduce the overall building bulk, particularly on the upper floor.

Outcome 5) Equitable preservation of views and vistas to and/or from public/private places. (S)

Comment: As discussed elsewhere within this report, the proposed development will result in a satisfactory view sharing scenario. The minor envelope non-compliance to the south-eastern wall does not directly contribute to a view impact for surrounding properties.

Outcome 6) To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)

Comment: The area of non-compliance does not contain any windows or result in an overshadowing impact that is unreasonable. The proposal has demonstrated compliance with the solar access and privacy controls. The existing pedestrian corridor adjoining the south-eastern elevation creates additional building separation and 'breathing space' between dwellings to mitigate amenity impacts.

Outcome 7) Vegetation is retained and enhanced to visually reduce the built form.

Comment: The proposal does not result in the removal of trees and the provided landscape plan provides additional landscape planting throughout the site.

The proposed development is considered to achieve the outcomes of the Pittwater DCP and the outcomes of control D4.8 with regard to the rear setback. Therefore, the variation to the control is supported on merit in this particular circumstance based on the above assessment.

D4.10 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

The DCP requires that 60% of the site consists of landscaped area. The proposed development consists of 50% landscaped area. In accordance with the landscaped area variation clause, up to 6% of site area consisting of paved pathways and open decks may count towards landscaped area. Therefore, when including the pathways and rear deck, the site can be considered as 54.9% landscaped area in accordance with the variation clause.

Merit Assessment

In considering a variation to the control, the application is assessed against the outcomes of the Pittwater DCP as follows:

Outcome 1) Achieve the desired future character of the Locality.

Comment: The proposed built form is well articulated with the top level stepped in to reduce the visual impact and bulk and scale. The submitted landscape plan demonstrates there is adequate room for the establishment of landscape planting to achieve the desired character of the built form situated within a

landscaped setting. The proposed finishes schedule consists of recessive materials to help reduce the visual prominence of the built form within the landscape.

Outcome 2) The bulk and scale of the built form is minimised.

Comment: The built form is well articulated to break up the bulk and scale of building. The proposal is compliant with building height and presents only a minor non-compliance with regard to the building envelope on the south-eastern elevation. Overall the bulk and scale of the building is considered acceptable and not inconsistent with dwellings within the vicinity of the site. The proposed rear deck (which is non-compliant with the rear setback) is not considered to add visual bulk and scale to the building as the structure located close to ground level and not located within a visually prominent location.

Outcome 3) A reasonable level of amenity and solar access is provided and maintained.

Comment: The proposed development has demonstrated that no unreasonable impacts will arise with regard to overshadowing, privacy and a reasonable view sharing scenario is achieved.

Outcome 4) Vegetation is retained and enhanced to visually reduce the built form.

Comment: No tree removal is proposed. However new tree planting is proposed throughout the site as part of the landscape plan.

Outcome 5) Conservation of natural vegetation and biodiversity.

Comment: No tree removal is proposed. The site does not have any particularly significant natural features.

Outcome 6) Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.

Comment: Council's Development Engineer has reviewed the proposals and is satisfied the proposed development can adequately manage stormwater, which will ultimately drain to Council's infrastructure within the road reserve.

Outcome 7) To preserve and enhance the rural and bushland character of the area.

Comment: No tree removal is proposed and the proposed landscaping plan demonstrates new native species to be planted to assist in enhancing bushland character. A large area is provided within the front setback area available for the establishment of landscape planting and new canopy trees.

Outcome 8) Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.

Comment: Although non-compliant with the numerical landscape control, Council's Development Engineer is satisfied that the site can adequately manage and dispose of stormwater.

The proposed development is considered to achieve the outcomes of the Pittwater DCP and the outcomes of control D4.10 with regard to landscaped area. Therefore, the variation to the control is supported on merit in this particular circumstance based on the above assessment.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$18,200 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,820,000.

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

The proposed development is considered to have only minor to moderate view impacts upon the adjoining properties, with each property retaining key important water views. The minor variations to the DCP are supported following a merit assessment against the objectives of each control. Overall, the proposal is considered a reasonable use of the site and is recommended for approval.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0904 for Construction of a dwelling house, Secondary dwelling and Swimming Pool on land at Lot 1 DP 562577, 2033 Pittwater Road, BAYVIEW, 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-1002, Issue B - Site Plan	3/12/2019	Aaron Vumbaca Pyt Ltd
DA-1201, Issue B - Upper and Lower ground floor plans	3/12/2019	Aaron Vumbaca Pyt Ltd
DA-1202, Issue B - First floor and roof plans	3/12/2019	Aaron Vumbaca Pyt Ltd
DA-1010, Issue B - Demolition plans	3/12/2019	Aaron Vumbaca Pyt Ltd
DA-1310, Issue A - Driveway section	8/08/2019	Aaron Vumbaca Pyt Ltd
DA-1301, Issue B - Sections A & B	3/12/2019	Aaron Vumbaca Pyt Ltd
DA-1404, Issue B - North-east and south-west elevations	3/12/2019	Aaron Vumbaca Pyt Ltd
DA-1402, Issue B - South-east and north-west elevations	3/12/2019	Aaron Vumbaca Pyt Ltd
DA-1501, Issue A - Excavation and fill plan	8/08/2019	Aaron Vumbaca Pyt Ltd
DA-1810, Issue A - Sedimentation and erosion control plan	8/08/2019	Aaron Vumbaca Pyt Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1026920M	7 August 2019	Outsource Ideas P/I
Geotechnical Report, J2253	7 August 2019	White Geotechnical Group

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

DA-L101, Revision A - Landscape Plan	16/07/2019	Canvas
DA-L102, Revision A - Landscape detail and plant schedule	16/07/2019	Canvas

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	Undated	Unsigned

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. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house and secondary dwelling. According to the Dictionary of the Pittwater Local Environmental Plan 2014:

A dwelling house means a building containing only one dwelling.

*A secondary dwelling means a self-contained dwelling that—
(a) is established in conjunction with another dwelling (the principal dwelling), and
(b) is on the same lot of land as the principal dwelling, and
(c) is located within, or is attached to, or is separate from, the principal dwelling.*

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

3. **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.

4. **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

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$18,200.00 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 \$1,820,000.00.

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.

6. **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.

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

The applicant is to lodge a bond of \$5,000 as security against any damage to Council's stormwater drainage infrastructure adjoining the site as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure.

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

8. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the kerb in Pittwater Road.

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

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

9. **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 White Geotechnical Group dated 7 August 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. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

10. **Certification of Structures Located Adjacent to Council Pipeline Adjoining the Site**

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Pittwater DCP 2014 Clause B5.12. Structural details prepared by a suitably qualified Structural Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

11. **Boundary Identification Survey**

A Boundary Identification Survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the Boundary Identification Survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans, referenced in Condition 1 of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

12. **BCA Report (Class 2, 3 Storey Residential Flat Building - Type A Construction)**

A 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' from an appropriately qualified Accredited Certifier* will need to be submitted with the Construction Certificate application addressing the following:

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 building works required to ensure that the specified measures and facilities for the proposed development are appropriate for its intended use to:

- i) restrict the spread of fire from the building to other buildings nearby, and
- ii) protect persons using the building, and to facilitate their egress from the building in the event of fire, and
- iii) where appropriate, provide access for persons with a disability, and

iv) provide facilities and services appropriate for the development

*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 with the Construction Certificate application.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety son.

13. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property do not exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility.

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

Reason: To ensure suitable vehicular access to private property.

14. **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.

15. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the 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.

16. **Soil and Water Management Program**

A Soil and Water Management Plan prepared in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and implemented on site until the works are

completed.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

17. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets 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 at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.1>

The pre-construction / demolition dilapidation report must be submitted to Council for their records and their acknowledgement is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

18. **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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **Tree protection**

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 30mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 30mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) 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.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) 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 the site.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **Road Reserve**

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

Reason: Public safety.

21. **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.

22. **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.

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

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

Reason: To ensure protection of private and Council's Infrastructure.

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

24. Landscape completion certification

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

b) 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 established and maintained in accordance with the approved landscape plan.

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

25. 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.

26. Certification of Structures Located Adjacent to Council Pipeline or Council Easement

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Pittwater DCP 2014 Clause B5.12. Structural certification prepared by a suitably qualified Structural Engineer certifying compliance with Council's requirements are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

27. Geotechnical Certification Prior to Occupation Certificate

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

28. Post Construction Dilapidation Survey of Council's Stormwater Assets

The Applicant is to submit a post-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the post construction condition of the asset. Council's Guidelines are available at:
<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.pdf>

The post-construction / demolition dilapidation report must be submitted to Council for their review and their acceptance is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate. Any damage to Council's stormwater asset is to be rectified in accordance with Council's technical specifications prior to the release of the security bond.

Reason: Protection of Council's infrastructure.

29. **Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the 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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

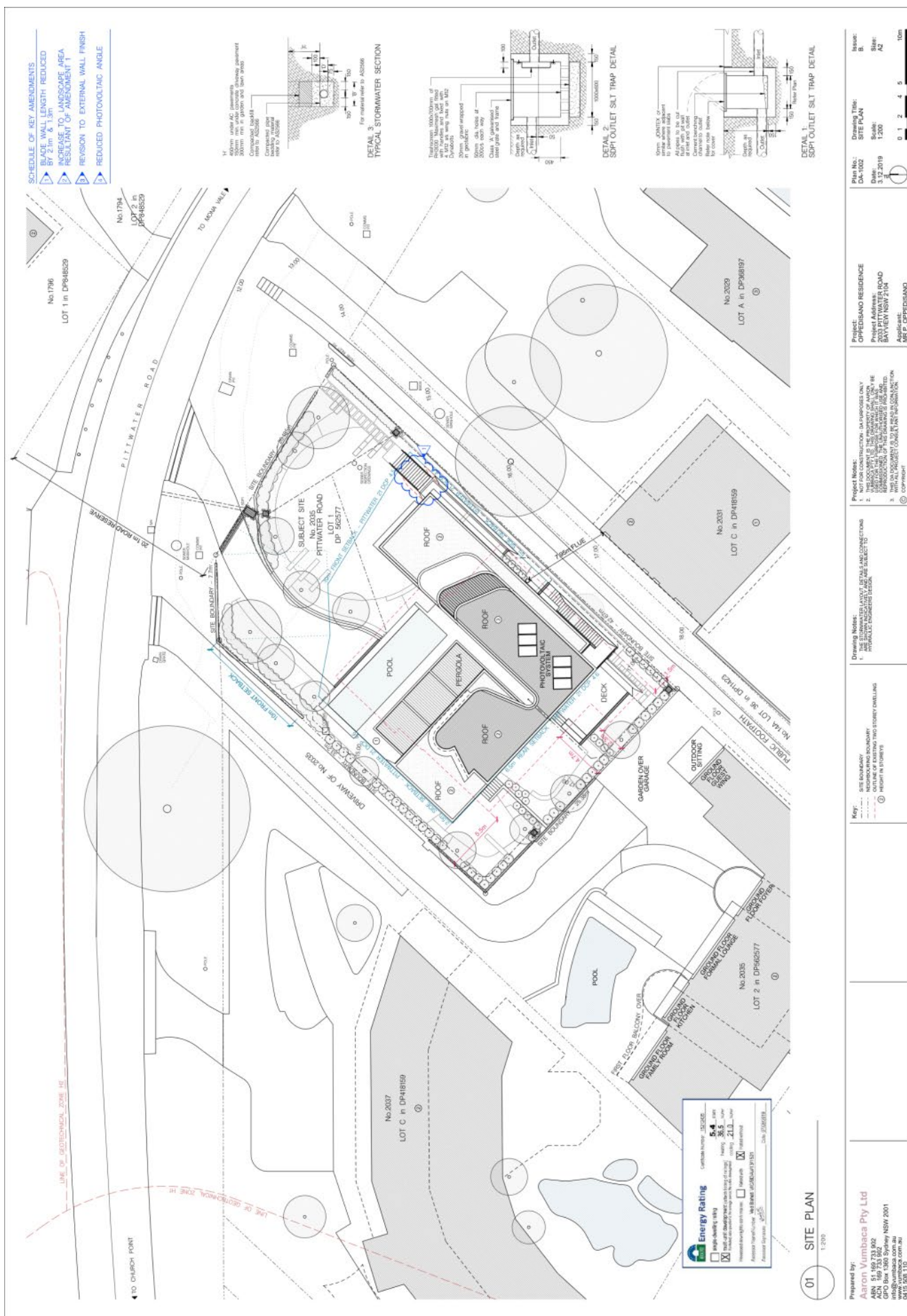
(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.









(g) Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life.





SCHEDULE OF MATERIALS																							
A		SANDSTONE CLADDING	B		OFF FORM CONCRETE	C		PAINTED RENDER	D		PAINTED STEELWORK	E		STANDING SEAM COPPER CLADDING	F		GLAZED POOL TILES	G		ALUMINIUM FRAMED GLAZING	H		FRAMELESS GLASS BALUSTRADE
Prepared by: Aaron Vumbaca Pty Ltd ABN 51 69 733 902 PO BOX 100 1893 TULLAGH NSW 2001 info@vumbaca.com.au www.vumbaca.com.au										Project: OPPRESSANO RESIDENCE Project Address: 2023 PITTSWATER ROAD PITTSWATER NSW 2112 Scale: 1:200 Date: 3.12.2019													
Key:										Drawing Notes: 1. NOT FOR CONSTRUCTION - IN PROPOSED ONLY 2. VENDOR TO BE THE MANUFACTURER OF THE CLADDING MATERIALS TO BE USED IN THE PROJECT 3. THIS IS A PROPOSED CLADDING MATERIAL 4. THIS IS A PROPOSED CLADDING MATERIAL 5. THIS IS A PROPOSED CLADDING MATERIAL													
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Plat No: DA-101 Issue: B North-West ELEVATIONS Scale: 1:200 Date: 3.12.2019										Plat No: DA-101 Issue: B North-West ELEVATIONS Scale: 1:200 Date: 3.12.2019													
0										1													
2										3													
4										5													
100										100													



Appendix 1 – View Impact Photographs

2031 Pittwater Road, Bayview



Figure 1 - Full extent of view obtained from loungeroom looking north from a seated position.

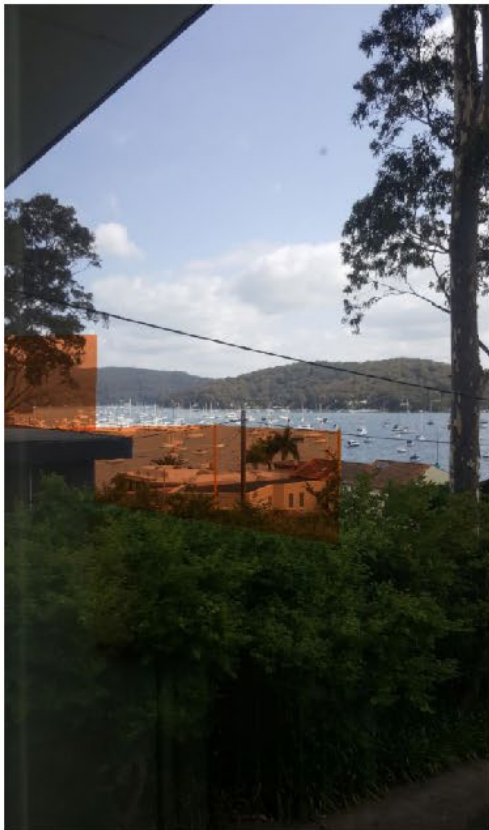


Figure 2 – View from bedroom, looking north-west, standing position.

14 Noolinga Road, Bayview



Figure 3 - View from Kitchen window looking north, standing position.



Figure 4 - View from balcony adjoining kitchen, standing position.



Figure 5 - View from upper floor living room, standing position.



Figure 6 - View from lower ground floor living room, standing, looking north.

2029 Pittwater Road, Bayview



Figure 7 – View from living room, looking north-west, standing position

2035 Pittwater Road, Bayview



Figure 8 – View from kitchen (ground floor), looking north, standing.



Figure 9– View from ground floor living room, looking north, standing.



Figure 10 – View from upper floor living room, looking north, standing position.



Figure 11 - View from balcony adjoining upper floor living room, looking north, standing.

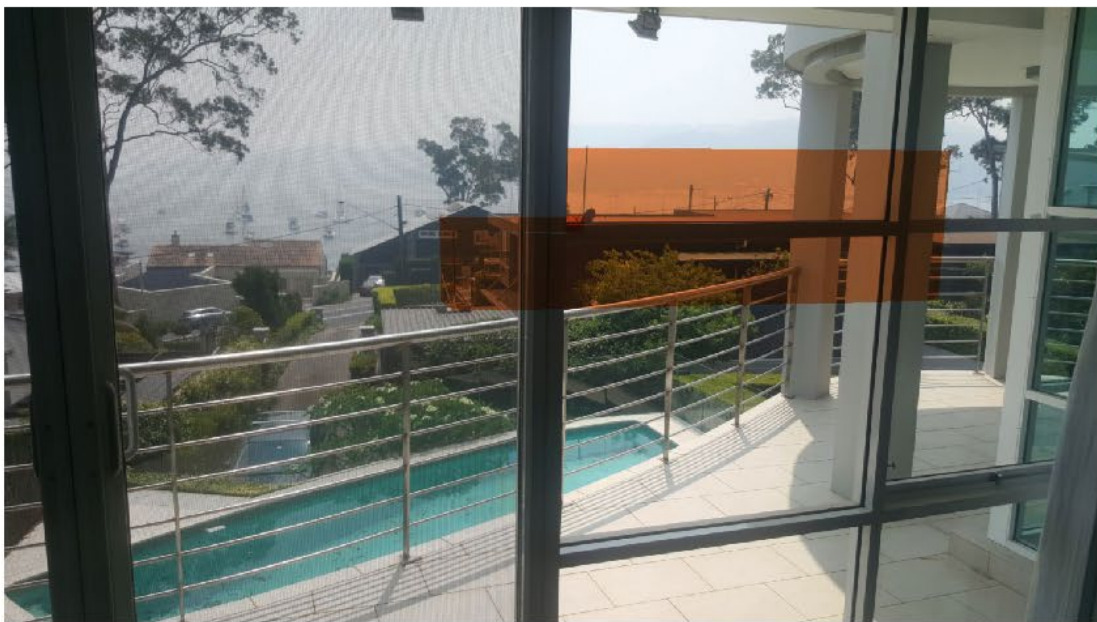


Figure 12 – View from master bedroom, looking north-east, standing.



