

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

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

WEDNESDAY 5 FEBRUARY 2020

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



Peter Robinson
Executive Manager Development Assessment

Panel Members

Paul Vergotis	Chair
Steve Kennedy	Urban Design Expert
Graham Brown	Town Planner
Lloyd Graham	Community Representative

Quorum

A quorum is three Panel members

Conflict of Interest

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

**Agenda for a Meeting of the Northern Beaches Local Planning Panel
to be held on Wednesday 5 February 2020
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1.00pm**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Northern Beaches Local Planning Panel held 18 December 2019	
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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 18 DECEMBER 2019

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 18 December 2019 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	DA2019/1056 - 35 FAIRLIGHT CRESCENT, FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING
AUTHORISING MANAGER	MATTHEW EDMONDS
TRIM FILE REF	2020/046069
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Clause 4.6 3 ↓ Site and Roof Plans

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 of MLEP 2013 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/1056 for alterations and additions to a residential flat building at Lot CP SP 4731, 35 Fairlight Crescent, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1056
Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot CP SP 4731, 35 Fairlight Crescent FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to a Residential Flat Building
Zoning:	Manly LEP2013 - Land zoned E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 4731
Applicant:	Hosking Munro Pty Ltd
Application Lodged:	23/09/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/10/2019 to 21/10/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 50.5%
Recommendation:	Approval
Estimated Cost of Works:	\$ 75,000.00

Executive Summary

The application seeks consent for alterations and additions to an existing residential flat building.

The proposed development is permissible with consent in the E4 Environmental Living zone under the *Manly Local Environmental Plan (MLEP) 2013*.

The proposed development involves work above the 8.5m maximum building height stipulated in Clause 4.3 Height of Buildings in the MLEP 2013, but is not increasing or reducing the existing building height. The Applicant has lodged a written request under Clause 4.6 Exceptions to Development Standards to vary the development standard.

The existing residential flat building measures at 12.8m in height, and thus breaches the maximum

building height by 4.3m. This represents a variation to the development standard of 50.5%. The proposed development will maintain the existing building height.

The proposed development involves the construction of a metal roof over the existing concrete roof slab of the entire building.

Notification of the proposed development resulted in no submissions.

The application has been referred to the Northern Beaches Local Planning Panel (the 'Panel') as the building height non-compliance exceeds 10% and, as per the Department of Planning's 'Local Planning Panels Direction - Development Applications', the building is considered to be sensitive development.

It is recommended the Panel approve the application.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for alterations and additions to an existing residential flat building, including:

- A new metal roof over the existing concrete slab roof of the entire building.

No information has been provided by the applicant in relation to the proposed colour of the roof. As such, a condition is included to require the colour to be "medium" or "dark" as classified in the Building Code of Australia.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Local Environmental Plan 2013 - 6.4 Stormwater management
Manly Local Environmental Plan 2013 - 6.8 Landslide risk
Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area

Manly Development Control Plan - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot CP SP 4731 , 35 Fairlight Crescent FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Fairlight Crescent. The site is irregular in shape with a frontage of 18.2m along Fairlight Crescent and a depth of 41.95m. The site has a surveyed area of 990.0m². The site is located within the E4 Environmental Living zone under MLEP 2013 and accommodates a residential flat building, comprised of 6 dwellings and associated vehicle parking spaces. The site has an easterly orientation and is located on a slope of approximately 16.4% (6.9m). The site has multiple palm trees located to the rear of the property, with medium to large hedges located throughout the site. Areas of turf are located within the front and rear setbacks. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential flat buildings and single residential dwellings.

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:

Application **DA127/69** for the use of land for the purpose of a four (4) storey Residential Flat Building containing 6 units at a maximum height of approx. 13m was approved by Manly Council on 5 August 1969.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration'	Comments
	under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

relevant Development Control Plan.

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

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Council's Natural Environment - Biodiversity section raises no objections to the proposed development. This proposal was assessed against the Manly LEP Clause 6.5 Terrestrial Biodiversity and the Coastal Management SEPP "Coastal Environment Area". The proposal is the alterations and additions to the existing structure, including a new roof. The proposal is consistent with the objectives of Clause 6.5 and the Coastal SEPP.
NECC (Coast and Catchments)	The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, <i>State Environmental Planning Policy (Coastal Management) 2018</i>, <i>Sydney Harbour Catchment Regional Environment Plan, 2005</i> and <i>Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005</i>. It has also been assessed against requirements of the MELP 2013 and MDCP. The application has also been assessed using Northern Beaches SREP assessment template. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objectives, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>. State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development. The subject site has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the <i>State Environmental Planning Policy (Coastal Management) 2018</i> (SEPP Coastal Management 2018). Clauses 13 (Coastal Environment Area) and 14 (Coastal Use Area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the SEPP Coastal Management 2018 applies. Comment: The DA satisfies requirements under Clause 15 of the Coastal