Figure 13 – View from bedroom looking north-west, standing.

ITEM 3.3

DA2019/0628 - 3 LOFTUS STREET, NARRABEEN - DEMOLITION WORKS AND THE CONSTRUCTION OF SIX ATTACHED DWELLINGS WITH A BASEMENT CARPARK, AND SUBDIVISION OF FOUR LOTS INTO SIX

REPORTING MANAGER

Rodney Piggott

TRIM FILE REF

2019/704836

ATTACHMENTS

- 1 Assessment Report**
- 2 Site Plan & Elevations**
- 3 Clause 4.6**

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0628 for demolition works and the construction of six attached dwellings with a basement carpark, and subdivision of four lots into six on land at Lot 1 & 2 DP 136684, Lot 1 DP 955553 & Lot D DP 315039, 3 Loftus Street, Narrabeen, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0628
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Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot 1 DP 955553, 5 Loftus Street NARRABEEN NSW 2101 Lot D DP 315039, 7 Loftus Street NARRABEEN NSW 2101 Lot 1 DP 136684, 3 Loftus Street NARRABEEN NSW 2101 Lot 2 DP 136684, 3 Loftus Street NARRABEEN NSW 2101
Proposed Development:	Demolition works and the construction of six attached dwellings with a basement carpark, and subdivision of four lots into six
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Oscar Billy Wright Alan Roy Madder Michelle Anne Madder Michael John Wright Julie Patricia Wright
Applicant:	P2P

Application Lodged:	18/06/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	20/07/2019 to 03/08/2019
Advertised:	20/07/2019
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: 7.1%%
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	\$ 4,659,843.00
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Executive Summary

This report provides an assessment of the proposed development application for demolition works and construction of six (6) 'multi-dwelling' townhouses and basement parking for twelve (12) vehicles.

The site is zoned R3 Medium Density Residential under Warringah Local Environmental Plan 2011 (WLEP 2011) where multi dwelling housing is permissible.

The development proposes six (6) x 3 storey townhouses each with double basement parking, a roof terrace and Torrens title subdivision. The proposed development seeks a variation to the Height of Buildings Development Standard resulting in a 7.1% breach at the western end of the development which is supported when considered against the provisions of Clause 4.6 of WLEP 2011.

Notification of the application resulted in five (5) submissions objecting to the proposed development. The issues raised include amenity impacts (such as privacy, noise and visual appearance), overshadowing, traffic and parking, and construction related. The application has CIV of \$4,659,843 and is therefore referred to the Development Determination Panel as the consent authority for determination.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposed development should be supported subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent for a six (6) lot Torrens title subdivision and construction of six (6) attached dwellings. Specifically the proposal includes identical floor plates containing the following:

Basement Level (RL 5.7)

- Double garage with storage
- Rumpus Room with subterranean light well
- Laundry
- Internal lift and stair access

Ground Floor Level (RL8.80)

- Street level access to basement
- Entry
- Media room
- Bathroom
- Kitchen, dining and living
- Rear north facing terrace (6.5m²)

First Floor Level (RL11.9)

- Master bedroom with walk-in-robe and ensuite
- Bedroom 2 and 3
- Bathroom
- South facing balcony (5m²)

Roof Level (RL14.6)

- Terrace area (53.5m²)
- Roof structure (31.7m²)

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 - 6.1 Acid sulfate soils
Warringah Development Control Plan - B2 Number of Storeys
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 1 DP 955553 , 5 Loftus Street NARRABEEN NSW 2101 Lot D DP 315039 , 7 Loftus Street NARRABEEN NSW 2101 Lot 1 DP 136684 , 3 Loftus Street NARRABEEN NSW 2101 Lot 2 DP 136684 , 3 Loftus Street NARRABEEN NSW 2101
Detailed Site Description:	<p>The subject site ('the site') consists of four (4) lots on the northern side of Loftus Street Narrabeen known as Nos. 3, 3a, 5 and 7 Loftus Street, Narrabeen, The specific details for each of the lots include – Lot 1 DP136684; Lot 2 DP136684, Lot 1 DP 955553 and Lot D DP 315039.</p> <p>The combined site area is 1,385m² with a frontage of 45m to Loftus Street and a depth of 30m. There is a significant tree at the front of the central lot and other trees along the rear combined boundary. The site is relatively level with a slight fall from east to west and front to back.</p> <p>The site is located within the R3 Medium Density Residential zone within WLEP 2011 and currently accommodates 2 x two storey single dwellings and a single storey attached dwelling.</p>

Detailed Description of Adjoining/Surrounding Development

Surrounding development includes a two storey dwelling to the west, one and two storey dwelling houses opposite the site on the southern side of Loftus Street, a multi-unit housing development to the east; and, a seniors housing development adjoining to the north (rear).

Map:



SITE HISTORY

PLM2018/0305

A pre-lodgement meeting was held with the Applicant on 24 January 2019 to discuss a multi dwelling housing development for six (6) townhouses and Torrens title subdivision. The applicant presented a schematic form generally consistent with that now proposed. Most aspects of the development could be supported, however Council raised concerns over the amenity of the basement rumpus area that relies on a south facing light well as a poor design choice and the inclusion of the covered roof terrace due to potential for overlooking and privacy impacts.

The Applicant has provided justification and further commentary around these items which have been retained in the current application.

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

Section 4.15 Matters for Consideration'	Comments
impacts on the natural and built environment and social and economic impacts in the locality	<p>on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development .subject to conditions.
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 5 submission/s from:

Name:	Address:
Mr Ryan John Hird	10 Loftus Street NARRABEEN NSW 2101
Mr Martin Scott Cloeraine	PO Box 740 NARRABEEN NSW 2101
Jonathan Paul Justin Jones	8 / 150 - 152 Ocean Street NARRABEEN NSW 2101
Steven Clifford Faddy	7 / 150 - 152 Ocean Street NARRABEEN NSW 2101
Mr Sandro D'Amore	9 Loftus Street NARRABEEN NSW 2101

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

- **Height**

How can a 3 storey building be lower than the neighbouring 2 storey building at 150 Ocean Street

Comment:

The maximum height of the proposed development is 9.1m measured to the roof top skillion roof structure. The finished height of the roof structure of this development is RL17.282. According to the survey plan submitted with the application, the parapet level of the adjoining property at No. 150-152 Ocean Street is RL17.33. The height is almost the same as the highest point of the adjoining property.

- **Privacy and Noise**

Concerned about the windows on the side elevations overlooking private living space, garden, balconies and bedrooms.

Suggest the use of frosted glass/ louvres for windows overlooking 150-152 Ocean Street.

Concern the rooftop entertaining spaces will funnel excessive noise into private living spaces.

Concern about privacy impacts into the front balcony and living area of No. 6 Loftus Street.

Request additional screen planting or privacy screens to the front of the roof terraces.

Noise (and pollution) from the mechanical venting shaft

Comment:

The windows at first floor level on the eastern elevation include two (2) bathroom windows (W31 and W33) and a bedroom window (W32). According to the window schedule, W31 and W33 are obscured glass and W32, while it is clear glass adjoins a bedroom which is considered a low impact, low traffic room. These spaces generally contain internal window coverings and are not considered likely to result in unacceptable privacy impacts.

In relation to the roof terrace, these spaces at approximately 54m² are considered excessive in the context of their location and proximity to adjoining properties. The terrace on the eastern end of the development has a setback of just under 5.0m to the property boundary with a narrow planter bed of 0.7m. This is considered unacceptable in this configuration. Conditions of consent have been included to ensure that the eastern and western planter beds adjoining the roof terraces have an internal width of at least 1.0m planting space.

Further, the terrace area is to be reduced in size with no access past the northern alignment of the lift door to prevent access to the southern side of the terrace where privacy impacts to the properties on the opposite side of Loftus Street are realised due to the elevated position of these terraces. This reduces the terrace area to approximately 36.8m² and increases the separation with the adjoining properties providing a more achievable space for planting likely to support plants that will provide the green separation indicated on the plans.

The vent for the basement exhaust is located at the north-eastern corner of the development. The actual mechanical plant for this vent is located within the basement area. The clearance of these types of vents to adjoining properties is subject to requirements specified by the Australian Standards, and Building Code of Australia.

- **Bin Storage**

Bins for each townhouse. Would these need to be covered and not visible from the street.

The location of the bin storage area is different between the subdivision documents and the architectural plans.

The storage area should be fully enclosed and large enough to accommodate four (4) bins or

relocated to the basement.

Comment:

The Applicant has identified that there is an inconsistency with the plans in relation to the layout of the bin storage areas. The bins will not be located in a common bin area but will be located within each townhouse frontage as an elongated storage space on the side boundaries capable of accommodating four (4) bins each.

A deferred commencement condition has been recommended to ensure that the appropriate bin storage is provided for the development to the satisfaction of Council's Waste section prior to activation of the consent.

- **Landscaping**

Proposal does not meet the 50% landscaping requirement and rooftop gardens do not count in the calculation.

There is no external path shown for pedestrians adjacent to the driveway access. A pathway for pedestrians to stop would be useful and add to the landscaping.

The development is similar to the townhouses at 6, 6a, 8 and 8a Malcolm Street Narrabeen where the use of hedges, trees, louvres and frosted glass for privacy has been very effective. No clothes lines identified. These should be in the rear yard and not on balconies.

Comment:

The calculation of the landscaped open space proposed by the development does not comply with the 50% required. This issue is dealt with in greater detail within Part D1.

Separate pedestrian paths are provided from the front boundary of each townhouse to the entry.

Issues relating to privacy have been addressed elsewhere in this report. Subject to conditions the proposal is considered acceptable in terms of privacy.

Each town house provides a rear yard with a depth measuring approximately 6.0m. Clothes line are indicated on drawing L501.1 Issue B Surfaces Plan and can easily be accommodated on the site.

- **Construction impacts**

Concerns cutting the tree roots of the tree on the neighbouring property which will make the tree unstable. Will the Arborist be able to trim or remove the trees if necessary.

What monitoring reports and safety guarantees will be provided to ensure no adverse effects from the development?

How will residents access the street and their properties during construction.

How will heavy construction equipment access the site.

What is the timeline for construction and the construction hours

Comment:

Council's Landscape Architect has reviewed the submitted documentation including the Arborist Report. Subject to conditions relating to tree protection, concerns relating to the trees adjoining the site should be adequately addressed.

In terms of construction activity impacts on the adjoining neighbours and surrounding road network, a Construction and Traffic Management Plan is to be submitted prior to the issue of a Construction Certificate.

Construction hours are regulated through standard conditions of consent.

- **Water table**

Residents have warned that the water table is at 1.8m. Does the geotech clarify deep excavation and how it will impact neighbouring residents. References made to engineers reports to be carried out prior to works commencing. How will they monitor effects and perform any necessary remedial action.

Comment:

Section 3.2 of the Geotechnical Assessment prepared by Ascent Geotechnical Consulting provides the following comments:

No significant groundwater or seepage was identified during our testing. Given the likely permeability of the subsurface profile encountered in our testing and the topography of the block no significant standing water table is expected to influence the site. However, it is possible that the fluctuating water table, as a result of rainfall, may influence the proposed excavation. Additional groundwater testing may be required to confirm these assumptions.

A condition of consent is recommended to ensure that the excavation works are supervised by a suitably qualified person in accordance with the recommendations of the Geotechnical Assessment.

- **Overshadowing**

Will there be overshadowing of the rear yard at No. 9 Loftus Street. The rear of No. 150-152 will be overshadowed from 2-3pm which is the prime time when the sun reaches the west side of the property and will no longer receive direct sunlight. The roof top terrace of 150-152 Ocean Street is the main area for solar access, what will the impact be?

Comment:

A detailed assessment of overshadowing impacts is provided under Part D6 of WDCP 2011. The overshadowing impacts of the development on balance are considered acceptable.

In terms of the roof terraces to No. 150-152 Ocean Street, these are located on the eastern side of the building facing Ocean Street. These spaces will receive uninterrupted sunlight access from 9am to approximately midday when the building of No. 150-152 will begin to overshadow itself. The proposal is not considered to result in unacceptable impacts on solar access.

- **Parking**

How many more cars are going to park in the street that is already at capacity. There is often no available on-street parking in the evenings. Confirm that there will be 12 underground parking spaces. Visitor parking not provided.

Comment:

The proposed development includes six (6) double garages within the proposed basement provided two (2) parking spaces per residence. The Traffic and Parking Assessment indicates that 1.5 spaces are required per three (3) bedroom dwelling in accordance with the requirements of Appendix 1 Car Parking Requirements of WDCP 2011. This equates to a numerical requirement for 9 on-site parking spaces and one (1) visitor space. The site complies with the parking requirements notwithstanding that a visitor space is not nominated within the basement area.

- **Streetscape**

The proposed street frontage is unappealing and not in harmony with other buildings in the street.

We would like to see a footpath in front of the development on the north side of Loftus Street. Loss of green street frontage as currently exists.

Comment:

The aesthetic appearance of the development is considered acceptable in terms of its consistency with the relevant controls and policies of Council.

In terms of the request for a footpath, a condition of consent has been included requiring a footpath be installed by the Applicant prior to the issue of an Occupation Certificate.

While the existing vegetation on the site will be removed as part of the demolition and site preparation, the proposed landscape plans has been reviewed by Council's Landscape Architect and is considered to provide an acceptable streetscape setting.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Supported No objections or conditions
Environmental Health (Acid Sulphate)	Supported Geological report preliminary assessment revealed Acid Sulphate Soils not likely. Recommendation approval - no conditions.
Landscape Officer	Supported The Arborist's Report and Landscape plan submitted with the application are noted. Subject to specific tree protection and landscape conditions, no objections are raised to approval.
NECC (Development Engineering)	Supported subject to conditions The development engineer commenced the assessment in August

Internal Referral Body	Comments
	<p>2019 and concluded the review of proposal with below written recommendation. Due to new circumstances the assessment was finished at the beginning of September 2019, imposing the relevant conditions.</p> <p>Proposed development is located out side of the Town Center and it has been confirmed that is not affected by flooding. A driveway crossing has been proposed to be located with required setback of 2.0 m from the west property boundary, in accordance with Council Pre-DA advice. The pre-lodgement advice (PLM2018/0305) provided to the Applicant has contained the following recommendation related to storm-water drainage from the site:</p> <p><i>"In the event of a failure to the above storm-water disposal system, overflow from this system must be directed to Loftus Street. Storm-water drainage plans must include the above detail."</i></p> <p>The Applicant has provided a statement with the submission, explaining that the requirement for overflow from this system cannot be directed to Loftus Street in case of proposed system failure without the use of a large pump system. The supporting reasoning was that the development site falls natural away from the street and an infiltration system is proposed as the method of storm-water disposal. Based on that the Applicant has proposed storm-water management plan that is recommended as a safe and practical solution to support the development given the site constraints.</p> <p>No objections are raised to the proposed development, subject to conditions prepared for the Torrens Title subdivision.</p>
Traffic Engineer	Traffic referral is not required.
Waste Officer	<p>Not Supported</p> <p>The applicant has not complied with the Northern Beaches Council Waste Management Guidelines as follows. A redesign is required to ensure compliance.</p> <p>All Waste Storage Areas for each townhouse will:</p> <p>a) Be a designated area to accommodate Council's allocated number of waste and recycling containers. b) Have an area capable of storing -1x 80L (Red bin), 2x 140L (Blue and Yellow bin) and 1x 240L (Green Bin). c) Be clear of any service and utilities infrastructure and related activities. d) Be capable of being kept clean and tidy at all times. e) Be in accordance with the BCA, relevant AS and legislation detailed in Chapter xii of the Waste Management Guidelines.</p> <p>The Waste Storage Area must be: a) Incorporated entirely within the site boundary and, if it is an external structure, be designed to reduce visual impact and clutter from the street.</p> <p><u>Officer Comment:</u> The requirements for the bin storage area are to be demonstrated</p>

Internal Referral Body	Comments
	with an amended layout as a deferred commencement requirement.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1016044M dated 5 June 2019).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	51

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

SEPP (Infrastructure) 2007Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018**13 Development on land within the coastal environment area**

(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
- (b) coastal environmental values and natural coastal processes,
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- (f) Aboriginal cultural heritage, practices and places,
- (g) the use of the surf zone.

Comment: The proposal is unlikely to have an adverse impact on any of the above

(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment: The proposal design and siting will avoid any adverse impacts on the biophysical, hydrological, ecological and/or coastal environment.

14 Development on land within the coastal use area

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

(a) has considered whether the proposed development is likely to cause an adverse impact on the following:

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
- (iv) Aboriginal cultural heritage, practices and places,
- (v) cultural and built environment heritage, and

(b) is satisfied that:

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

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

Comment: The proposal is not likely to have adverse impact on the surrounding coastal environment.