Internal Referral Body	Comments
	Management SEPP 2018. As such, the application complies with the requirements of the Coastal Management SEPP 2018. <i>Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005</i> The subject site is located adjacent to the W2 (Environmental Protection) zone As such, the application generally complies with the objectives and assessment criteria of the zone have been met. <i>Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005</i> <u>Landscape character Assessment</u> The subject site is located within the Landscape Character Type 6. AS such, the proposed development satisfies the relevant criteria of Landscape Character Type 6. <i>MLEP 2013 and MDCP</i> The subject site is mapped as being within the "Manly Foreshores Scenic Protection Area" on Council's Foreshores Scenic Protection Area in MLEP 2013. As such, Clause 6.9 (Foreshores Scenic Protection Area) of the MLEP 2013 and Part 5, section 5.4.1 Foreshores Scenic Protection Area of the MDCP 2013 will apply to proposed development on the site. <i>Foreshores Scenic Protection Area Management</i> As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Hosking Munro Pty. Ltd. dated 11/9/19 and Council accepts the assessment, the DA satisfies requirements under Clause 6.9 (Foreshores Scenic Protection Area) of the MLEP 2013 and Part 5, Section 5.4.1 Foreshores Scenic Protection Area of the MDCP 2013. As such, it is considered that the application does comply with the requirements of the Clause 6.9 (Foreshores Scenic Protection Area) of the MLEP 2013 and Part 5, Section 5.4.1 Foreshores Scenic Protection Area of the MDCP 2013.
NECC (Development Engineering)	The application proposes to replace the existing roof. Development Engineering has no objection to the proposed development, subject to conditions.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral

Internal Referral Body	Comments																		
	This application has been referred to heritage as it is within proximity to heritage items: Item 11 - Harbour foreshores - Manly municipal area boundary adjacent to the Harbour Item 149 - Esplanade Park and Fairlight Pool - Fairlight Foreshore, North Harbour, Fairlight																		
	Details of heritage items affected Details of the items, as contained within the Manly Heritage Inventory is: Item 11 - Harbour foreshores <u>Statement of significance:</u> Natural landscape type with aesthetic significance. <u>Physical description:</u> Length of foreshore including natural and built elements of the landscape. Rocky sandstone ledgers, beaches, mud flats and sandstone retaining walls and timber structures. Item 149 - Esplanade Park and Fairlight Pool <u>Statement of significance:</u> Part of driveway setting leading up to 'Fairlight House' in the 1850's. Part of Manly's foreshore open space system with aesthetic significance.																		
	Other relevant heritage listings <table><tr><td>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr><tr><td>Other</td><td>No</td><td></td></tr></table>	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No		Other	No	
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No																		
Australian Heritage Register	No																		
NSW State Heritage Register	No																		
National Trust of Aust (NSW) Register	No																		
RAIA Register of 20th Century Buildings of Significance	No																		
Other	No																		
	Consideration of Application The proposal seeks consent for constructing a new metal roof with a box gutter over the existing concrete roof. The new roof structure will be within the existing parapet wall height, therefore will not be visible from both the street and the Harbour foreshore. There will be no impact upon the heritage items in the vicinity.																		

Internal Referral Body	Comments
	Therefore no objections raised to this application on heritage grounds. Considered against the provisions of Clause 5.10 of MLEP 2013. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP 65 - Design Quality of Residential Apartment Development

State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) *Part 1, Clause 4* stipulates that:

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

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

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

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

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

As previously outlined, the proposed development is for the erection of a new metal roof over the existing concrete slab roof of the entire building.

As per the provisions of Clause 4 of SEPP 65 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application. However, as the works are minor in nature, resulting in no amenity impacts to neighbouring properties (particularly view loss) and the surrounding locality, a detailed assessment of SEPP 65 is considered unnecessary.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

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*. However, the relevant clauses of the SEPP Coastal Management (2018) (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 Coastal Management (2018) 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, Council (as the consent authority) can be satisfied that the proposed development complies with the requirements of the SEPP Coastal Management (2018).

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	12.8m (existing & unchanged)	50.5%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

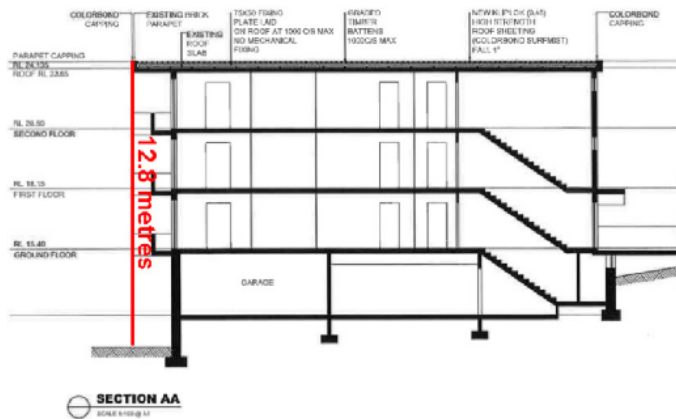
Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	12.8m

Percentage variation to requirement:	50.5%
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Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *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 Clause 4.6(3). There are two separate matters for consideration contained within Clause 4.6(3) and these are addressed as follows:

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

Comment:

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

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

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

Comment:

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

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

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 Applicant's written request argues, in part:

- *"The non-compliance is due to the existing parapet and building height not the proposed roof. The existing building was within the controls applicable at the time of construction.*
- *The height, bulk, scale of the existing building are entirely consistent with the existing built form characteristics established by adjoining development within the site's visual catchment. The new roof will not alter the existing built form.*
- *The proposed new roof will not give rise to any adverse residential amenity impacts in terms of view loss, overshadowing, privacy or visual bulk.*
- *The proposed new roof does not result in any private or public view affection."*

The proposed new roof does not exceed the height of the existing parapet. As such, the new roof will not be visible from public and private places. In this instance, the proposed new roof is consistent with the appearance of the existing building and will not impact upon the streetscape of Fairlight Crescent.