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

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

Comment: The development is unlikely to cause increased risk of coastal hazards on the subject site or other land.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies

Height of Buildings:	8.5m	9.1m	7%	No
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Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
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
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

6.1 Acid sulfate soils

The subject site is identified as Acid Sulfate Soils - Class 4. The application was accompanied by a Geotechnical Assessment Report prepared by Ascent Geotechnical Consulting dated 26 September 2018 which states the following:

"With reference to the ASSMAC Assessment guidelines 1998, field pH levels of less than or equal to 4.0 indicates that actual Acid Sulfate Soils (AASS) are present in the soil profile at the Site. Potential Acid Sulfate Soils (PASS) are considered to be present when pH values in hydrogen peroxide solution (pHfox) are less than or equal to 3.0, or where the drop in pH is greater than one pH unit.

Based on the results of the soil screening tests summarised above, pH in Field (pHF) tests ranged from 5.1 to 7.3 and pH in Hydrogen Peroxide (pHFOX) produced values ranging from 5.2 to 6.8. Neither pHF or pHFOX indicates the presence of actual or potential Acid Sulfate Soils at the Site.

It is our opinion that the foredune/beach ridge emplacement environment of these sand deposits lacks the organic matter, iron oxides and reducing conditions necessary for the generation of Acid Sulfate Soils.

Based on the scope of the proposed works and the results of this preliminary assessment, no Acid Sulfate Soil Management Plan is required for this development."

Accordingly, the proposal is considered acceptable in terms of Acid Sulfate Soils.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	2	3	33.3%	No
B3 Side Boundary Envelope	East - 4m	Within envelope	N/A	Yes
	West - 4m	Within envelope	N/A	Yes

B5 Side Boundary Setbacks	East - 4.5m	5.8m to face of building 2.0m to driveway	N/A 55.6%	Yes No
	West - 4.5m	3.915m to face of building 2.62m to basement stair	13% 41.8%	No No
B7 Front Boundary Setbacks	6.5m	4.8m to basement rumpus 6.5m to ground floor 5.0m to first floor balcony	26.2% Nil 23%	No Yes N/A
B9 Rear Boundary Setbacks	6m	6.0m to terrace 8.0m to face of building	N/A N/A	Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	50% site area (692.5m ²)	42% (576.4m ²)	17% (116.1m ²)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	No	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C1 Subdivision	Yes	Yes
C3 Parking Facilities	Yes	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	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	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D19 Site Consolidation in the R3 and IN1 Zone	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B2 Number of Storeys

Description of non-compliance

The requirements of the B2 number of storeys control state:

To measure the height in storeys :

The number of storeys of the building are those storeys which may be intersected by the same vertical line, not being a line which passes through any wall of the building; and

Storeys that are used for the purposes of garages, workshops, store rooms, foundation spaces or the like, that do not project, at any point, more than 1 metre above ground level (existing) are not counted.

The proposed development includes a roof terrace with a large fixed roof structure connected to a solid wall element. As the the structures on this level may be intersected by the same vertical line, the development is considered three (3) storeys, although it is noted that the structure is open on three (3) sides.

Merit consideration:

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

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

Comment:

The roof structure element on the roof terrace is setback approximately 12.5m from the front property boundary and will be barely perceptible from street level. The development with the roof terrace is not considered visually dominant.

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

Comment:

The roof structure will be visible from the first floor levels of the adjoining properties, particularly

the dwellings on the opposite side of Loftus Street. Due to the large setback and subject to conditions to remove trafficable access from the southern end of the terrace, the proposed roof level is not considered to result in any adverse visual impact.

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

Comment:

There are no views that have been identified which are impacted by the proposed development.

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

Comment:

A number of conditions are recommended to reduce the overall size of the roof terrace and increase the separation from the adjoining eastern and western neighbours by increasing the planter bed width. Subject to these design changes, the proposed development is not considered to adversely impact on the amenity of neighbouring properties.

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

Comment:

The roof structure proposed on this roof terrace is a skillion style with two roofs connecting to create a butterfly roof line. No objection is raised to the shape of the roof line.

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

Comment:

The roof structure at the western end of the development results in breach of the building height development standard under WLEP 2011 by 0.6m. This has been assessed in detail within Clause 4.6 of this report and is considered supportable.

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 s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance and that the roof terrace will provide enhanced amenity for the future occupants of the development.

B5 Side Boundary Setbacks

Description of non-compliance

The subject site is to provide a 4.5m side setback which is to exclude driveway ramps. The development as proposed includes a 3.915m setback to the building at the eastern boundary at ground level and a 1.42m setback at basement level to the service recess. On the western boundary, the development seeks a 2.0m setback to the driveway ramp to the basement and the basement itself.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying

Objectives of the Control as follows:

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

Comment:

Notwithstanding the non-compliance along the western boundary, the site provides adequate space for deep soils landscaping along the eastern boundary and to the rear of the site.

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

Comment:

The basement non-compliances will not be visually dominant. At ground level, the 0.585m non-compliance with the face of the building is not considered to become a dominant element as there is sufficient space for landscaping along the length of this boundary.

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

Comment:

There is no objection to the bulk and scale of the development which is commensurate with the scale of the residential flat buildings in close proximity to the subject site.

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

Comment:

Privacy, amenity and solar access have been addressed separately within this report. The development subject to conditions to further improve some of these elements is consider to provide adequate separation with surrounding properties.

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

Comment:

There are no views which have been identified that will be impacted by the proposed development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

The site is subject to a 6.5m front building setback requirement. The front setback 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 proposed development includes a basement area containing light wells to provide light and ventilation to the subterranean rumpus room. The light well for

each dwelling is entirely within the front boundary setback.

In addition, the balcony and fenestration to the first floor level bedrooms provides a setback to the front boundary of approximately 5.0m

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The light well structure has a setback of approximately 5.3m and will present as a small retaining wall. The location of this element within the front setback will not be visible from the street frontage.

The balcony structure includes an architectural frame to provide articulation to the facade of the building. While this balcony structure is within the front setback, it allows sight lines and depth through to the face of the building which is compliant and does not adversely impact on the sense of openness.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The properties within this section of Loftus Street demonstrate a variety of setbacks and landscaping due to the short length of the road and the corner sites. The proposed development is not considered inconsistent with the overall pattern of buildings and landscape elements in this location.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposed development provides a clear entry for each dwelling within the development and incorporates a landscaped transition to the street. The proposal is considered satisfactory in this regard.

- *To achieve reasonable view sharing.*

Comment:

There are no views that have been identified which will be adversely impacted by the proposed development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The numerical requirement for this site is 50% of landscaped open space. Specifically, the following distinguishes what may be included in the calculations for landscaped open space:

- a) *Driveways, paved areas, roofed areas, tennis courts, car parking and stormwater structures, decks, etc, and any open space areas with a dimension of less than 2 metres are excluded from the calculation;*
- b) *The water surface of swimming pools and impervious surfaces which occur naturally such as rock outcrops are included in the calculation;*
- c) *Landscaped open space must be at ground level (finished); and*
- d) *The minimum soil depth of land that can be included as landscaped open space is 1 metre.*

The proposed development excluding the items listed above results in a landscaped open space calculation of 41.5% (576.4m²).

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:

Each townhouse provides approximately 21m² of landscaped open space within the front setback as deep soil planting area. The landscape plan proposes a range of trees and shrubs in this location providing subtle levels of planting.

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

Comment:

The site does not currently contain and indigenous vegetation, topographical features or habitat for wildlife.

- *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 landscape plan has specified six (6) Japanese Maples trees with a mature height of approximately 4m to be planted across the frontage of the site, one within each front setback and twelve (12) Evergreen Ash with a mature height of 7m along the rear boundary of the site. These larger trees in conjunction with the smaller shrubs are considered to provide a suitable landscaped setting across the site.

- *To enhance privacy between buildings.*

Comment:

As the site is surrounded by low and medium density housing, the planting plan has included a row of Magnolia trees along the eastern boundary with a height up to 5m and additional planting at the roof terrace level.

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

Comment:

In addition to the recreational area at roof level, each townhouse includes an area at the rear excluding the terrace for outdoor recreational uses. This space is considered to satisfy this requirement.

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

Comment:

The rear setback of each site provides adequate space for clothes lines and other service functions.

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

Comment:

The application was accompanied by a stormwater management plan which is supported by Council's Development Engineers.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

Merit consideration

Privacy concerns were raised by the surrounding properties in relation to windows on the eastern and western facades and the roof terrace. Conditions of consent have been imposed in relation to the roof terrace to reduce the overall size of the space removing access at the front southern end of the terrace where sight lines into the living areas of the properties on the opposite side of Loftus Street were exposed. The development is considered against the underlying Objectives of the Control as follows:

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

Comment:

Given the proximity of sensitive residential spaces in the adjoining properties, the roof terraces are conditioned to be reduced in their overall size and to provide a greater landscape buffer along the side boundaries.

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

Comment:

The proposed development provides a suitable design solution for the site.

- *To provide personal and property security for occupants and visitors.*

Comment:

Each townhouse in this development is serviced by individual entrances and a secure basement. Personal and property security is considered adequate.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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 \$46,598 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,659,843.

Torrens Title Subdivision

The subject site does not contain a minimum lot size requirement under WLEP 2011. The applicant seeks to Stratum subdivide the development into six (6) Torrens Title lots with easements for access into the basement.

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

Conclusion

This development application has been assessed in accordance with the provisions of 4.15 of the EP&A Act, 1979, the provisions of relevant EPI's, WLEP 2011 and the relevant codes and policies of Council including the relevant provisions of the WDCP 2011.

The proposal has been assessed against the relevant matters for consideration under Section 4.15 and 4.55 of the EP&A Act 1979. This assessment has taken into consideration the submitted plan, Statement of Environmental Effects, all other documents supporting the application and public submissions.

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

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RECOMMENDATION

DEFERRED COMMENCEMENT APPROVAL

A. Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.1m
Percentage variation to requirement:	7.1%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has 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 proposed development, in particular the parts of the development which breaches the 8.5m height plane, do not create any adverse visual impacts; do not disrupt existing views; do not introduce any privacy impacts; and, do not unreasonably overshadow neighbouring properties. The departure to the height standard will not introduce any significant adverse environmental or amenity related impacts on neighbouring properties;*
- *The non-compliance arises as a result of a desire to create private open space of high amenity to the future occupants of the dwellings, without the introduction of impacts on neighbouring properties, which is considered to be a positive environmental planning outcome;*
- *The non-compliance arises due to a fall in the land towards the west noting the same non-compliant elements at the western end of the building comply in terms of height at the*

eastern end of the building;

- *The proposal is lower, in relative levels, than the multi-unit housing development to the immediate east of the site;*
- *Council has already supported a similar non-compliance with the height standard to enable the provision of open space at roof level at 6-8 Malcolm Street, Narrabeen (DA2011/0952).*
- *Strict compliance with the standard would not make any perceivable difference to the massing or scale of the building;*
- *The proposed non-compliance is not of a degree to warrant the amendment of the instrument and subject to merit may be administered under Clause 4.6.*

Officer Comment:

The applicant's justification is concurred with and it considered that the written request contains sufficient environmental planning grounds to justify contravening the development standard by up to 7.1%.

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.

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) and 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 R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – '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 development is considered to be compatible with the height and scale of surrounding development noting that the immediately adjoining developments present a range of medium density residential flat buildings and single residential dwellings. The scale of the development is generally considered commensurate with these larger buildings.

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

Comment:

The proposed development is not considered to result in unacceptable view loss or impact on solar access. Privacy concerns are raised in relation to the roof terrace areas of the development which provide opportunities for overlooking into the adjoining properties private open space and the living areas of the residential dwelling opposite. Subject to conditions to reduce the size of the roof terraces removing access to the terrace area south of the lift shaft entry and increasing the landscaped planters at the eastern and western ends up to 1.5m in width.

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

Comment:

The proposed development is not considered to adversely impact on the scenic quality of coastal and bushland environments given its location.

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

Comment:

The visual appearance of the development from Loftus Street is considered consistent with the surrounding development.

Zone objectives

The underlying objectives of the R3 Medium Density Residential zone:

- *To provide for the housing needs of the community within a medium density residential environment.*

Comment:

The proposal is for a multi dwelling housing development within the R3 Medium Density Residential Zone and is considered to meet this objective.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The proposed design of this development is for six (6) attached town house style dwellings and Torrens title subdivision. The proposal is consistent with this requirement.

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

Comment:

The proposed residential development will not adversely impact on other facilities or services.

- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The development has sought to provide a landscaped setting for these residences both at ground level and at roof level.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Comment:

The aesthetic presentation of the proposal from the street is considered to be an acceptable quality.

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:

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, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

Accordingly Council as the consent authority grant a Deferred Commencement Development Consent being subject to a Five (5) year time frame for Deferred Commencement Consents detailed within Section 95 of the EPA Act 1979 to DA2019/0628 for Demolition works and the construction of six attached dwellings with a basement carpark, and subdivision of four lots into six on land at Lot 1 DP 955553,5 Loftus Street, NARRABEEN, Lot D DP 315039,7 Loftus Street, NARRABEEN, Lot 1 DP 136684,3 Loftus Street, NARRABEEN, Lot 2 DP 136684,3 Loftus Street, NARRABEEN, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

DEFERRED COMMENCEMENT CONDITIONS

1. Waste Storage to be redesigned to accommodate four (4) bins

Details for the Waste Storage Areas for each townhouse will:

- a) Be a designated area to accommodate Council's allocated number of waste and recycling containers.
- b) Have an area capable of storing -1x 80L (Red bin), 2x 140L (Blue and Yellow bin) and 1x 240L (Green Bin).
- c) Be clear of any service and utilities infrastructure and related activities.
- d) Be capable of being kept clean and tidy at all times. e) Be in accordance with the BCA, relevant AS and legislation detailed in Chapter xii of the Waste Management Guidelines.

The Waste Storage Area must be:

- a) Incorporated entirely within the site boundary and, if it is an external structure, be designed to reduce visual impact and clutter from the street.

Reason: To ensure compliance with Council's Waste Management Guidelines.

2. Roof terrace to be reduced in area

- a. The roof terrace to all units are to be reduced in size deleting all areas south of the alignment of the north facing lift opening (toward Loftus Street). This area is to be clearly identified as 'non-trafficable' and must contain a barrier either side of the northern end of the lift to prevent access.

- b. The landscape planter to the roof terraces along the western side of Unit 1 and the eastern side of Unit 6 are to be increased to provide a minimum width of 1.0m and a minimum soil depth of 600mm.

Reason: To ensure adequate protection of privacy to adjoining properties.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within five (5) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

3. 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
Project 28623 - Site Plan - Drawing 2 of 10 - Rev A	21.05.2019	IDraft Architect

Project 28623 - Basement Plan - Drawing 3 of 10 - Rev A	21.05.2019	IDraft Architect
Project 28623 - Ground Floor Plan & BASIX & NatHERS - Drawing 4 of 10 - Rev A	21.05.2019	IDraft Architect
Project 28623 - First Floor Plan & Window Schedule - Drawing 5 of 10 - Rev A	21.05.2019	IDraft Architect
Project 28623 - Roof Plan & Streetscape - Drawing 6 of 10 - Rev A	21.05.2019	IDraft Architect
Project 28623 - Elevations - Drawing 7 of 10 - Rev A	21.05.2019	IDraft Architect
Project 28623 - Elevations & Sections - Drawing 8 of 10 - Rev A	21.05.2019	IDraft Architect
Project 28623 - Colour and Material Schedule	27.06.2019	IDraft Architect
L502.1 - Planting Plan - Sheet 1 - Rev B	30.05.2019	Plot Design G
L502.2 - Planting Plan - Sheet 2 - Rev B	30.05.2019	Plot Design G
L503.1 - Landscape Details - Rev B	30.05.2019	Plot Design G

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment	26 September 2018	Ascent Geotechnical Consulting
Arboricultural Impact Assessment Report	4 October 2018	Hugh The Arborist
BCA Assessment	29 April 2019	BCA Logic
Traffic and Parking Impact Assessment	May 2019	Transport and Traffic Planning Associates

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

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

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

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.

4. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

5. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or 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.

6. **Sewer / Water Quickcheck (Crown Land Only)**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website www.sydneywater.com.au for:

- o Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- o Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- o Or telephone 13 20 92.

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

FEES / CHARGES / CONTRIBUTIONS

7. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$46,598.43 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 \$4,659,843.00.

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.

8. 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.

9. **Construction, Excavation and Associated Works Security Bond (Road Works)**

The Applicant is to lodge a security bond with Council of \$5,000.00 as security against any damage or failure to complete the construction of road pavement/shoulder reconstruction works as part of this consent. Details demonstrating payment of the security bond to Council shall be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: Protection of Council's Infrastructure

10. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb/ Footpath)**

The applicant is to lodge a bond of \$26,000.00 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, grass verge any footpath works and removal of any redundant driveways required as part of this consent. Details demonstrating payment of the bond shall be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: Protection of Council's Infrastructure

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

11. **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 Ascent Geotechnical Consulting dated 26 September 2018 are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to RMS standards by an appropriately certified person.

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.

13. **Boundary Identification Survey**

A Boundary Identification Survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the construction certificate are to accurately reflect the property boundaries as shown on the Boundary Identification Survey, with setbacks between the property boundaries and the approved works consistent with those nominated 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 issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

14. Pump-Out System Design for Stormwater Disposal

The design of the pump-out system for Storm-water 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. The Applicant is to provide engineering details demonstrating compliance with this requirement and certification issued by an appropriately qualified and practicing hydraulic engineer. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure adequate provision is made for the discharge of Storm-water from the excavated parts of the site.

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

The Applicant is to submit an application for approval for Infrastructure works on Council's road reserve. Engineering plans for the new development works within the road reserve within this development consent are 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 driveway crossing, footpath, new kerb & gutter and associated works which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The design plans shall be prepared by a qualified civil engineer. The design must include the following information:

1. Detail design of one driveway crossing placed 2.0 m setback from the west property boundary and maximum width of 6.0 m, shall be in accordance with Northern Beaches Council standard and specifications provided on <https://www.northernbeaches.nsw.gov.au/planningdevelopment/permits-and-certification/driveway-and-vehicle-crossings> and drawing A4/3330/1 Normal.
2. New concrete footpath, along the full frontage of the development site in Lotus Street, shall be 1.5 m wide and placed in the alignment of existing footpath fronting the corner property. Transition works must be designed in accordance with Council standards.
3. Construction of kerb and gutter along the full frontage of the development site in Lotus Street and a minimum of 500 mm road resurface along the new gutter.
4. Redundant layback and vehicular crossings shall be indicated on the plans as to be replaced with new infrastructure
5. Grass verge to be indicated where is to be reinstated or to be planted in accordance with Council requirements

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 any Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

16. Vehicle Driveway Gradients

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 20 (5%) within the first 5.0 m from the front boundary and a maximum gradient of 1 in 4 (25%) with transition gradients in accordance with AS/NZS 2890.1 Off street parking. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

Reason: To ensure suitable vehicular access to private property

17.

18. **Tanking of Basement Level**

The basement area is to be permanently tanked. The Applicant is to submit structural details of the tanking that shall 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 NSW Office of Environment and Heritage. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Office of Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements

19. **On-site Stormwater Absorption System**

An On-site Storm-water Absorption system must be designed and constructed in accordance with Northern Beaches Council's current WATER MANAGEMENT POLICY PL850 and generally in accordance with the concept drainage plans prepared by Stellen, and submitted to Council on 20 June 2019 (DR-000/2, DR-001/3, DR-002/2, DR-100/2, DR-101/1 & SD-001/0. In addition, soil permeability report is required to show that infiltration rate (in liters/square meters/second) is acceptable for the proposed storm-water absorption system.

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.

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

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

20. **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 any Construction Certificate.

Reason: To provide public and private safety.

21. Sub-Soil Seepage

The Applicant is to submit plans demonstrating that all sub-soil seepage drainage is discharged via a suitable silt arrester pit, directly to Council's nearest storm-water drainage line 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:

- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- 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 Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate drainage and storm-water management on site to protect amenity of residents

22. 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 any Construction Certificate

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

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). The private properties at No. 150-152 Ocean Street, 9 Loftus Street and the buildings with the adjoining property at No.156-164 Ocean Street must be included. 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.

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. Traffic Management and Control

The Applicant is to submit a Traffic Management Plan to Council for approval. The Traffic Management Plan shall be prepared to Transport for NSW (formerly RMS) standard by an appropriately certified person. An approval from Council 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.

26. 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)

27. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

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

27. 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.

28. Tree protection

- (a) Existing trees which must be retained
 - i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
 - ii) Trees located on adjoining land
- (b) Tree protection
 - i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by the Project Arborist on site.
 - ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by the Project Arborist on site.
 - iii) All tree protection to be in accordance with the Arboricultural Impact Assessment dated 4 October 2018 prepared by Hugh The Arborist and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
 - iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
 - v) 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 the site.

29. Project Arborist

- i) A Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works.
- ii) The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the Arboricultural Impact Assessment dated 4 October 2018 prepared by Hugh The Arborist and AS4970-2009 Protection of trees on development sites.
- iii) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

Reason: to ensure protection of vegetation proposed for retention on the site.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

30. Road Reserve

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

Reason: Public Safety.

31. 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.

32. 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.

33. Installation and Maintenance of Sediment Control

Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.

Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until all development activities have been completed and the site fully stabilised.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

34. Civil Works Supervision

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

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

35. Footpath Construction

The applicant shall provide a new footpath across the 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 Principal Certifying Authority.

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

36. **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 pouring of kerb and gutter, driveway, footpath
- (c) 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.

37. **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

38. **Vehicle Crossings**

The provision of one vehicle crossing 6.0 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.

39. **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

40. **Erosion and Sedimentation Responsibilities**

Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of

approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.

Reason: To ensure sediment and erosion controls comply with standards

41. **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 offsite

42. **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

43. **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

44. **Site Fencing**

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

Reason: To ensure public safety.

45. **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.

46. **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.

47. **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.

48. **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**

49. **Landscape completion certification**

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

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

50. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

- a) Compliance to Arborist recommendations for tree protection and excavation works.
- b) Extent of damage sustained by vegetation as a result of the construction works.
- c) Any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites.

51. **Stormwater Disposal**

The Applicant shall submit a certificate from a suitably qualified person that the storm-water drainage works have been constructed/installed in accordance with all relevant Australian

Standards and Codes. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

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

52. 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.

53. Required Planting

Trees shall be planted in accordance with the following schedule:

No. of Trees Required.	Species	Location	Pot Size
All trees	As indicated on the approved Landscape Plan	As indicated on the Landscape Plan	As indicated on the Landscape Plan

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.

54. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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 bushland management. (DACPLF01)

55. 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.

56. **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.

57. **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.

58. **Undergrounding of Telecommunications Services**

Arrangements are to be made for the provision of underground telecommunications services to the building.

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

Reason: Provision of telecommunication facilities in a manner that facilitates the future underground provision of cable services. (DACPLF06)

59. **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.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**60. 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.

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE**61. Positive Covenant and Restriction as to User for On-site Stormwater Absorption System**

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance of the on-site storm-water disposal absorption system structures approved within this development consent. The terms of the positive covenant and restriction 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 NSW Land Registry Services. Northern Beaches Council shall be nominated as the only 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 Subdivision Certificate.

Reason: To ensure the on-site storm-water disposal system is maintained to an appropriate operational standard

62.

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

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorized 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 the Subdivision Certificate.

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

64. Provision of Services for Subdivision

The applicant is to ensure all services including, water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots

65. Right of Carriageway

A right of carriageway (under the provisions of Section 88B of the Conveyancing Act) is to be created over whole of Lots on the final plan of subdivision and accompanying 88B instrument to include all vehicular access and maneuvering areas. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919

66. Restriction as to User for Vehicular Access

A restriction as to user shall be incorporated in the title of All Lots that shall preclude lots from utilizing each respective frontage for vehicular traffic except for the section created as a Right of Carriageway. The wording of the restriction of use is to be prepared by a surveyor, with terms acceptable to Council.

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

Reason: To ensure compliance with Council policy for vehicular access.

67. Restriction as to User (Drainage Structures)

A restriction as to user (under the provisions of Section 88B of the Conveyancing Act) is to be created over the whole Lots on the final plan of subdivision and accompanying 88B instrument over the On -Site Storm-water Absorption system, restricting any alteration or additions to the system. The terms of such restriction are to be prepared to Council's requirements, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the party to authority empowered 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 Subdivision Certificate.

Reason: To ensure no modification of the On -Site Storm-water Absorption system without Council's approval.

68. Stormwater Drainage and Utility Services Plan

A plan of subdivision identifying the location of water, gas, telephone, electricity and stormwater drainage in relation to boundaries and/or relevant easements, prepared by a registered surveyor is to be submitted to Council. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that services have been provided with appropriate easements as required by the Conveyancing Act 1919

69. Survey Plan - Construction Identification

A declaration by a registered surveyor shall be provided to Council as evidence that all construction has been effected within the appropriate property, easement boundaries and rights of carriageway. This shall be in the form of a copy of the final subdivision or easement plan, with the distances from the boundaries to the edges of these structures endorsed in red thereon and signed by the surveyor.

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

to the issue of the Subdivision Certificate.

Reason: To ensure accurate location of buildings, access and services

70. **Sydney Water Compliance Certification**

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 the Subdivision Certificate.

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

71. **Certification of Utility Services**

The provision of all utilities/services are to be certified by the relevant authority(s) and/or authorized contractor. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure services have been provided in accordance with the relevant authorities requirements

72. **Easement for Drainage**

An easement for drainage (under the provisions of Section 88B of the Conveyancing Act) is to be created over whole of Lots on the final plan of subdivision the accompanying 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s). Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919

73. **Easement for Services**

An easement for services (under the provisions of Section 88B of the Conveyancing Act) is to be created over whole of Lots on the final plan of subdivision and the accompanying 88B instrument to ensure all utility services are located within the appropriate easement(s). Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919

74. **Electrical Substations**

The applicant shall dedicate the land required for an electricity sub-station as a public road, if requested by the energy authority. The dedication is to be detailed on the final plan of

subdivision, to be submitted to Council with the application for a Subdivision Certificate.

Reason: To comply with statutory requirements of the energy authority

75. **On-Site Storm-water Absorption System Compliance Certification**

Prior to issue of a Subdivision Certificate the On-site stormwater Absorption System must be certified by a consulting engineer and include a "works as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved Absorption System plans. 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.

Reason: To ensure stormwater disposal is constructed to standard specifications AUSPEC 1.

76. **Release of Subdivision Certificate**

To enable the lodgement of the final plan at the NSW Land and Property Information Department the Subdivision Certificate shall not be issued until the Final Occupation Certificate for the approved development has been issued.

Reason: To ensure that the plans relate to approved development

77. **Subdivision Certificate Application**

Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a Building Management Statement and a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 and Conveyancing Amendment Act 2001 are to be submitted to Council. Nine copies of the final plan of subdivision are to be submitted. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919

78. **Title Encumbrances**

All easements, rights of carriageway, positive covenants and restrictions as to user as indicated on the plans and required by this consent are to be created on the title naming Northern Beaches Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.

DRAFT ARCHITECTS

Lot 11
DP 775927

NO KERRILL ACCESS TO NEIGHBOURS AT REAR

STRUCTURE AND WINDINGS AT REAR

LOT 11
DP 775927

ALL PITS AND RETAINING WALLS TO STORMWATER ENGS DETAIL

EXISTING BUILDING TO BE DEMOLISHED SHOWN DOTTED LOT C JP 315039

EXISTING TREE TO BE REMOVED SHOWN DOTTED

DEMOLISH EXISTING DRIVEWAY AND CROSSING AND MAKE IT GOOD AS PER COUNCIL REQUIREMENTS

2000L UNDERGROUND RAINWATER TANK REFER TO BASIN AND STORMWATER ENGS DETAILS

EXISTING TREE TO BE REMOVED SHOWN DOTTED

DEMOLISH EXISTING DRIVEWAY AND CROSSING AND MAKE IT GOOD AS PER COUNCIL REQUIREMENTS

PROPOSED CROSSING KERB & GUTTER TO COUNCIL REQUIREMENTS

SITE PLAN
1:100 @ 1 SHEET

DO NOT SCALE OFF ARCHITECTURAL DRAWINGS

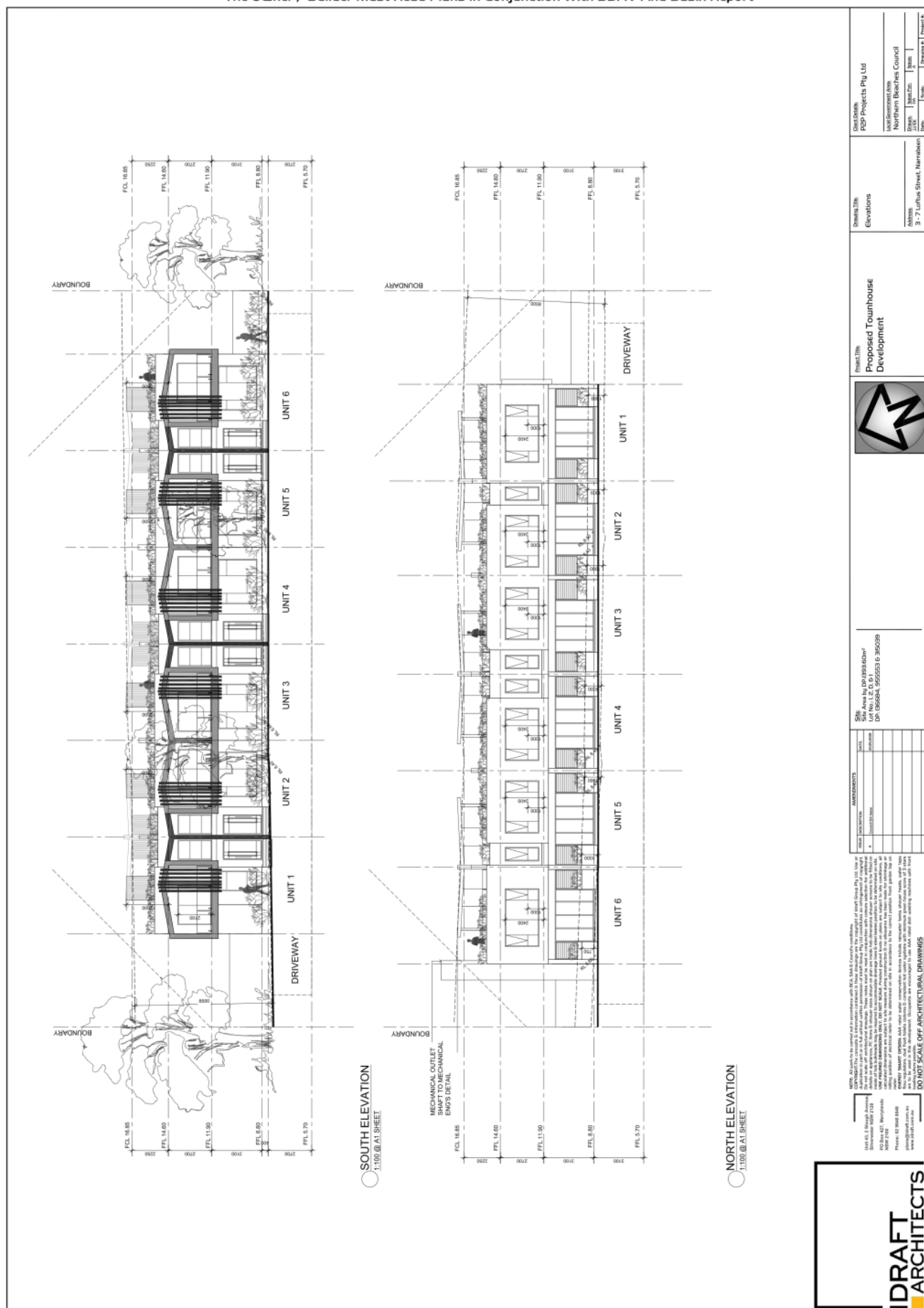
NOTES:
1. All work shall be carried out in accordance with NCC, State Council's requirements.
2. The developer shall provide all services and facilities as required by the Council.
3. The developer shall ensure that all work is completed in accordance with the Council's requirements.
4. The developer shall ensure that all work is completed in accordance with the Council's requirements.

APPENDICES

Lot 11
DP 775927

Site Area by DP 775927
Lot No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 6

The Owner / Builder Must Read Plans In Conjunction With BDAV And Basix Report





4.2.4 Height

At Clause 4.3 of the LEP a development standard pertaining to building height of 8.5m applies to the site.

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

The maximum height of the proposed development is 9.1m, occurring at the uppermost point of the western end of the roof canopy on Dwelling 1 at the western end of the development. The development also includes other lesser breaches to height standard comprising parts of lift and stair overruns and roof canopy structures. The minor breaches to the height standard are shown below at Figure 22 where an extract of dwellings 1-4 is taken, (noting no breach occurs at Dwellings 5-6).

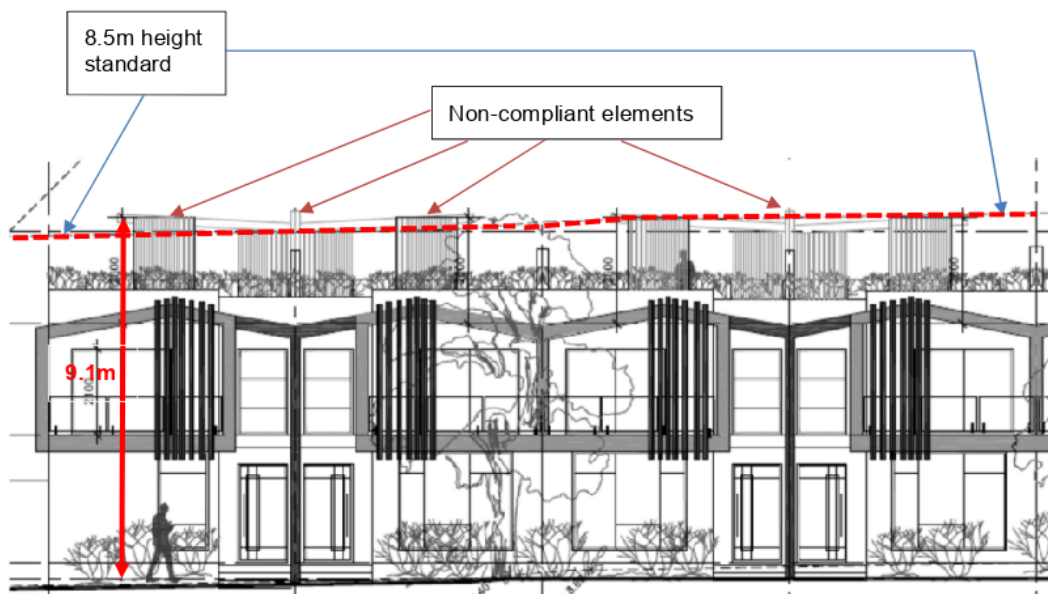


Figure 22: Extract south elevation (Dwellings 1-4) showing breaches to 8.5m height plane

The vent from the basement located at the NE corner of the development is not included in the measurement of height as it is considered to be a type of “flue”.