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 Clauses 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the

objectives of the E4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The roof form will be within the height of the existing parapet and will not be inconsistent with the relationship of the building to the topographic landscape, prevailing building height, or desired future streetscape of the locality.

b) to control the bulk and scale of buildings,

Comment:

The proposal will not alter the bulk and scale of the building.

c) to minimise disruption to the following:

(i) views to nearby residential development from public spaces (including the harbour and foreshores),

(ii) views from nearby residential development to public spaces (including the harbour and foreshores),

(iii) views between public spaces (including the harbour and foreshores),

Comment:

As the proposed new roof does not change in pitch, or exceed the height of the existing parapet, no views will be impacted as a result of the development.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

As the proposed new roof does not change in pitch, or exceed the height of the existing parapet, there will be no additional impacts on solar access as a result of the development.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

There will be no impacts on existing vegetation, topography or any other aspect that might conflict with bushland or surrounding land use.

Zone objectives

The underlying objectives of the E4 Environmental Living zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

The proposed development will have a low impact upon the existing ecological, scientific and aesthetic values of the area.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

The proposed development is minor nature and, as such, will not have an adverse effect on those values mentioned above.

- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*

Comment:

The proposed development will not impact upon existing tree canopies. Additionally, the proposed development will not dominate the natural scenic qualities of the foreshore area.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment:

The proposed development will not negatively impact on the nearby foreshore area, nor will it impact upon significant geological features and bushland areas. The proposed development will not result in the loss of natural vegetation.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

The proposed development does not require the removal of any vegetation. As such, the proposed development does not need to encourage revegetation or rehabilitation of the nearby foreshore area. Council's Development Engineer has reviewed the development and raised no issues with regards to stormwater runoff.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The existing building exceeds the maximum building height stated in Clause 4.3 of MLEP 2013. However, the proposed development will not exceed the height of the existing parapet. As such, the proposed development results in a good design that complements the existing structure thus limiting impacts upon existing vegetation, topography and surrounding land uses.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone.

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

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

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

6.4 Stormwater management

Under Clause 6.4 Stormwater Management of MLEP 2013, 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 result in the disturbance of soft surface soil characteristics, thus allowing the current management of on-site infiltration of water to continue. Council's Development Engineer has reviewed the application and imposed relevant conditions to satisfy appropriate stormwater discharge management. Council (as the consent authority) can be satisfied the proposed development will achieve compliance with the abovementioned objectives.

6.8 Landslide risk

Under Clause 6.8 Landslide Risk of the MLEP 2013, 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 the 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:

While the subject site is located on a minor slope, the proposed development is unlikely to impact upon the current management of waste water, stormwater and drainage across the land. Council's Development Engineer has reviewed the application and raised no objections to the proposed development, subject to relevant conditions. Council (as the consent authority) can be satisfied the proposed development will achieve compliance with the abovementioned objectives.

6.9 Foreshore scenic protection area

Under Clause 6.9 Foreshore Scenic Protection Area of the MLEP 2013, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,
(b) measures to protect and improve scenic qualities of the coastline,
(c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,
(d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

Comment:

The proposed development will not unreasonably impact upon the visual amenity of the coastal foreshore area. The minor nature of the proposed development will result in the protection and enhancement of the scenic qualities of the coastline, the foreshore area. As such, Council (as the consent authority) can be satisfied that the proposed development achieves compliance with the abovementioned objectives.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 3150.0m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.3 Roof Height	Height: 2.5m	0.2m	N/A	Yes
	Parapet Height: 0.6m	0.2m	N/A	Yes
	Pitch: maximum 35 degrees	0 degrees	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 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

4.1.8 Development on Sloping Sites

The site is identified as being within Landslip Hazard Areas G2 and G4. In accordance with MDCP, a Preliminary Assessment of Site Conditions is required to be prepared by a suitably qualified geotechnical engineer. No site conditions report has been provided by the applicant.

Due to the minor load bearing nature of the proposed development, a condition is included to require a site conditions report be prepared prior to the issue of an occupation certificate.

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

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this 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 EPs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

Accordingly

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

Non-compliances

The proposed development includes variations to the building height development standard. The Applicant provided a written request to vary the development standard. As such, the development standard does not strictly apply. In this instance, the proposed development is supported on merit in relation to the building height non-compliance.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/1056 for Alterations and additions to a Residential Flat Building on land at Lot CP SP 4731, 35 Fairlight Crescent, FAIRLIGHT, 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
DA100 'D'	September 2019	Hosking Munro
DA101 'D'	September 2019	Hosking Munro
DA102 'D'	September 2019	Hosking Munro

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Council Waste Management Plan	11 September 2019	Hosking Munro

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

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

2. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments

specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is

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

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

5. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the relevant controls under the MDCP

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.

6. **Compliance with Standards**

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

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

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

7. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

8. **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.

9. **Demolition Works - Asbestos**

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

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

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

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

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

10. **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.

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

11. **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.

12. **Preliminary Assessment of Site Conditions**

A Preliminary Assessment of Site Conditions is to be prepared by a suitably qualified geotechnical engineer in accordance with the requirements of the Manly Development Control Plan.

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

Reason: To ensure geotechnical hazards are managed on the site.

13. **Waste Management Confirmation**

Prior to the issue of an 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, reused and to limit landfill.

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

14. **General Foreshore Matters**

Unless in accordance with the approved works the Consent holder must ensure that:

- a) No materials or cleared vegetation that may obstruct flow or cause damage to the foreshore are left within the coastal foreshore area.
- b) All drainage works must not obstruct flow of water within the coastal waters. Drain discharge points are stabilised to prevent erosion. Any excavation must not result in diversion of any foreshore bank instability or damage to native vegetation.
- c) The foreshore is graded to enable the unimpeded flow of water and retaining structures result in a stable foreshore banks.
- d) Any vegetation or other material removed from the area of operations shall be disposed of lawfully. Burning of the material is not permitted.
- e) The foreshore is to function as an ecological system and as such, all works, access, roads, recreational areas, service easements and any other non-ecologically functioning work or activity are to be located beyond the foreshore other than provided by the consent.