To address these minor breaches to the development standard a request to vary the standard, in accordance with Clause 4.6 of the LEP and a guiding judgement of the NSW Land and Environment Court by Preston CJ in *Initial Action v Woollahra Municipal Council [2018] NSWLEC 118*, in terms of the proper construction of such statements, is provided below.

The Clause 4.6 variation request addresses a number of issues which arise with relation to the consideration of the objectives of the standard, such as potential amenity related impacts on

neighbouring properties. In this respect, the variation request does not only consider the small non-compliant portions of the building but rather the building as a whole to avoid the duplication of discussion in these respects.

4.2.4.1 Clause 4.6 - Exceptions to Development Standards – Height

The Objectives of Clause 4.6 of Warringah Local Environmental Plan 2011 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.*

At sub clause (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.”*

Sub-clause (3) includes the requirement that a written request is provided by the applicant that seeks to justify the contravention of the standard.

The written request needs to demonstrate that:

- i. *compliance with standard is unreasonable or unnecessary in the circumstances of the case;*
- ii. *there are sufficient environmental planning grounds to justify contravening the development standard.*

Before granting consent, the consent authority needs to be satisfied:

- a. that the request made by the applicant adequately addresses those matters at sub clause (3), (items (i) and (ii) above);
- b. that the proposal is within the public interest because:
 - i. it is consistent with the objectives of the particular standard; and,
 - ii. the objectives for development within the zone in which the development is proposed to be carried out.
- c. Concurrence has been obtained from the Secretary.

In deciding whether to grant concurrence, the Secretary must consider:

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

These matters are considered below with respect to a proposed contravention to *Clause 4.3 Height* under Warringah LEP 2011.

This statement (or request) satisfies the first provision of Clause 4.6 in terms of the applicant making a written request to vary a development standard.

The consent authority, the Northern Beaches Local Planning Panel, has delegation from the Secretary to determine this DA.

Relevant Standard

The development standard to which this Clause 4.6 request seeks to vary is Clause 4.3 Height of Warringah LEP 2011.

4.3 (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

"Building height" is defined as:

"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."

Is the requirement a development standard?

A development standard is defined at Section 4 of the Act as:

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

*(a) the area, shape or frontage of any land, **the dimensions of any land, buildings or works**, or the distance of any land, building or work from any specified point,*

(b)....."

[emphasis added]

Clause 4.3 of the LEP includes a numeric height restriction of any building being 18m. The control is considered to be a *development standard*.

1. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In *NSWLEC Four2Five Pty Ltd v Ashfield Council 2015*, Pearson C found that due to the consistency in language used in SEPP 1 Development Standards and Clause 4.6 that when determining whether compliance with a development standard is unreasonable or unnecessary under Clause 4.6 that the consideration provided in *NSWLEC Wehbe v Pittwater 2007* (typically applied to SEPP 1) may be of assistance.

As to whether or not compliance with the standard is unreasonable and unnecessary, *Wehbe* sets out five means for consideration as follows:

- a) the objectives of the standard are achieved notwithstanding non-compliance with the standard;
- b) the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

- c) the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- d) 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;
- e) 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.

With respect to the tests outlined above from *Wehbe*, we submit that it is unreasonable and unnecessary to strictly comply with Clause 4.3 of the LEP for reasons related to (a) above, in terms of the consistency of the proposed development with the objectives of the development standard.

(a) Consistency with the objectives of the standard

The objectives of the height standard are as follows:

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

The proposed development is considered to be consistent with the objectives of the standard for the following reasons:

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

Comment: To assess the "compatibility" of the proposed development in terms of its height and scale with surrounding and nearby development, reference is made to a NSW Land and Environment Court Planning Principle found in *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*.

The Planning Principle, prepared by Senior Commissioner Dr J Roseth in the aforementioned judgement, deals with "compatibility in the urban environment".

The Planning Principle begins by offering an understanding of compatibility as follows:

"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."

The accepted approach is therefore that compatibility is different from sameness.

In terms of "height" the Planning Principle provides the following:

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

There are three main considerations which relate to the current proposal in light of the Planning Principle:

- that buildings do not have to have the same height to be compatible;
- compatibility is easier to achieve when changes in height is gradual – in this case there is no abrupt changes in height between neighbouring buildings;
- consistency of height in the streetscape.

The two questions which need to be asked are:

- i. *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
- ii. *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

In response to these questions:

- (i) *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites*

The proposed development, in particular the parts of the development which breaches the 8.5m height plane, do not create any adverse visual impacts; do not disrupt existing views; do not introduce any privacy impacts; and, do not unreasonably overshadow neighbouring properties.

Visual Impact

The small portions of the lift and stair overruns and the awning above Units 1-3 at the western side of the development do not introduce significant massing and do not introduce any unreasonable visual impacts. The visual impact of the lift overruns have been reduced by the proposed screens which are for aesthetic purposes to minimise the visual impact of these elements.

The parts of the roof which breach the height standard are setback from the front building line and will only be barely visible from the street as shown below in the perspectives below taken at 1.6m above street level, (assumed eye level).

ITEM 3.4	DA2019/0661 - 22 STUART STREET, MANLY - DEMOLITION WORKS AND CONSTRUCTION OF A BOARDING HOUSE
REPORTING MANAGER	Matthew Edmonds
TRIM FILE REF	2019/704865
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuse** Development Consent to DA2019/0661 for demolition works and construction of a boarding house on land at Lot 4 DP 82179, 22 Stuart Street, Manly, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0661
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 4 DP 82179, 22 Stuart Street MANLY NSW 2095
Proposed Development:	Demolition works and construction of a boarding house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jason Bruce Dunnachie
Applicant:	Urban Strategies
Application Lodged:	26/06/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	27/07/2019 to 10/08/2019
Advertised:	27/07/2019
Submissions Received:	13
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 2,625,703.01

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application DA2019/0661 for demolition works and construction of a boarding house at 22 Stuart Street, Manly.

The proposed development is not compliant with a number of clauses under the Manly Development Control Plan 2013 (MDCP 2013) in relation to amenity and environmental impact. These non-compliant elements are not supported for the reasons detailed throughout this report. The proposed development received 13 submissions, four of which support the proposed development. The remaining objections related to social impacts, traffic and parking, property value, character, landscaping, amenity, communal open space, land use, water management, and environmental concerns. The number of objections (nine) in conjunction with the cost of works (\$2,625,703) require the application to be referred to the Development Determination Panel for determination.

The application has been assessed against the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979), *Environmental Planning and Assessment Regulations 2000* (EP&A Regulations 2000), relevant environmental planning instruments (EPIs) and Council policies. Based on a detailed assessment of the proposal against the applicable planning controls, the proposal is unsuitable and is an inappropriate development for the subject site. Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be **refused**.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the following works:

- Demolition of all structures on site;
- Construction of a boarding house, comprised of:
 - Twelve boarding rooms, plus one manager's residence, each with kitchenette and bathroom facilities;
 - Communal laundry;
 - Two internal communal living rooms;
 - Two outdoor communal areas;
 - Lift; and
 - Basement car park containing seven car spaces and three motorcycle spaces.
- Three bicycle spaces at ground;
- Bin storage area;
- Onsite detention system; and
- Landscaping.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 6.2 Earthworks
Manly Local Environmental Plan 2013 - 6.4 Stormwater management

Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.12 Essential services
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.3.1 Landscaping Design
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.7 Stormwater Management
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)
 Manly Development Control Plan - 4.4.9.3 Open Space

SITE DESCRIPTION

Property Description:	Lot 4 DP 82179 , 22 Stuart Street MANLY NSW 2095
Detailed Site Description:	<p>The Assessing Officer inspected the site on 6 August 2019.</p> <p>The subject site consists of one (1) allotment located on the south-western side of Stuart Street, Manly.</p> <p>The site is regular in shape with a frontage of 12.19m along Stuart Street and a depth of 40.575m. The site has a surveyed area of 494.7m².</p> <p>The site is located within the R1 General Residential zone and accommodates a two-storey house.</p> <p>The site is generally level for the eastern-most three quarters of the site. The western-most quarter of the site steeply slopes approximately 5m from east to west.</p> <p>The site does not contain significant vegetation, but does contain significant sandstone rock outcrops in the rear yard.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one- and two-storey detached dwellings, and two- to four-storey residential flat buildings.</p>

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:

- DA2018/0195 for Demolition and construction of a dwelling house was refused on 24 September 2018 by Council's Development Determination Panel for the following reasons:
 1. *The proposed development exceeds the floor space ratio development standard contained within Clause 4.4 of the Manly Local Environmental Plan (MLEP) 2013 without adequate justification that is consistent with the requirements of Clause 4.6 under the MLEP 2013; having regard to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979.*
 2. *The proposed development contravenes Clause 3.1 Streetscapes and Townscapes of the MDCP 2013; having regard to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979.*
 3. *The proposed development contravenes Clause 3.4.2 Privacy and Security of the MDCP 2013; having regard to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979.*
 4. *The proposed development contravenes Clause 4.1.5 Open Space and Landscaping of the MDCP 2013; having regard to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979.*
 5. *The proposed development contravenes Clause 4.4.5 Earthworks (Excavation and Filling) of the MDCP 2013; having regard to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979.*

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter can be addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter can be addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of	(i) Environmental Impact

Section 4.15 Matters for Consideration'	Comments
the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan 2013 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	The matters that have arisen in this assessment that would justify the refusal of the application in the public interest are detailed throughout this report.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 13 submission/s from:

Name:	Address:
Mr Michael Walter Howard Lamb	4 Orana Avenue PYMBLE NSW 2073
Mr Duncan Hugh James Black	1 / 68 Addison Road MANLY NSW 2095
Mr George Yuri Opadchy	2 / 24 Stuart Street MANLY NSW 2095
Mariana Cordeiro	2 / 30 South Steyne MANLY NSW 2095
Mr Michael John Edwards	3 / 34 Crown Road QUEENSLIFF NSW 2096
Mr Giuseppe Porcelli	1 / 24 Stuart Street MANLY NSW 2095

Name:	Address:
Gary Neugebauer	80 Alfred Street MILSONS POINT NSW 2061
Mr Stephen John Titus	2B Craig Avenue MANLY NSW 2095
Richard Farrell	
Grant Hughes	42 Neptune Road NEWPORT NSW 2106
Ms Beverley Anne Eddington	2A Craig Avenue MANLY NSW 2095
Transit Securities Pty Ltd	16 Stuart Street MANLY NSW 2095
Mr Haydn Brian Smith	2 / 3 Craig Avenue MANLY NSW 2095

The application has received thirteen submissions, comprising four in support and nine in objection. The matters raised within the submissions are addressed as follows:

Social Impacts

Objections raised concern about social impacts arising from use of the site as a boarding house, including noise nuisance, unruly behaviour, littering, sex, and drug use.

Comment:

The proposal is recommended for refusal. Issues relating to the behaviour of boarding house residents within the scope of planning issues relating to amenity could be managed via conditions referencing a Plan of Management and the use of an onsite manager.

Parking Concerns

Objections raised concern that the proposal is not supported by adequate parking spaces, and that parking should be placed at the ground level, rather than in a basement with car stackers. Concern was also raised that the proposed accessible parking space does not provide adequate area for turning and manoeuvring.

Comment:

The proposed development provides compliant parking spaces in accordance with the *State Environmental Planning Policy (Affordable Rental Housing) 2009*, which stipulates the requirements for boarding house developments. Stacked parking is commonly used in multi-dwelling or boarding room developments, and is an acceptable design response regularly supported by Council's Traffic Engineer. However, concern is raised that the stackers rely on cooperation between boarding house occupants for operation and management of the spaces, which is an undesirable outcome. This is included as a reason for refusal.

Property Value

Objections raised concern that the proposed development would reduce the value of surrounding properties.

Comment:

Property value is not a planning matter for consideration under the *Environmental Planning & Assessment Act 1979*.

Character, Overdevelopment and Density

Objections raised concern that the proposed development is out of character with the locality, excessive in relation to bulk, scale and height, as well as density.

Comment:

Assessment of the proposal establishes that the development is not in keeping with the character of the locality, in relation to landscape treatment, height, bulk and scale. The proposed development is compliant in relation to density. However, the bulk and scale proposed to support that density is unacceptable. These objections carry determinative weight and have been included as reasons for refusal.

Landscaping / Vegetation

Concern is raised that the proposed bamboo planting will cause unreasonable overshadowing. Concern is also raised in regards to the removal of the fig tree.

Comment:

The existing fig tree is located on the adjacent property to the south and is not proposed to be removed. If the proposal were recommended for approval conditions could be included for the fig tree to be protected, and the height of screen planting to be restricted. This is not considered to be a reason for refusal.

Amenity – Privacy / Overshadowing

Concern is raised in relation amenity impacts of the development, including dimensions and use of the outdoor communal area, and overshadowing to properties to the south.

Comment:

The proposed outdoor communal area is of sufficient dimensions in accordance with the *State Environmental Planning Policy (Affordable Rental Housing) 2009*, and the use is not anticipated to result in unreasonable noise impacts, as supported by the submitted Acoustic Assessment and Plan of Management. The proposal results in unreasonable overshadowing impacts to properties to the south. This is included as a reason for refusal.

Land Use Concerns

Concern was raised in objections that the proposed land use is not actually 'affordable'. Concern was also raised that the development could be used for short term rental accommodation.

Comment:

The proposal is recommended for refusal. The property market sets rates for rental prices, as there is no legislation capping rental prices for this form of development. Should this development be approved, the consent would be for boarding house accommodation, which requires a minimum stay of three months, and is therefore not considered short term in accordance with planning legislation. Any operation of the site not in accordance with development consent or other planning legislation is a matter for investigation by Council's Compliance team. This is not a reason for refusal.

Environmental Concerns

Concern is raised that the proposed development will disrupt water dragon habitat and unreasonable geotechnical risks. Objections recommended dilapidation reports be required.

Comment:

The proposed development has been reviewed by Council's Bushland & Biodiversity Officer, who raised no concern in relation to water dragon habitat, as the water dragon is not classified as a threatened species. The development is supported by a geotechnical report which details that risks associated with the proposed earthworks are acceptable, subject to compliance with recommendations. Should the development be approved, dilapidation reports can be required by condition of consent. These are not reasons for refusal.

Water Management

Objections raised concern that the driveway ramp levels are insufficient in relation to flooding levels, and that the basement may flood. Concern was also raised about impacts of water flowing down stream if pumps on the property should fail. Lastly, concern was raised that the proposal does not allow for enough water infiltration on site, given the proportion of impervious area proposed.

Comment:

The subject site is not classified as flood affected land. The proposed development has been reviewed by Council's Development Engineer, who is satisfied with the proposed stormwater management measures, with the exception of the lack of connection to Council's piping. This has been included as a reason for refusal. The proposed development includes insufficient open space due to an oversized building footprint and excess impervious area. This has also been included as a reason for refusal.

Support

Four submissions were received in support of the application, as the proposed development may provide affordable accommodation, housing for international students, and good amenity.