Reason: Environmental protection, monitoring and enhancement of the foreshore.

35 FAIRLIGHT CRESCENT FAIRLIGHT
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

This Clause 4.6 variation provides justification for the contravention of the height of buildings development standard in the Manly Local Environmental Plan 2013.

It relates to the construction of a new metal roof over an existing concrete slab roof on an existing block of apartments at 35 Fairlight Crescent Fairlight.

The existing building is three storeys above a sloping ground line.

The parapet height is approximately 13.01m above the lowest point of the site.

This breaches the 8.5 metre Height of Buildings standard contained in clause 4.3 of Manly LEP 2013.

It is presumed that the height of the existing building complied with the controls in place when it was constructed in 1970.

Clause 4.6 of Manly LEP 2013 provides a mechanism by which a development standard can be varied.

(1) The objectives of this clause are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

This provides the flexibility for applying variations to development standards.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The variation relates more to the existing building than the proposed roof. The roof is proposed in a portion which exceeds the development standard. The flexibility will enable the circumstances to be achieved.

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

The development standard proposed to be contravened, Clause 4.3 Height of Buildings, is not expressly excluded.

(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

in order to comply with the standard the proposed roof, which is for weatherproofing, would not be possible. It is therefore considered unreasonable and unnecessary in the circumstances.

1 | 35 Fairlight Crescent Fairlight Clause 4.6 Exceptions to development standards
Prepared by Hosking Munro Pty Ltd Architects, Interior + Landscape Designers
3.09/55 Miller Street Pyrmont 2009 T 9660 1055 F 9692 9290 E hm@hoskingmunro.com.au
December 2019

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

The proposal will have no environmental impacts.

- (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*

We submit this request adequately addresses the matters.

- (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*

Refer to the zone and height of buildings assessments.

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

These matters have been considered and are positively demonstrated by the proposal. The Secretary has formally delegated this function to Council.

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*

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

The Secretary of the Department of Planning and Environment can be assumed to have concurred to the variation. This is because of Department of Planning Circular PS 08-003 'Variations to development standards', dated 9 May 2008. This circular is a notice under 64(1) of the Environmental Planning and Assessment Regulation 2000. Under Clause 64(2), a consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The proposal does not raise any matters of significance for State or regional environmental planning.

- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if –*
(a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*

- (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note: When this Plan was made, it did not include land in Zone RU1 Primary Production Zone, RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition or Zone R5 Large Lot Residential.

The proposal is not for the contravention of a subdivision control.

It is not located in any of the zones listed.

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

The consent authority will retain a copy of the determination.

- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*

- (a) *a development standard for complying development,*
- (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) *clause 5.4,*
- (ca) *clause 6.15,*
- (cb) *a development standard on land to which clause 6.19 applies.*

Not applicable.

CLAIM FOR VARIATION

Zone

The subject property is zoned E4 Environmental Living pursuant to the provisions of Manly LEP 2013.
Residential flat buildings are permitted with consent in the zone.

(1) Objectives of Zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To protect tree canopies and ensure that new development does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The proposal will not alter the environmental impacts of the existing building on the existing area.

The height and bulk will not be altered.

The roof will not be visible.

Height of Buildings Standard and Objectives

Clause 4.3 Height of buildings

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

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

The roof form will be within the height of the existing parapet and will not be inconsistent with the relationship of the building to the topographic landscape, prevailing building height or desired future streetscape of the locality.

- (b) to control the bulk and scale of buildings.*

The proposal will not alter the bulk and scale of the building.

(c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

No views will be impacted.

- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.*

There will be no additional impacts on solar access.

- (e) To ensure the height and bulk of any proposed building or structure in a recreation or environmental living zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land use.*

There will be no impacts on existing vegetation, topography or any other aspect that might conflict with bushland or surrounding land use.

(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.

The proposal will not increase the existing building's exceedance of the allowable maximum height of 8.5m.

SUMMARY

Pursuant to clause 4.3 of Manly LEP 2013 the height of any building on the land shall not exceed 8.5 metres above existing ground level as detailed on the Height of Building Map

We note that the new proposed roof is within the height of the parapet of the existing building and is not visible above that parapet.

Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

- The non-compliance is due to the existing parapet and building height not the proposed roof. The existing building was within the controls applicable at the time of construction.
- The height, bulk, scale of the existing building are entirely consistent with the existing built form characteristics established by adjoining development within the site's visual catchment. The new roof will not alter the existing built form.
- The proposed new roof will not give rise to any adverse residential amenity impacts in terms of view loss, overshadowing, privacy or visual bulk.
- The proposed new roof does not result in any private or public view affectation.

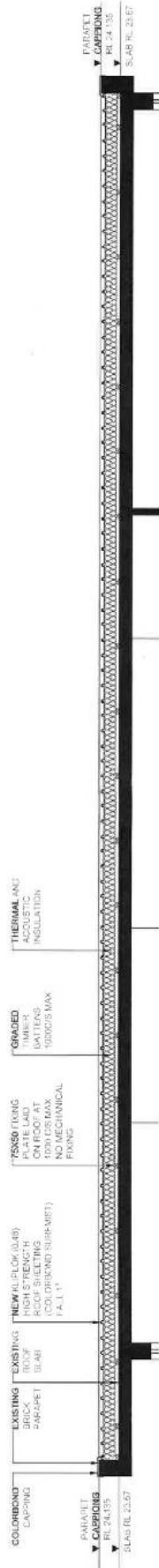
CONCLUSIONS

Having regard to clause 4.6 variation provisions we believe:

- (a) that the new roof is not inconsistent with the zone objectives, and
- (b) that the new roof is not inconsistent with the objectives of the height of buildings standard, and
- (c) that there are no environmental planning grounds which prohibit the new roof within the height of the existing building parapet which contravene the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that contravention of the existing development standard by the existing building does not raise any matter of significance for State or regional environmental planning.

As such we have formed the considered opinion that there is no statutory or environmental planning impediment to the acceptance of the existing building height and granting approval for a new roof within the existing height of the existing building's variation in this instance.

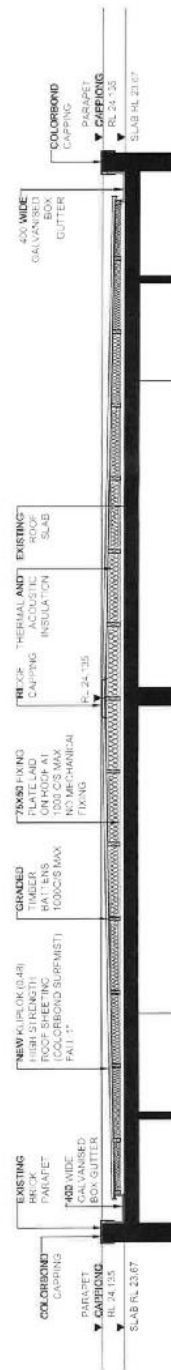




DETAIL SECTION AA

NOTE:

1. ALLOW TO FALL BOX GUTTERS TO EXISTING OUTLETS AND SEAL CONNECTION
2. ALLOW FOR DEKITE SEALS TO ALL ROOF - BOX GUTTER PENETRATIONS



DETAIL SECTION BB

Item	Description	Quantity	Unit
1	1000 C/S MAX HAT TIES	1000	M
2	75X50 FIXING PLATE LAD	1000	M
3	1000 C/S MAX NO MECHANICAL FIXING	1000	M
4	1000 C/S MAX THERMAL AND ACOUSTIC INSULATION	1000	M
5	1000 C/S MAX GRADED INSULATION	1000	M
6	1000 C/S MAX NEW KILFLOK (SLAB) HIGH STRENGTH (COLORBOND SURMIST) (A.L. 1°)	1000	M
7	1000 C/S MAX EXISTING ROOF (SLAB)	1000	M
8	1000 C/S MAX EXISTING BRICK PARAPET (SLAB)	1000	M
9	1000 C/S MAX COLORBOND CAPPING	1000	M
10	1000 C/S MAX PARAPET (SLAB RL 23.67)	1000	M

35 FAIRLIGHT CRESCENT FAIRLIGHT

STRATA PLAN 4731

DETAIL SECTION AA AND SECTION BB

HOSKING MUNRO
ARCHITECTS
1/111 RIVERVIEW ROAD
SYDNEY NSW 1585
TEL: 02 9550 1111
WWW.HOSKINGMUNRO.COM.AU

Drawn: HM1499 DA102 'D'
Scale: 1:100
Date: 01/02/20



ITEM 3.2

**DA2019/1275 - 67 FLORENCE TERRACE, SCOTLAND ISLAND
- CONSTRUCTION OF A BOAT SHED AND ASSOCIATED
WORKS**

AUTHORISING MANAGER MATTHEW EDMONDS

TRIM FILE REF 2020/046081

ATTACHMENTS

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

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the development contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 of PLEP 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/1275 for construction of a boat shed and associated works at Lot 5 DP 816673, 67 Florence Terrace, Scotland Island subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1275
Responsible Officer:	Georgia Quinn
Land to be developed (Address):	Lot 5 DP 816673, 67 Florence Terrace SCOTLAND ISLAND NSW 2105; LIC 558711
Proposed Development:	Construction of a boat shed and associated works
Zoning:	E3 Environmental Management; W1 Natural Waterways
Development Permissible:	Yes - Zone E3 Environmental Management Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	David John Suttie Department of Planning, Industry Jennifer Joy Suttie & Environment - Crown Lands
Applicant:	Stephen Crosby & Associates
Application Lodged:	14/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/12/2019 to 17/12/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 29.5%
Recommendation:	Approval
Estimated Cost of Works:	\$ 175,000.00

EXECUTIVE SUMMARY

The proposal is for the construction of a boat shed and associated works and involves a variation to the Height of Buildings development standard of the Pittwater Local Environmental Plan 2014 (PLEP 2014) of 29.5%. Despite the numeric non-compliance, the proposal is not considered to result in unreasonable bulk, scale or amenity impacts as viewed from the adjoining Pittwater Waterway or adjoining properties.

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

The proposed development is generally compliant with the numeric controls under the Pittwater 21 Development Control Plan (P21DCP).

The application is referred to the Northern Beaches Local Planning Panel for review and determination due to the contravention of the Height of Buildings development standard exceeding 10%.

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

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

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for the construction of a boat shed and associated works.

In particular, the application includes:

- The construction of a boat shed;
- A timber skid ramp; and
- Associated access decking.