Comment:

Noted.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Recommendation: Approval with conditions</p> <p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Industrial)	<p>Recommendation: Approval with conditions</p> <p>Environmental Health has been asked to comment on the proposed 12 room (24 occupants) Boarding House. Currently there is a boarding house of unstated size/occupation. It is interpreted that this may be a 7 to 8 room structure -occupation capacity 14 to 16 and currently registered as a Boarding House. An Acoustic report has been submitted, is noted that the communal area is located at the rear of the block affecting the least number of neighbours and will be subject to a management plan (which Council will require updating). Noise from individual units to neighbouring units (windows/balconies) is in keeping with similar developments in the area. Conditions are recommended to be added for controllable noise. Conditions would include; plant and equipment; the communal area external windows being closed at 10 pm and the outside communal area not being occupied after 10 pm at night to avoid a noise nuisance, from a concentrated occupancy of up to 24 tenants plus visitors.</p> <p>Extensive excavation into rock will also be addressed in conditions.</p>
Landscape Officer	<p>Recommendation: Approval with conditions</p> <p>The application seeks approval to demolish the existing boarding house and construct a new 12 room boarding house with associated landscaping, common areas and parking for 7 cars in a stacker formation, 3 motor bikes and 3 bicycles.</p>

Internal Referral Body	Comments
	<p>The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation, and the completion of landscaping.</p> <p>Council's Landscape section have assessed the application against the landscape controls of Manly DCP2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.</p> <p>There are no significant trees within the site impacted by the works. Significant trees are located within adjoining properties and these shall be protected during all stages of works. Conditions of consent shall be imposed to ensure tree protection measures are in place, including protection of trees on adjoining properties and within the road verge.</p> <p>No Arboricultural Impact Assessment is provided with this application. A previous Arboricultural Statement prepared for DA2018/0195, by Hugh The Arborist dated 21 May 2018, recommended that a minimum 3 metre setback from the existing Port Jackson Fig located within adjoining property in 2 Craig Avenue be imposed on any development works. Conditions of consent shall be imposed to ensure protection of the existing Port Jackson Fig.</p> <p>A Landscape Plan numbered DA.21 and prepared by All Australian Architecture satisfies the DA Lodgement Requirements, subject to conditions.</p> <p><u>Assessing Officer's Comment:</u> The proposed development does not provide a suitable landscaping response in consideration of the requirements under the MDCP 2013 and the <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i>. As such, the proposed landscaping is unacceptable. This is included as a reason for refusal.</p>
NECC (Bushland and Biodiversity)	<p>Recommendation: Refusal</p> <p>This application was assessed against MLEP Clause 6.5 Terrestrial Biodiversity, MDCP Clause 5.4.2 and Schedule 1 Map D, as well as the NSW Biodiversity Conservation Act 2016.</p> <p>The proposal is for the demolition of the existing boarding house and the construction of a new boarding house and associated landscaping.</p> <p>The plans include elements which are not ancillary to operation of the boarding house (e.g. outdoor communal paved area) and which will require the permanent removal of known habitat for the endangered population of Long-nosed Bandicoots at North Head. The retention of these proposed paved areas and the extent of soft open space removal proposed in the plans demonstrates that the applicant has not attempted to design and site the development to achieve</p>

Internal Referral Body	Comments
	<p>consistency with Manly LEP Clause 6.5 (Terrestrial Biodiversity). Furthermore, the planting schedule of the amended Landscape Plan is still not consistent with the species list specified in Manly DCP Section 3.3.1.a)iv) (Landscaping Design – Bandicoot Habitat).</p> <p>In order to achieve consistency with relevant Natural Environment controls, amendments are required including replacement of the proposed paved outdoor area with turf/landscaping and substantial changes to the planting schedule.</p> <p><u>Assessing Officer's Comment:</u> The above matters are included in the reasons for refusal.</p>
NECC (Coast and Catchments)	<p>Recommendation: Approval with conditions</p> <p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, <i>State Environmental Planning Policy (Coastal Management) 2018</i> (SEPP Coastal Management), <i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</i> (SREP) and Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The subject land is located within the SREP foreshore and waterways area. The proposed development meets the requirements of the SREP and DCP, and relevant clauses of the Manly LEP and DCP.</p> <p>Clauses 13 and 14 of the SEPP Coastal Management do not apply in foreshore and waterways areas subject to the SREP. The proposed development meets the relevant Clause 15 of the SEPP Coastal Management. As such, it is considered that the application complies with the requirements of the SEPP Coastal Management.</p>
NECC (Development Engineering)	<p>Recommendation: Refusal</p> <p><i>Original Comments:</i></p> <p>Development Engineering has assessed the application.</p> <p>However, Development Engineering is unable to provide an appropriate assessment when missing a detailed site survey and on site stormwater management plan in the application.</p> <p>Furthermore, the proposed driveway does not comply with Council's Crossing standard and Australian Standard AS 2890.1.2004. The proposed driveway crossing on road reserve shall be designed in accordance with Council's Normal profile. In internal driveway, the grade of the first 6 m shall be complied with the section 3.3 of AS2890.1.2004.</p> <p>Any pump out system for basement area is not permitted to connect to the kerb.</p> <p>The basement shall be waterproofed to minimise any groundwater</p>

Internal Referral Body	Comments
	<p>entering the basement. It prevents any constantly discharge to kerb & gutter. Alternatively, the pump must be connected directly into a nearest Council drainage system.</p> <p><i>Updated Comments:</i></p> <p>A survey plan and stormwater management plan were submitted.</p> <p>As the previous comment, Council does not permit any pumping water into Council's kerb and gutter. The proposed pump in the submitted plan shall connect to a Council drainage piepline directly. The nearest pipeline is located at the corner of Craig Avenue and Stuart Street. It means a Council's standard pipeline and pit shall be built in order to connecting the proposed pump. However, no detail of the pipeline and pit is provided in this submission.</p> <p>Second, the previous driveway issue has not been addressed in this submission.</p> <p>As the above, the application cannot be supported.</p> <p><u>Assessing Officer's Comment:</u> The above matters are included in the reasons for refusal.</p>
Strategic and Place Planning (Urban Design)	<p>Recommendation: Refusal</p> <p><i>Original Comments:</i></p> <p>The applicant seeks approval to demolish the existing boarding house and construct a new 12 room boarding house with associated manager's room, landscaping, common areas and parking for 7 cars in a stacker formation, 3 motor bikes and 3 bicycles. The proposal cannot be supported for the following reasons:</p> <p>1. Manly DCP - 3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise) <i>Objective 1) To protect the amenity of existing and future residents and minimise the impact of new development, including alterations and additions, on privacy, views, solar access and general amenity of adjoining and nearby properties including noise and vibration impacts.</i></p> <p>Comment: The proposal will have an unacceptable impact to neighbouring houses when considering key amenity issues such as visual impact, noise and privacy. The primary concern is the interrelationship between the openings of the proposed rooms and the southern neighbours. In this regard, it is noted that 12 of the 13 rooms face directly south to the neighbouring semi-detached houses. This will result in privacy and overlooking issues. Furthermore, the</p>

Internal Referral Body	Comments
	<p>proposed ground floor rooms (6 no.) and communal living room has access to linear outdoor courtyards on the southern boundary bringing up issues of noise nuisance.</p> <p>Manly DCP - 3.4.1 Sunlight Access and Overshadowing <i>Objective 1) To provide equitable access to light and sunshine.</i> <i>Objective 2) To allow adequate sunlight to penetrate: private open spaces within the development site; and private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.</i> <i>Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by: encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.</i></p> <p>3.4.1.1 Overshadowing Adjoining Open Space <i>In relation to sunlight to private open space of adjacent properties:</i> <i>a) New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June) ; or</i> <i>b) Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.</i></p> <p>3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties <i>In relation to sunlight to the windows or glazed doors to living rooms of adjacent properties:</i> <i>a) for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June);</i> <i>b) for adjacent buildings with a north-south orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors of living rooms for a period of at least 4 hours from 9am to 3pm on the winter solstice (21 June);</i> <i>c) for all adjacent buildings (with either orientation) no reduction in solar access is permitted to any window where existing windows enjoy less than the minimum number of sunlight hours specified above.</i></p> <p>Comment: The proposal does not comply with the sunlight access and overshadowing requirements. The submitted shadow diagrams indicate that the proposal will take away completely the limited sunlight reaching the existing private open spaces to the southern neighbouring houses. Solar access to the living room of the adjacent house will also be made worse from currently limited exposure.</p> <p>The proponent should consider re-orientating the boarding rooms to</p>

Internal Referral Body	Comments
	<p>the front and back boundaries and newly created central courtyard area. This will result in a better planning outcome with more sunlight access to the boarding rooms and the central courtyard will provide a break in built form to allow greater sunlight access to the southern neighbours. Consideration for increasing the setback on the southern side of the development to encourage solar penetration to the south and increasing landscape buffer space should also be further explored.</p> <p>Such a modification to the design would represent a far better relationship between the site and surrounding properties as it would avoid overlooking and noise nuisance exposure to the southern neighbours whilst also improving amenity to the boarding rooms. The central courtyard would also break up the proposed linear built form which will lessen the visual impact of the development.</p> <p>2. Privacy screenings of windows to the upper units should only be used as a last resort to minimise privacy issues to immediate neighbours.</p> <p><i>Additional Comments (22 October 2019):</i></p> <p>3. Clause 30A of the SEPP states that: <i>A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.</i></p> <p>The proposal can be made more compatible with the character of the local area:</p> <p>a) The surrounding neighbourhood is generally dominated by traditional and contemporary dwellings with a range of pitched and flat roofs. The proposal seeks to incorporate a contemporary design with a curved metal roof incorporating stone cladded feature wall and rendered and painted elements. This style of building is becoming increasingly prevalent within the area and is generally acceptable as a transitional approach if the bulk and scale of the built form is treated sensitively.</p> <p>b) The proposed front façade to the street presents a two storey with a curved roof form which is generally acceptable.</p> <p>c) Both the side elevations of the proposal have long and relatively flat two to three storey façades which would be out of character. The long linear built form needs to be broken up with a centrally located courtyard where substantial landscaping can be incorporated. This courtyard will also help to soften the built form impact to the adjacent neighbours.</p> <p>d. The proposed back elevation of a single storey with a mezzanine</p>

Internal Referral Body	Comments
	<p>floor incorporated in the curved metal deck roof form is generally acceptable.</p> <p>4. Landscape area requirement of 40% of site area has not been provided (119 sqm proposed ie. 24% of site area). The central courtyard suggested above to break up the long linear built form will help to achieve the landscape requirement.</p> <p><u>Assessing Officer's Comment:</u> The above unsupported matters are included in the reasons for refusal.</p>
Waste Officer	<p>Recommendation: Approval with conditions</p> <p>The applicant has complied with the Northern Beaches Council Waste Management Guidelines after revision of the ground floor plans, 22 Stu FD.10 issue E. The conditions must be executed to ensure compliance.</p> <p>Bin Room Design and Location The applicant has modified the ground floor plan to ensure the bin room is at street level to facilitate a wheel out and return service by Council and/or its agents. The bin room is to be able to accommodate 12 x 240L general waste and recycling bins required for the 13 dwellings. Plus, accommodate 1 x 240L vegetation bin for every 200m² of landscaped open space on the site.</p> <p>The Waste Storage Area must be:</p> <ul style="list-style-type: none"> a) The bin room is to be located within 6500mm of the front property boundary. b) Clear of any obstructions and security devices. c) Incorporated entirely within the site boundary and, as it is an external structure, be designed to reduce visual impact and clutter. This must be reviewed by principal planner for compliance. <p>The pathway and access between the Waste Storage Area and Collection Point will be:</p> <ul style="list-style-type: none"> a) Solid, concrete, continuous, non-slip and clear of any obstructions and steps. b) A maximum ramp gradient of 1 in 8. c) Hazard free and not via a pathway with vehicular traffic. d) A minimum width of 1200mm. <p>Any doors or gates fitted on the Waste Storage Area, pathway and access will be:</p> <ul style="list-style-type: none"> a) A minimum width of 1200mm. b) Able to be latched in an open position. c) Unobstructed by any locks and security devices. d) Openable in an outward direction. <p>A bulky goods waste storage area in the basement has been accepted and must be:</p>

Internal Referral Body	Comments
	<p>a) A minimum of 4m³ per 10 dwellings fit for the purpose of storing bulky goods.</p> <p>b) A room or caged area separate from the Waste Storage Area.</p> <p>c) Incorporated entirely within the site boundary and not visible to the public. The responsibility of the bulky goods to the street on their booked collection date is the sole responsibility of the building manager and their tenants.</p> <p><u>Assessing Officer Comment:</u> The proposed waste storage area is unacceptable from a planning perspective in relation to its impact on landscaping, character, and built form, as detailed throughout this report. These matters are included in the reasons for refusal.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental

housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 3: Boarding houses

Clause 25: Definition

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

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

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

Clause 26: Land to which this Division applies

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone B1 Neighbourhood Centre, or (f) Zone B2 Local Centre, or (g) Zone B4 Mixed Use.	Consistent The site is located within the R1 General Residential and, as such, the proposed use is permissible with consent under MLEP 2013.

Clause 27: Development to which this Division applies

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

Requirement	Comment
(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area. Note: Accessible area means land that is within: (c) 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.	Consistent The site is located within the R1 General Residential zone and is situated not more than 400m walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.
(3) Despite subclause (1), this Division does not	Not applicable.

apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.	The site is located within the Sydney region.
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Clause 28: Development may be carried out with consent

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

Clause 29: Standards that cannot be used to refuse consent

Standard	Requirement	Proposed	Compliant/Comment
(1) Density and scale A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	The maximum floor space ratio for the subject site (under Clause 4.4 of the MLEP 2013 and Clause 29 of this SEPP) is 1.1:1 (544.17sqm).	Compliant. The proposed development includes a floor space ratio of 0.94:1 (463.3sqm).
	(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or	Not applicable. The subject site is zoned R1 General Residential.	
	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register - the existing maximum floor space ratio for any form of residential accommodation	The subject site is zoned R1 General Residential, in which residential flat buildings are permitted with consent. The subject site does not contain a heritage item. The maximum floor space ratio for the subject site (under Clause 4.4 of the MLEP 2013 and Clause 29 of this SEPP) is 1.1:1 (544.17sqm).	Compliant. The proposed development includes a floor space ratio of 0.94:1 (463.3sqm).

	<p>permitted on the land, plus:</p> <p>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or</p> <p>(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</p>		
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:			
(a) building height	if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,	The proposed development is 8.4m in height, being below the maximum building height of 8.5m.	Compliant.
(b) landscaped area	if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	The landscape treatment of the front setback area is incompatible with the streetscape in which the building is located. The front setback area includes a bin store room and significant impervious areas. As such, the proposed development does not include sufficient planting to soften the visual bulk of the proposed development.	Not compliant. This is included as a reason for refusal.
(c) solar access	where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	The proposed development includes two internal communal living rooms. These rooms do not receive 3 hours of direct sunlight between 9am and 3pm.	Not compliant. This is included as a reason for refusal.
(d) private open space	if at least the following private open space areas are provided	(i) The proposed development includes a landscaped open space	(i) Compliant. (ii) Not compliant. This is

	<p>(other than the front setback area):</p> <p>(i) one area of at least 20m² with a minimum dimension of 3.0m is provided for the use of the lodgers,</p> <p>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8.0m² with a minimum dimension of 2.5m is provided adjacent to that accommodation,</p>	<p>area of 63.6sqm with a minimum dimension of 5.2m, and a communal outdoor area of 21.7sqm with a minimum dimension of 2.7m at Level 1.</p> <p>(ii) The proposed development includes one boarding house manager. The proposal includes an open space area of 6.3sqm with a minimum dimension of 1.7m.</p>	<p>included as a reason for refusal.</p>
(e) parking	<p>if:</p> <p>(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</p> <p>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p> <p>(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and</p> <p>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in</p>	<p>(i) Not applicable.</p> <p>(ii) Not applicable.</p> <p>(iia) The proposal includes 12 boarding rooms (plus one manager's room), and provides 7 parking spaces.</p> <p>(iii) The proposal provides for one manager's room and does not allocate a parking space to that manager.</p>	<p>Compliant.</p>

	connection with the development and who is resident on site,		
(f) accommodation size	<p>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	Each boarding room has an internal floor space of at least 17sqm.	Compliant.
	(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	Each proposed room has an ensuite bathroom and a kitchenette.	Compliant.
	(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).	Noted.	Noted.

Clause 30: Standards for boarding houses

Standard requirement	Proposed	Compliant/Comment
(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:		
(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	The proposal includes 12 boarding rooms and one internal communal living room.	Compliant.
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25m ² ,	The proposed boarding rooms have areas of between 17sqm and 23.6sqm exclusive of bathroom and kitchen facilities.	Compliant.
(c) no boarding room will be	Each boarding room will allow for	Compliant.

occupied by more than 2 adult lodgers,	a maximum of two occupants.	
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Private bathroom and kitchen facilities are provided in each boarding room.	Compliant.
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,	The proposed development has capacity for up to 24 lodgers and includes one manager's room.	Compliant.
(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,	Not applicable. The subject site is zoned R1 General Residential.	Compliant.
(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.	The proposed development includes 12 rooms and provides for three bicycles and three motorcycles.	Compliant.
(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.	Subclause (1) applies, as the proposal is for construction of a new boarding house.	Noted.

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

Clause 30AA of the SEPP ARH provides that a consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.

Comment:

Not applicable. The subject site is zoned R1 General Residential.

Clause 30A: Character of the local area

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

The first principle is that buildings in a development do not have to be single-storey to be compatible with the

streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation.

Comment:

The proposed boarding house is three storeys in height (including the basement), plus a mezzanine. Given the slope of the site, and the proposed design, the boarding house presents to Stuart Street as a two-storey building with attic space. The streetscape along Stuart Street a mix of one- to four-storey developments of varying densities. There are a number of examples of developments with similar streetscape presentation, including (but not limited to) a two-storey (plus attic) dual occupancy to the southeast, and a three-storey residential flat building to the northwest. The proposed development is compliant with the maximum building height of 8.5m, being a maximum of 8.4m in height. Notwithstanding this, the proposed development includes significant built form in the front setback area for the purpose of the bin store room and a portion of the boarding house. This built form is set ahead of the prevailing building line in the street, and is not supported by suitable landscaping to soften the built form. In this regard, the scale of the development is not compatible with the streetscape, and is inconsistent with the first principle.

The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.

Comment:

The proposed development presents long portions of built form along the northern and southern elevations. These elevations are inadequately set back from the side property boundaries, and are inadequately articulated. The proposed development is not adequately broken up or supported by landscaping to sufficiently reduce the visual impact of the building, or reduce its appearance as one large building. In this regard, the development is incompatible with the scale of surrounding development and is inconsistent with the second principle.

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

Comment:

The proposed development relies on significant excavation to achieve the desired yield. This excavation increases the visual appearance of the proposed development from what would be two storeys in height above ground (plus attic) to three storeys (plus attic). The topography of the site that would make the development appear smaller is not retained, resulting in unreasonable visual impact to the adjoining properties to the north and south. In this regard, effective methods have not been employed in the design of the development to reduce its visual dominance, and that the proposed development is inconsistent with the third principle.

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

Comment:

Stuart Street contains a mix of building colours and materials along the streetscape. The proposed development includes materials, colours, and finishes that are compatible with the existing and desired streetscape character. In this regard, the development is consistent with the fourth principle.

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

Are the proposal's physical impacts on surrounding development acceptable? The physical impacts

include constraints on the development potential of surrounding sites.