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 - Zone W1 Natural Waterways
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater 21 Development Control Plan - B4.19 Estuarine Habitat
Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation
Pittwater 21 Development Control Plan - D8.9 Landscaped Area

Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark

Pittwater 21 Development Control Plan - D15.14 Minimum frontage for waterfront development

Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 5 DP 816673 , 67 Florence Terrace SCOTLAND ISLAND NSW 2105
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Florence Terrace. The site is associated with Crown Licence LIC 558 711 for development seaward of the Mean High Water Mark, of which is owned by the Department of Planning, Industry and Environment - Crown Lands and is located within the W1 Natural Waterways zone. The site is regular in shape with a frontage of 10.1m along Florence Terrace and a depth of 58.9m to the mean high water mark. The site has a surveyed area of 589.4m². The site is located within the E3 Environmental Management zone and accommodates a one and two storey dwelling house. The site has a cross fall from west to east towards the Pittwater Waterway (ie. front to rear) of approximately 16m. The site is not known to contain any threatened species. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by similar scaled low density residential development within landscaped settings, most of which contain waterfront facilities including boat sheds and jetties.

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:

Development Application N0686/05

This application for the replacement of an existing jetty was granted consent under delegation on 6 December 2005.

Development Application DA2018/0518

This application for the construction of an inclined passenger lift was granted consent under delegation on 28 August 2018.

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 Regulation 2000 (EP&A Regulation 2000)	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been

Section 4.15 Matters for Consideration'	Comments
	addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact

Section 4.15 Matters for Consideration'	Comments
	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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Planning for Bushfire Protection, dated 22 August 2019) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. <u>Note:</u> The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.

Internal Referral Body	Comments
Environmental Health (unsewered lands)	As a boat shed, it will have no effect on the onsite waste water system. There are two conditions recommended to ensure the boat shed remains a boat shed, one to ensure no plumbing is added and a second to prevent it being converted to a habitable dwelling. <u>Planner Comment</u> The provided architectural plans denote the use of the structure as a boat shed only. In this regard it is not considered necessary to further impose a condition regarding the use.
Landscape Officer	The application is for a new Boat shed and skid ramp partially on Crown Land at 67 Florence Terrace Scotland Island, with a public access walkway deck and steps on Crown Land below the Mean High Water Mark. There is no existing trees within 5 metres of the development and thus no landscape issues are raised. The proposal is acceptable in terms of achieving the landscape outcomes of Pittwater 21 DCP, subject to conditions to protect existing trees and vegetation. Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP Controls: B4.22 Preservation of Trees or Bushland Vegetation C1.1 Landscaping D8 Lower Western Foreshores and Scotland Island Locality
NECC (Bushland and Biodiversity)	The development has been assessed against Pittwater LEP - Clause 7.6 Biodiversity and Pittwater 21 DCP Clauses B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor and B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community (EEC). The boat shed and skid ramp has limited environmental impact on the terrestrial environment and no trees or significant native vegetation require removal. The development is designed, sited and will be managed to avoid any significant adverse impact to the EEC, wildlife corridor of threatened species and their habitats.
NECC (Coast and Catchments)	The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.

Internal Referral Body	Comments
	State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development. The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but 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 apply for this DA. <i>Comment:</i> As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stephen Crosby & Associates Pty. Ltd. dated 4 November 2019 and Council accepts the assessment, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. Pittwater LEP 2014 and Pittwater 21 DCP The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. Estuarine Risk Management In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.69m AHD would apply at the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.07m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m. As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Stephen Crosby & Associates Pty. Ltd. dated 4 November 2019 and as assessed in the submitted Coastal Engineering Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 16 October 2019 and Council accepts the assessments, The floor level of the proposed boatshed is below the adopted EPL for the site. The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP.
NECC (Development)	

Internal Referral Body	Comments
Engineering)	The development/site is located in Geotechnical Hazard H1 Area, an "Acceptable Risk Management" level is achievable in accordance with the geotechnical report. Recommend approval subject to conditions.
NECC (Riparian Lands and Creeks)	This application has been assessed under SEPP Coastal Management 2018 - Coastal Environment Zone Pittwater DCP B4.16 Seagrass Conservation Pittwater DCP B4.19 Estuarine Habitat Pittwater DCP B4.20 Estuarine Water Quality Advice from DPI-Fisheries confirms that there is no risk to seagrass beds from the addition of a boathouse and ramp at the proposed location. It is not expected that any earth will be disturbed in the course of this work as the existing seawall is to remain, therefore sediment and erosion controls in the waterway will not be required.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 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

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

13 Development on land within the coastal environment area

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

Comment:

The proposed development is not considered likely to negatively impact upon the matters raised above in subclause (1).

- (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 proposed development has been designed, sited and will be managed to avoid an adverse impact referred to in subclause (1).

14 Development on land within the coastal use area

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

Comment:

The proposed development is not likely to cause an adverse impact on the matters referred to above.

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

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

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

Comment:

The proposed development is not likely to cause increased risk of coastal hazards on that land or other

land.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone E3 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	Yes
zone objectives of the LEP?	Zone E3 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	4.0m <i>W1 Zone</i> 8.5m <i>E3 Zone</i>	5.18m	29.5% (1.18m)	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone W1 Natural Waterways

Development for the purposes of boat sheds is not identified within the W1 Natural Waterways zone as being permissible development. However, Clause 2.5 of PLEP 2014 allows for additional permitted uses on particular land, as prescribed within Schedule 1, Section 23 of PLEP 2014. This schedule stipulates boat sheds are permitted with development consent in zone W1 Natural Waterways for land identified as 'Area 23' on the Additional Permitted Uses Map.