Comment:

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

Constraints on the development potential of surrounding sites

The proposed development is not adequately sited (in relation to setbacks, bulk and scale) to ensure reasonable development of adjoining properties. The impacts of the proposed development on adjoining properties are discussed throughout this report.

Privacy

The proposed development presents unreasonable impositions on the privacy of adjoining properties in relation to windows to boarding rooms and outdoor communal areas. The privacy impacts are discussed in detail in the section of this report relating to Clause 3.4.2 Privacy and Security of the MDCP 2013.

Overshadowing

The proposed development unreasonably overshadows the adjoining property to the south at 24 Stuart Street. The overshadowing impacts are discussed in detail in the section of this report relating to Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP 2013.

Noise

The proposed development is not anticipated to result in unreasonable noise impacts in regards to general use and use of the communal open space areas, as detailed in the submitted Plan of Management and Acoustic Report, and supported by Council's Environmental Health Officer. However, concern is raised in relation to the potential noise impacts of the private open space areas proposed adjacent to the southern side boundary, as this is not addressed in the submitted Acoustic Report. This concern is noted in the section of this report relating to Clause 3.4.2 Privacy and Security of the MDCP 2013.

Conclusion to character assessment

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1023381M dated 22 June 2019). The BASIX Certificate indicates that the development will achieve the following:

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

A condition can be applied 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.

SEPP (Coastal Management) 2018

The site is classified as being land within the coastal environment area and the coastal use area under the *State Environmental Planning Policy (Coastal Management) 2018* (the SEPP). However, the relevant clauses of the SEPP (Clauses 13 and 14) do not apply to areas classified as foreshore and waterways of the *State Regional Environmental Plan (Sydney Harbour Catchment) 2005*, as in this case. Accordingly, an assessment under the SEPP has been carried out in relation to the remaining applicable clause as follows:

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 development is not anticipated to cause risk of coastal hazards on the subject site or other land.

As such, the proposed development complies with the requirements of the SEPP.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement
Height of Buildings:	8.5m

Floor Space Ratio	1.1:1 (0.6:1 under MLEP 2013 plus 0.5:1 under SEPP ARH) (544.17sqm)
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Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.2 Earthworks	No
6.4 Stormwater management	No
6.5 Terrestrial biodiversity	No
6.8 Landslide risk	No
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	No

Detailed Assessment

6.2 Earthworks

The proposed development relies on excessive excavation in order to achieve the desired yield. The proposed development is supported by a geotechnical report, which details that the works will not involve greater than acceptable landslide risks. However, this geotechnical report states that excavation to a maximum depth of 4m below ground level is required to support the development, while plans detail excavation to a maximum depth of 6.4m. As such, the geotechnical report cannot be relied upon in this case. Additionally, this results in unreasonable amenity impacts on adjoining properties in relation to privacy and overshadowing, as detailed throughout this report. As such, the proposed development fails to suitably address the effect of the development on the existing and likely amenity of adjoining properties as a result of the excavation. This is included as a reason for refusal.

6.4 Stormwater management

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

- (a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*
- (b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*
- (c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

Comment:

The proposed development does not provide sufficient landscaped open space as a proportion of the site in order to maximise water infiltration and minimise stormwater runoff. The proposed development includes an onsite stormwater detention system, though this system is not shown to be adequately

connected to a Council drainage pipeline. Instead, the plans show pumping of water into Council's kerb and gutter, which is not permitted. As such, the consent authority cannot be satisfied that the proposed development is acceptable in relation to the matters above. This is included as a reason for refusal.

6.5 Terrestrial biodiversity

(1) The objective of this clause is to maintain terrestrial biodiversity by:

- (a) protecting native fauna and flora, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

Comment:

The subject site is known to contain habitat for the endangered population of Long-nosed Bandicoots at North Head. The proposed development includes elements that are not essential to operation of the boarding house (such as the outdoor communal paved area) that will require the permanent removal of a significant portion of Bandicoot habitat. The proposed development has not been designed and sited to achieve consistency with this clause and its objectives.

6.8 Landslide risk

Under Clause 6.8 Landslide Risk, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that:

- (a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or*
- (b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or*
- (c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.*

Comment:

The proposed development is supported by a geotechnical report, which details that the works will not involve greater than acceptable landslide risks. However, this geotechnical report states that excavation to a maximum depth of 4m below ground level is required to support the development, while plans detail excavation to a maximum depth of 6.4m. As such, the geotechnical report cannot be relied upon in this case. The proposed development is not demonstrated to appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land (as detailed in the sections of this report relating to Clause 6.4 Stormwater Management of the MLEP 2013, and Clause 3.7 Stormwater Management of the MDCP 2013). As such, the consent authority cannot be satisfied in relation to the matters under this clause. This is included as a reason for refusal.

6.12 Essential services

Under Clause 6.12 Essential Services, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,*
- (b) the supply of electricity,*
- (c) the disposal and management of sewage,*

- (d) stormwater drainage or on-site conservation,
(e) suitable vehicular access.

Comment:

The subject site is currently connected to suitable water, electricity, and sewerage facilities. The proposed development is not supported by adequate stormwater management measures, as detailed in the sections of this report relating to Clause 6.4 Stormwater Management of the MLEP 2013, and Clause 3.7 Stormwater Management of the MDCP 2013. Additionally, the proposed driveway is not supported by a suitable driveway, as detailed in the sections of this report relating to Internal Referrals - Development Engineer, and Clause 4.1.6 Parking, Vehicular Access and Loading of the MDCP 2013. As such, the consent authority cannot be satisfied in relation to subclauses (d) and (e) above. This is included as a reason for refusal.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 494.7sqm	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 6.9m (based on gradient 1:15)	6.3m	N/A	Yes
	South: 6.9m (based on gradient 1:15)	6.9m	N/A	Yes
4.1.2.2 Number of Storeys	2	2 (plus basement and mezzanine, excluded from calculation)	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	2m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	900mm to bin store room	85%	No
		3m to boarding house	50%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	North: 2.1m (based on wall height)	0m to outdoor communal area	100%	No
		1.2m to building	42.85%	No
	South: 2.3m (based on wall height)	0m to outdoor communal area	100%	No
		2m to building	13.04%	No
	Windows: 3m	North: 2.3m	23.3%	No
		South: 2m	33.3%	No
4.1.4.4 Rear Setbacks	8m	5.2m to outdoor communal area	35%	No
		8m to building	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total open space min. 55% of site area (272sqm)	38% (187.6sqm)	31%	No
	Open space above ground max. 40% of total open space (75.04sqm)	No open space above ground	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area min.	39.71%	N/A	Yes

	35% of total open space (65.66sqm)	(74.5sqm)		
	1 native tree	4 trees	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.2m	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	No	No
3.3.1 Landscaping Design	No	No
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	No	No
3.4.2 Privacy and Security	No	No
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
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	No	No
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	No	No
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	No	No
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.5 Earthworks (Excavation and Filling)	No	No
4.4.9 Boarding Houses	No	No
4.4.9.1 Communal Rooms and Areas	Yes	Yes
4.4.9.2 Bedrooms	Yes	Yes
4.4.9.3 Open Space	No	No
4.4.9.4 Parking	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The proposed development breaches the front setback control for the purpose of the boarding house (3m) and the supporting bin store room (900mm) where 6m is required. Buildings with more than one dwelling require unobtrusive garbage storage enclosures that are integrated into the building design and not visible from the streetscape. The proposed development does not include adequate landscaping and vegetation to the front setback in order to suitably screen the built form for consistency with the streetscape. The objectives of the control are addressed as follows:

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

The proposed development includes significant built form within the front setback area, with minimal landscaping to soften the visual impact. The proposed development results in an unreasonable imposition on the streetscape as a result of the non-compliance.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment:

The proposed development does not include a front setback that is compatible with the prevailing building line along Stuart Street, as is therefore not complementary to the streetscape.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment:

Not applicable. Fencing is not proposed.

The proposed development does not achieve consistency with the relevant objectives of this control. This is included as a reason for refusal.

3.3.1 Landscaping Design

The planting schedule of the submitted landscape plan is not consistent with the species list specified in subclause 3.3.1(a)(iv).

Objective 1) To encourage appropriate tree planting and maintenance of existing vegetation.

Comment:

The proposed development includes planting of species that are inconsistent with the requirements of this clause, required to support the existing Long-nosed Bandicoot population in the area. As such, the vegetation proposed is not appropriate for the site.

Objective 2) To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.

Comment:

The proposed development reduces important existing landscape features and soft open space required to support the habitat of Long-nosed Bandicoots in the locality, and does not proposed suitable replacement planting.

The proposed development does not achieve consistency with the relevant objectives of this control. This is included as a reason for refusal.

3.4.1 Sunlight Access and Overshadowing

The proposed development results in unreasonable overshadowing impacts to 24 Stuart Street by removing all existing direct sunlight to that property. The objectives of the control are addressed as follows:

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

Comment:

The rear yard of 24 Stuart Street (to the south of the subject site) receives a small portion of direct sunlight in the morning, which is blocked by the proposed development. The proposed development also removes almost all direct sunlight to the northern windows of 24 Stuart Street. As such, the proposed development does not allow for equitable sunlight access to the private open space or habitable rooms of 24 Stuart Street.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

As above, the proposed development does not allow adequate sunlight to penetrate the private open space or windows to habitable rooms of 24 Stuart Street.

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

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

Comment:

As above, the proposed development does not allow for adequate solar access to 24 Stuart Street. The proposed development is not adequately modulated, articulated or set back from the southern boundary in order to provide a suitable outcome for both the subject site and adjoining site to the south.

The proposed development does not achieve consistency with the relevant objectives of this control. This is included as a reason for refusal.

3.4.2 Privacy and Security

The proposed development includes windows and private open spaces of the boarding rooms are orientated to the northern and southern side boundaries. The objectives of the control are addressed as follows.

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

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

Comment:

The proposed development includes several windows at the first floor level, and private open space areas for the boarding rooms at the ground floor level, orientated to the southern side boundary. The proposed windows to the southern elevation of the first floor allow for overlooking of the private open spaces of several properties to the south. Further, the private open spaces proposed along the southern boundary present a concern in relation to the acoustic privacy of properties to the south, which has not been considered in the submitted Acoustic Report. As such, the proposed development is not designed for visual or acoustic privacy, and does not mitigate direct viewing.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

As above, the proposed development does not increase privacy, and does not suitably balance access to light and air for the subject site with amenity of adjacent sites.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposed development includes windows orientated to the street, which assist in casual surveillance and awareness of neighbourhood security.

The proposed development does not achieve consistency with the relevant objectives of this control. This is included as a reason for refusal.

3.7 Stormwater Management

The proposed development does not comply with Council's relevant stormwater control policy, in that the proposed stormwater management system is not shown to be adequately connected to a Council drainage pipeline. Instead, the plans show pumping of water into Council's kerb and gutter, which is not permitted. The objectives of this control are addressed as follows:

Objective 1) To manage urban stormwater within its natural catchments and within the development site without degrading water quality of the catchments or cause erosion and sedimentation.

Comment:

The proposed stormwater management measures are not anticipated to degrade water quality or cause erosion or sedimentation.

Objective 2) To manage construction sites to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.

Comment:

The proposed development is not supported by suitable stormwater management measures, in that the

system is not connected to Council pipelines, and instead proposes pumping water into the kerb and gutter. This is not an acceptable response to ensure that environmental impacts on downstream properties are prevented.

Objective 3) To promote ground infiltration of stormwater where there will be no negative (environmental) impacts and to encourage on-site stormwater detention, collection and recycling.

Comment:

The proposed development does not provide sufficient landscaped open space as a proportion of the site in order to maximise water infiltration and minimise stormwater runoff. The proposed development includes an on-site detention system. However, the proposed stormwater management system is not supported, as noted above.

Objective 4) To make adequate arrangements for the ongoing maintenance of stormwater facilities.

Comment:

The proposed development is not supported by detail regarding the ongoing maintenance of stormwater facilities.

The proposed development does not achieve consistency with the relevant objectives of this control. This is included as a reason for refusal.

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

The proposed development includes non-compliant front, rear, and side setbacks, as detailed in the section of this report relating to Built Form Controls. The objectives of the control are addressed as follows:

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

Comment:

The proposed development breaches the front setback control for the purpose of the boarding house (3m) and the supporting bin store room (900mm) where 6m is required. This presents a front building line that is inconsistent with other development in the street, and prevents the site from providing suitable landscaping to the front yard of the site. As such, the proposed development does not demonstrate maintenance or enhancement of the streetscape, and does not demonstrate compatibility with the spatial proportions, street edge, or landscape character of the vicinity.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed development orientates windows, private open spaces, and communal open spaces in close (non-compliant) proximity to common boundaries. As a direct result of these non-compliant elements, and as detailed in the sections of this report relating to Clause 3.4.1 Sunlight Access and Overshadowing and Clause 3.4.2 Privacy and Security of the MDCP 2013, the proposed development does not adequately ensure or enhance amenity by providing suitable privacy (acoustic or visual) or solar access

to adjoining sites. The proposed development does not result in any unreasonable view loss, and does not result in undesirable traffic conditions.

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

Comment:

The proposed development is not designed to allow for suitable flexibility in design of adjacent sites, in that the amenity (privacy and solar access) of these sites would be compromised by the proposed development.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The proposed development results in a significant non-compliance with the required total open space on site. As such, the proposed development is unable to provide suitable planting, deep soil zones, and vegetation in order to provide consistency with the landscape character of the area, and in order to suitably soften the proposed built form. The subject sites does not included any open space land, national park or bushland.

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

Comment:

Not applicable. The subject site is not classified as bush fire prone.

The proposed development does not achieve consistency with the relevant objectives of this control. This is included as a reason for refusal.

4.1.5 Open Space and Landscaping

The proposed development includes 38% of the site as total open space, where 55% is required. The objectives of the control are addressed as follows:

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

Comment:

The proposed development relies on significant, unacceptable earthworks, including deep excavation, removal of landscape features (such as rock outcrops), removal of soft open space, and removal of native fauna (Long-nosed Bandicoot) habitat. The proposed development does not suitably retain or augment important landscape features or vegetation.

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

Comment:

The proposed development includes a rear yard that would be able to support some tree planting. However, the proposed development relies on sizable soft open space removal, and does not provide sufficient landscaped open space as a proportion of the site.

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

the streetscape and the surrounding area.

Comment:

The proposed development results in unacceptable amenity impacts, as detailed throughout this report. The proposed landscape and design responses are inadequate in mitigating these impacts, and in maintaining and enhancing existing amenity.

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

Comment:

The proposed development does not provide sufficient landscaped open space as a proportion of the site in order to maximise water infiltration and minimise stormwater runoff.

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

Comment:

The supporting landscape plan demonstrates that, if approved, the subject site would be vegetated in such a way to prevent the spread of weeds and degradation of the private open space onsite.

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

Comment:

The proposed development relies on removal of a significant portion of open space on site that currently supports Long-nosed Bandicoot habitat. The proposed development does not maximise wildlife habitat on site.

The proposed development does not achieve consistency with the relevant objectives of this control. This is included as a reason for refusal.

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

The proposed development includes a driveway that is not designed in accordance with Council's normal profile. Additionally, the proposal relies on car stackers and significant excavation to provide the required number of parking spaces on site. The objectives of this clause are addressed as follows:

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

The proposed development provides accessible and adequate parking in accordance with the requirements under the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH) in order to cater for the use and density sought.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

The proposed development provides an adequate number of parking spaces in accordance with the requirements under the SEPP ARH in order to cater for the anticipated parking demand. However, to do so, the proposal relies on car stackers. While car stackers are commonly used for multi-dwelling developments, concern is raised that the stackers rely on cooperation between boarding house occupants for operation and management of the spaces, which is an undesirable outcome.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

The proposed driveway is not suitably designed in accordance with Council's normal driveway

profile. Further, the operation of the car stackers is not considered efficient, for the reason noted above at Objective 2. As such, Council is not satisfied that the proposed design is satisfactory in relation to providing efficient, safe, and convenient vehicular access.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

The proposed development relies on significant excavation in order to achieve compliance with the required number of parking spaces in accordance with the SEPP ARH. The supporting geotechnical report cannot be relied upon to establish that the proposed development will not cause site instability or interruption to ground water flows, as it includes incorrect information, as detailed in the sections of this report relating to Clause 6.2 Earthworks of the MLEP 2013, and Clause 4.4.5 Earthworks of the MDCP 2013.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

The proposed development limits vehicular access to a single driveway, thereby ensuring the width and number of footpath crossings are minimised.

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

The proposed development does not include suitable landscaping in order to offset the proposed impervious areas. However, this is not solely attributable to the proposed vehicular access or parking.

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

Not applicable. The subject site is not located in a local or neighbourhood centre.

The proposed development does not achieve consistency with the relevant objectives of this control. This is included as a reason for refusal.

4.4.5 Earthworks (Excavation and Filling)

The proposed development relies on significant excavation of up to 6.4m for the purpose of the basement car park, and for the lowest level of the boarding house. The proposal also relies on earthworks within 900mm of the side boundaries. The objective of this control is addressed as follows:

Objective 1) To retain the existing landscape character and limit change to the topography and vegetation of the Manly Local Government Area by:

- *Limiting excavation, "cut and fill" and other earthworks;*
- *Discouraging the alteration of the natural flow of ground and surface water;*
- *Ensuring that development not cause sedimentation to enter drainage lines (natural or otherwise) and waterways; and*
- *Limiting the height of retaining walls and encouraging the planting of native plant species to soften their impact.*

Comment:

The development does not limit changes to the topography, given the extensive excavation proposed.