Given the subject land is sited within Area 23, the proposed development is therefore permitted with

consent.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	4.0m
Proposed:	5.18m (above 1.17 AHD)*
Percentage variation to requirement:	29.5%

***Note** 1.17 AHD refers to the Highest Astronomical Tide which is assessed as being the most relevant reference point for measuring the height of development within the waterway.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of*

the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural*

heritage),
(g) to promote good design and amenity of the built environment,
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

"The development is justified in this instance for the following reasons:

- The height of the boat shed is entirely consistent in terms of form and height with the guidelines prescribed within 21DCP, Clause D15.15.
- The ridge height and scale of the proposed boat shed is not dissimilar to many previously approved structures built within the Scotland Island precinct and the wider Pittwater local.
- The proposed development will not result in any unreasonable overshadowing of neighbouring properties due to the location of the boat shed being largely beyond the MHW in conjunction with the rising slope of the adjoining sites.
- The boat shed will appear consistent with the desired character of the Pittwater Waterway. "

It is agreed that the development is visually consistent in terms of height, bulk and scale of surrounding waterfront development, and that the breach of the height limit (located towards to northeast of the site) will not result in any unreasonable impacts to neighbouring properties.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the E3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposal seeks a maximum building height of 5.18m (6.35 AHD), thereby contravening the numeric control by 29.5% (1.18m). The minor height departure will not contribute to an adverse building bulk and scale. The proposal is contemporary in design such the visual dominance of the built form is broken up as a result of the complementary external finishes in conjunction with the articulation of the structure. Further, modulation of the front facade will ensure the development minimises visual impact as viewed from the Pittwater Waterway and surrounding public and private spaces. Boat sheds are common development within the Lower Western Foreshores and Scotland Island precinct. The height and scale of the proposal is consistent with the design parameters prescribed within Clause D15.15 of P21DCP and is not dissimilar to that of surrounding development. In turn, the proposed development is considered to be consistent with the desired character of the locality.

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

Comment:

The encroachment of the height of buildings development standard will not be discernible when viewed from the Pittwater Waterway. The height departure is substantially attributed to the existing ground levels within the rear portion of the site in conjunction with the matter of water inundation. The development comprises a finished floor level of 1.85 AHD as so to ensure the boat shed is not likely to be subject to inundation. Further, the development comprises a height and scale that is in keeping with that of surrounding development within the Scotland Island precinct and those within the wider Pittwater locale.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposal will not unreasonably impact neighbouring properties in terms of solar access, given the siting of the boat shed being largely beyond the MHW in conjunction with the cross fall of the topography of the adjoining sites. It is also noted the boat shed will be offset from adjoining built structures, which furthermore assists in the maximisation of solar accessibility and amenity.

d) to allow for the reasonable sharing of views,

Comment:

The minor height variation will not be discernible to the casual observer from the waterway

perspective. Further, the articulated design and siting of the structure ensure minimal disruption of views between public and private spaces occur as a result of the development. The boat shed is offset from other structures within the adjoining properties, and at a significantly lower elevation than that of the adjoining dwellings. In turn the development is considered to allow for the reasonable sharing of views.

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

Comment:

Significant excavation is not required in order to facilitate the new works. The boat shed is to be sited atop of concrete piles, so as to reduce the extent of site disturbance and thus responding sensitively to the natural topography where possible. The development will sit comfortably within its context in terms of scale, massing and form and the variation will provide for a well composed, articulated structure that provides good amenity and function for the dwelling occupants whilst respecting the natural topography of the site and surrounds.

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

Comment:

The subject site is not located within proximity to a heritage conservation area or item. Further, the development as stated above, has been sited and designed appropriately within the context of the site to ensure the visual impact of the development is reasonable and minimised as viewed from the Pittwater Waterway and adjoining and surrounding properties.

Zone objectives

The underlying objectives of the W1 Natural Waterways zone

- *To protect the ecological and scenic values of natural waterways.*

Comment:

The development is appropriately sited and designed so as to protect the ecological and scenic values of natural waterways.

- *To prevent development that would have an adverse effect on the natural values of waterways in this zone.*

Comment:

The proposal has been reviewed by Council's Biodiversity, Riparian and Coastal Officers, having regard to the management of the natural environment and have raised no objection to the development subject to conditions. Further, the proposal has also been reviewed by DPI Fisheries who are also satisfied with the proposal. It is considered no unreasonable effects will be inflicted on the natural values of the waterway.

- *To provide for sustainable fishing industries and recreational fishing.*

Comment:

The proposal will not impact on fish passages or recreational fishing areas.

- *To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.*

Comment:

The proposal has been reviewed by DPI Fisheries who have raised no objection to the proposal. Further, the RMS have confirmed via their letter of correspondence dated 1 March 2019, that there are no navigational concerns regarding the designed proposal.

- *To provide opportunities for private access to the waterway where these do not cause unnecessary impact on the public access to the foreshore.*

Comment:

The proposal ensures public access to and along the foreshore will be maintained as a result of the application.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the W1 Natural Waterways 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.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	N/A	N/A	N/A
Rear building line	Foreshore Building Line applies	Wholly below FBL	N/A	N/A
Side building line	2.5m <i>Northwest</i>	4.5m <i>Deck</i> 5.7m <i>Boat shed</i>	N/A N/A	Yes Yes
	1.0m <i>Southeast</i>	1.6m <i>Deck</i> 2.6m <i>Boat shed</i>	N/A N/A	Yes Yes

Building envelope	3.5m <i>Northwest</i>	Within envelope	N/A	Yes
	3.5m <i>Southeast</i>	Within envelope	N/A	Yes
Landscaped area	68% (400.8m ²)	62.1% (366.3m ²)	8.7% (34.5m ²)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island 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
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	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
D8.1 Character as viewed from a public place	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	Yes	Yes
D8.6 Side and rear building line	Yes	Yes
D8.8 Building envelope	Yes	Yes
D8.9 Landscaped Area	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D8.15 Site disturbance	Yes	Yes
D8.16 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	No	Yes
D15.15 Waterfront development	Yes	Yes

Detailed Assessment

B4.19 Estuarine Habitat

An Aquatic Ecology Report has not been provided as part of the application, as DPI Fisheries has stipulated the proposal is not considered to constitute Integrated Development under s.91 of the EPA Act 1979, as denoted within their letter of correspondence dated 7 March 2019. This was determined as the proposal does not include any dredging, reclamation, harm to marine environment or blockage of fish passage. Further, Council's Biodiversity Officer has reviewed the proposal and raised no objection.