The proposed development does not adequately retain the existing landscape character of the site, as discussed throughout this report. The proposed development requires unreasonable excavation of existing significant natural features, including rock outcrops in the rear yard, and native fauna habitat.

The proposed development does not achieve consistency with the relevant objectives of this control. This is included as a reason for refusal.

4.4.9.3 Open Space

The minimum residential total open space and landscaped area requirements under Clause 4.1.5 Open Space and Landscaping of the MDCP 2013 apply. The non-compliance with this requirement is addressed in the section of this report relating to that Clause. This is included as a reason for refusal.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

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

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

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

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

- Incompatibility with the character in the locality;
- Excessive building bulk and scale;
- Impacts to visual privacy;

- Impacts to threatened species (Long-nosed Bandicoots);
- Unreasonable overshadowing;
- Excessive excavation;
- Insufficient open space and landscaping treatment; and
- Unacceptable vehicular access.

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0661 for the Demolition works and construction of a boarding house on land at Lot 4 DP 82179,22 Stuart Street, MANLY, for the reasons outlined as follows:

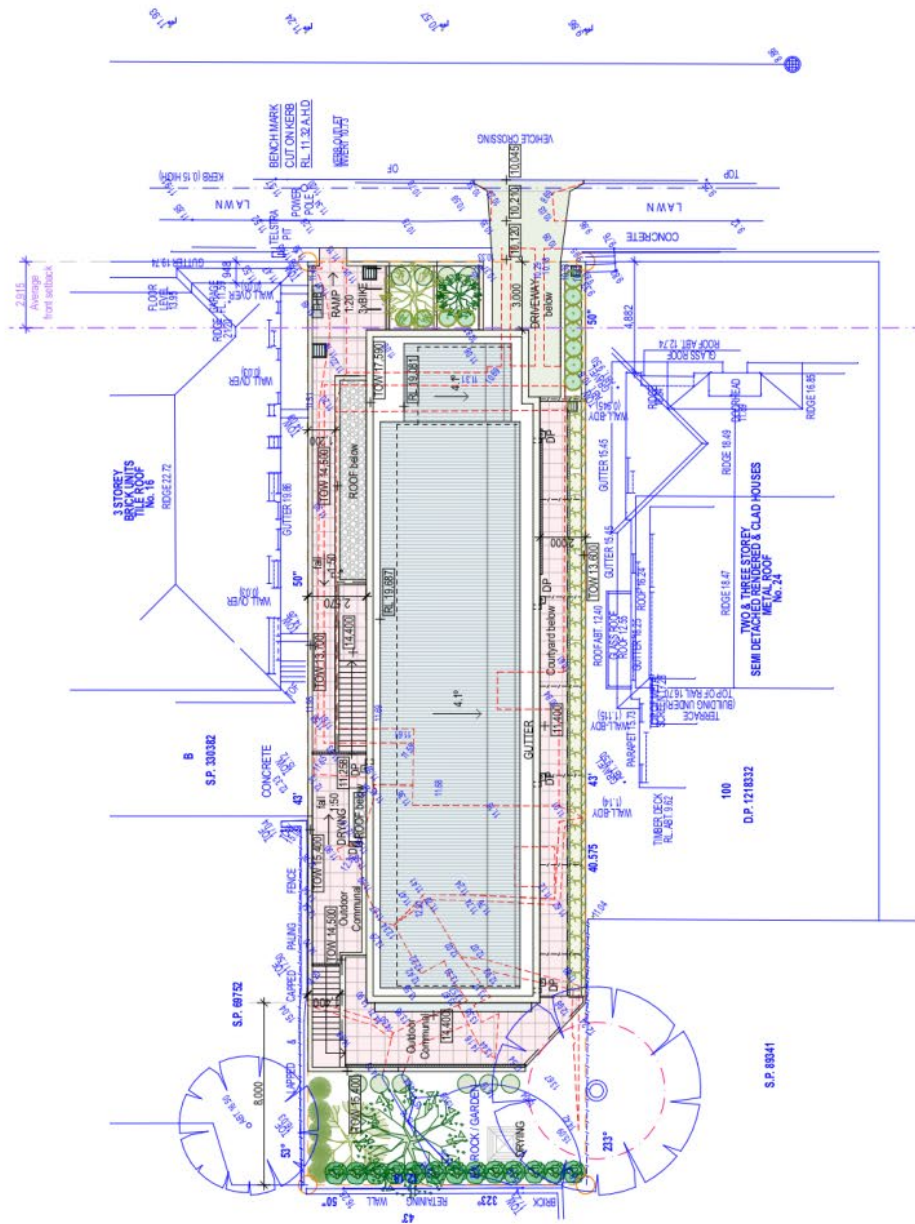
1. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009* in relation to landscaped area, solar access, private open space, and the character of the local area.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 6.2 Earthworks of the *Manly Local Environmental Plan 2013*.
3. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 6.4 Stormwater Management of the *Manly Local Environmental Plan 2013*.
4. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 6.5 Terrestrial Biodiversity of the *Manly Local Environmental Plan 2013*.
5. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 6.8 Landslide Risk of the *Manly Local Environmental Plan 2013*.
6. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 6.12 Essential Services of the *Manly Local Environmental Plan 2013* in relation to stormwater drainage and onsite conservation, and vehicular access.
7. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 3.1.1 Streetscape (Residential areas) of the *Manly Development Control Plan 2013*.
8. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 3.3.1 Landscaping Design of the *Manly Development Control Plan 2013*.
9. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 3.4.1 Sunlight Access and Overshadowing of the *Manly Development Control Plan 2013*.

10. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan 2013.
11. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 3.7 Stormwater Management of the Manly Development Control Plan 2013
12. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan 2013.
13. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan 2013.
14. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) of the Manly Development Control Plan 2013 in relation to the driveway profile and the level of excavation required to achieve compliant parking.
15. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 4.4.5 Earthworks (Excavation and Filling) of the Manly Development Control Plan 2013.
16. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 4.4.9.3 Open Space of the Manly Development Control Plan 2013.



NOTES:

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DA Plans For Approval - Not For Construction

Title: **Site / Roof Plan**

Scale: **1:200 @ A3**

Issue: **E**

DA: **DA.02**

Client: **Jason & Mara Dunnachie**

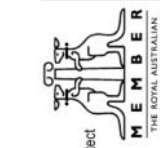
22 Stuart Street Manly 2095

4-DP82.79

Project: **Boarding House**

Project: Tuesday, 21 May 2019

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Architect: **Adam Pressley FRAIA**

Principal & Nominated Architect

NSW No. 6007

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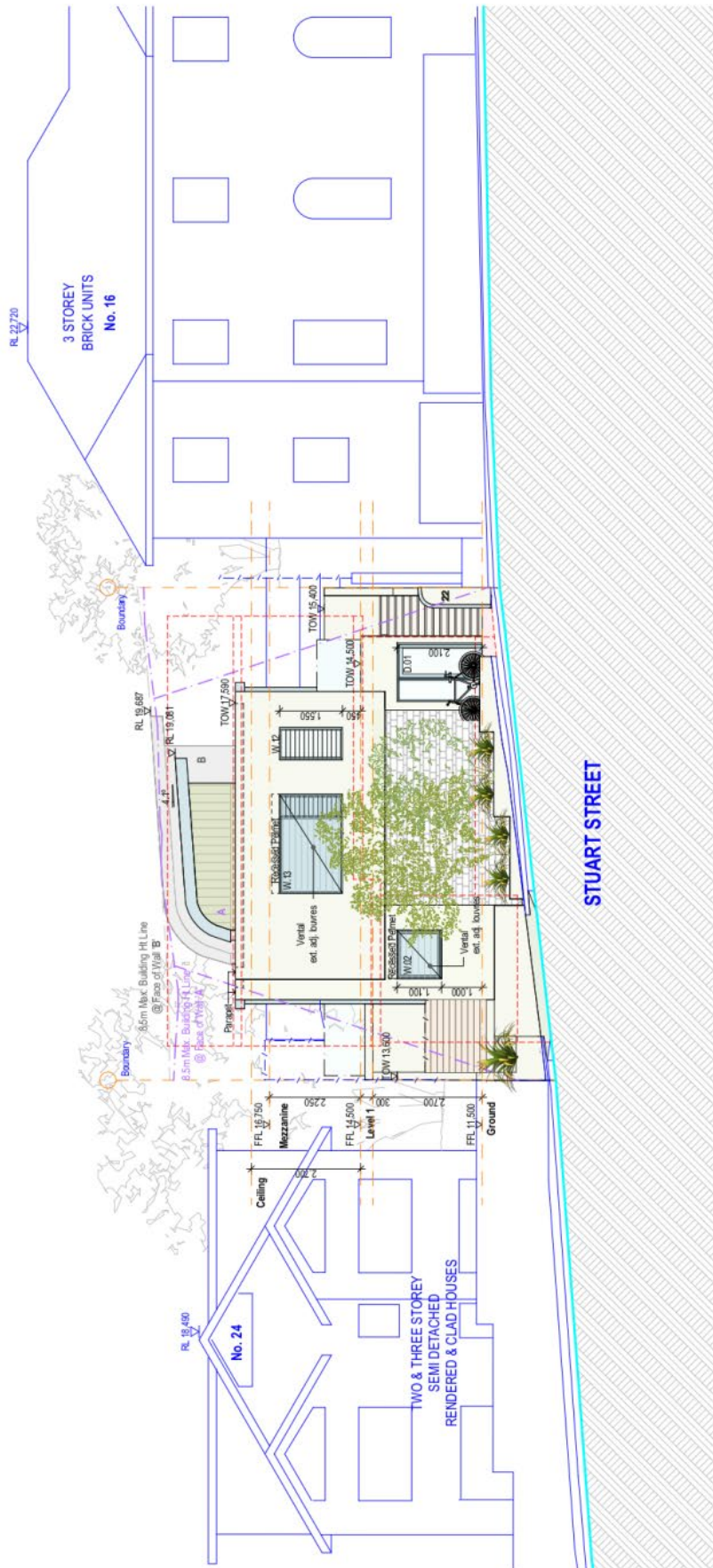
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EXISTING ITEM IS BLUE / BLUE

DEMOLISHED ITEM IS RED

DA COLOURS TO:
AS 1100.301-1985 & AS 2700S-1996



DA Plans For Approval - Not For Construction

Title: 22Stu

Street / East Elevation

Scale 1:100 @ A3

Issue: E

Client:
Jason & Mara Dunnachie

22 Stuart Street Manly 2095
4-DP82.779

Project:
Boarding House

Project: Tuesday, 21 May 2019
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Architect:
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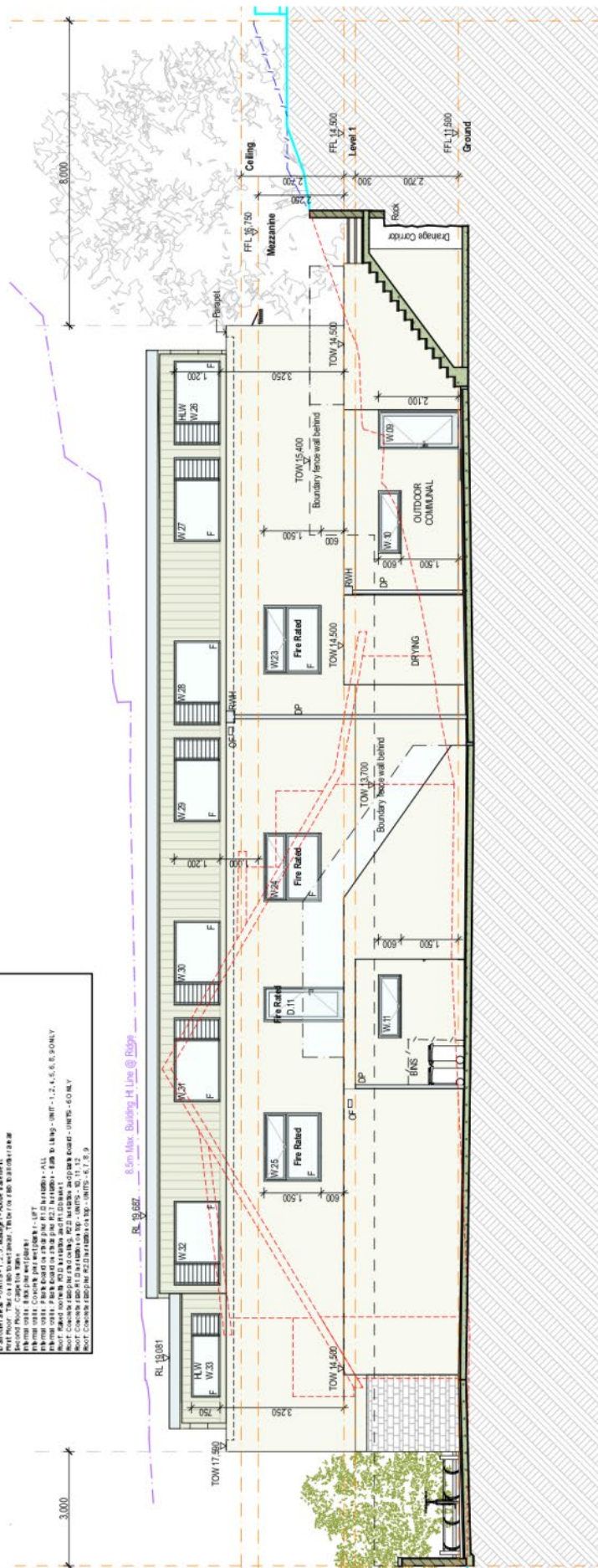
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DA COLOURS TO:
AS 1100.301-1985 & AS 2700S-1996



DA Plans For Approval - Not For Construction

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W

Client: Jason & Mara Dunnachie

22 Stuart Street Manly 2095
W/-DP&2179

Project:
Boarding House

Printed: Tuesday, 21 May 2019
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ALL AUSTRALIAN
ARCHITECTURE



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DEMOLISHED ITEM IS RED

DA COLOURS TO:
AS 1100.301-1985 & AS 2700S-1996



DA Plans For Approval - Not For Construction

Title: **South Elevation**
 Scale 1:100 @ A3

Issue: **E**

Client:
 Jason & Mara Dunnachie

22 Stuart Street Manly 2095
 4-0P82.779

Project:
 Boarding House

Project: Tuesday, 21 May 2019
 User: jason.dunnachie@22su_model.pln



Architect:
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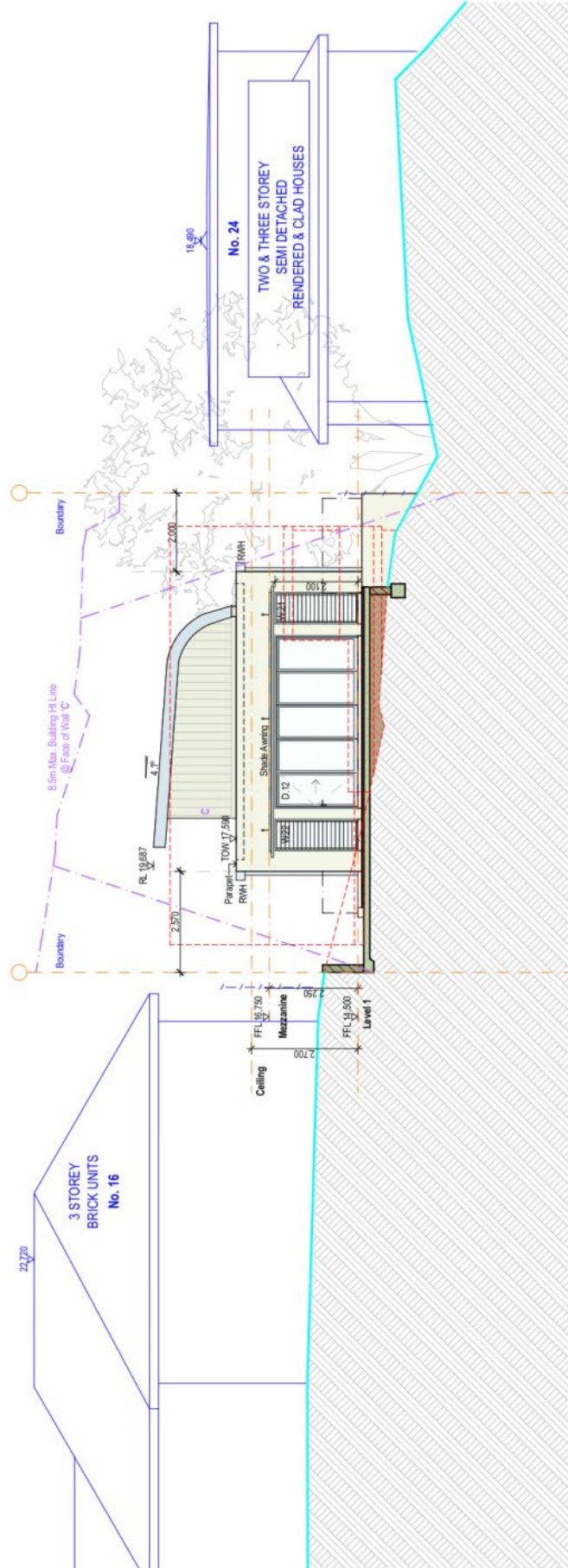
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DA COLOURS TO:
AS 1100.301-1985 & AS 2700S-1996



DA Plans For Approval - Not For Construction

Title: 225su

DA.09

Issue: E

West Elevation

Scale 1:100 @ A3

0 1 2 3 4 5

Client:
Jason & Mara Dunnachie

22 Stuart Street Manly 2095
41DP82.779

Project:
Boarding House

Project: Tuesday, 21 May 2019
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