B8.3 Construction and Demolition - Waste Minimisation

No Waste Management Plan was submitted as part of the application, therefore a condition of consent will be imposed requiring such be prepared in accordance with the DCP.

D8.9 Landscaped Area

Description of non-compliance

The control requires a minimum of 68% of the site area to be landscaped.

The proposal provides 62.1% (366.3m²) of the site as landscaped area, which represents a variation of 8.7% (34.5m²).

The variations provision prescribed within the Control, allows for up to 6% of the total site area to be impervious landscape treatment provided the objectives of the control are achieved in conjunction with such area being provided for outdoor recreational purposes only. As below, the objectives of the control are achieved, therefore the variation is permitted. In turn, the landscaped area of the site increases to 68.1%.

Merit consideration

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

- *To achieve the desired future character of the Locality.*

Comment:

The proposed development is appropriate in bulk and scale and is intended to provide storage functions for the dwelling occupants given the site is water access only. As the development is not considered unreasonable nor visually dominant, the desired future character of the locality is achieved.

- *The bulk and scale of the built form is minimised.*

Comment:

The boat shed, associated decking and skid ramp are articulated such that the dominance of the built form is broken down as a result. The boat shed achieves compliance with the relevant DCP built form controls for such development. Further, the development as viewed from the Pittwater Waterway will appear consistent with surrounding waterfront facilities, such that it will integrate appropriately within its context. In turn, the bulk and scale of the built form is considered to be reasonable and minimised.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties.*

Comment:

The boat shed has been designed and sited appropriately such that reasonable amenity including privacy and solar access is provided within the subject site and maintained to neighbouring properties. The boat shed has incorporated the majority of windows toward the rear boundary over the Pittwater Waterway. Further, the boat shed is offset from any built structures within the adjoining properties.

- *Vegetation is retained and enhanced within the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation including tree canopy.*

Comment:

No significant vegetation is required to be removed in order to facilitate the proposed development. The site is densely vegetated to the rear of the dwelling house, such that the existing built form is sufficiently screened. The boat shed development, being situated within a mature landscaped setting will visually appear as the secondary component of the site, consistent with this objective.

- *Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.*

Comment:

Council's development engineers have reviewed the proposal having regard to stormwater management and have raised no objection. It is therefore considered stormwater runoff will be appropriately managed to in turn prevent soil erosion and siltation of natural drainage channels.

- *To ensure the distribution of height and mass preserves, and enhances neighbourhood amenity and has regard to site characteristics and environmental constraints.*

Comment:

The boat shed has been appropriately designed so to evenly distribute the built form to in turn preserve and enhance neighbourhood amenity. The development is appropriately located within the context of the site, such that minimal excavation and site disturbance is required.

- *To conserve significant natural features of the site and contribute to effective management of biodiversity.*

Comment:

The development does not require the removal of significant vegetation or other natural features of the site. The proposal has furthermore been reviewed by Council's Biodiversity Officer who has concluded the development is not likely to impose environmental impact upon the terrestrial environment and that no removal of significant native vegetation is required.

- *The area of site disturbance is minimised.*

Comment:

The proposed development is sited atop of footings that include the existing sea wall and new concrete piers. In turn, minimal excavation is required. The degree of site disturbance is minimal and not dissimilar to that of previously developed sites within the vicinity.

- *Soft surface is maximised.*

Comment:

The landscaped area of the site is reduced slightly as a result of the boat shed development being sited across the MHW. This location was deemed the most practical and feasible position due to the existing sea wall and mature vegetation in conjunction with the recently approved inclinor (DA2018/0518). The boat shed is considered appropriate in terms of its bulk and scale, which in turn correlates to soft surface being maximised.

D15.12 Development seaward of mean high water mark

The control stipulates that all new buildings are to be located landward of the mean high water mark. The proposed boat shed is sited across the MHW, being located proportionately within both private land and the Pittwater Waterway. Given the site is water-access only this is considered acceptable. Further, the control allows for structures associated with the accommodation, servicing or provision of access to boats to be located seaward of the MHW. The proposal therefore satisfies this prescription. It is also noted that public access will be maintained along the foreshore.

D15.14 Minimum frontage for waterfront development

Description of non-compliance

The Control stipulates that allotments with a water frontage of less than 15.0m metres are generally only permitted to contain waterfront development such as a jetty, ramp and pontoon. Multiple facilities including boatsheds will not be permitted. The rear boundary of the site is 13.6m. However, the Control furthermore states that waterfront facilities should be shared with neighbouring waterfront properties to

minimise the density and visual impact of foreshore development. The existing jetty is a shared facility between the occupants of the subject site and those of the southern adjoining property, at No. 69 Florence Terrace.

Merit consideration

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

- *To minimise the individual and cumulative visual impact of waterfront development.*

Comment:

The site contains an existing timber jetty that is a shared facility between the subject site and the southern adjoining property. In turn, this minimises the visual impact of waterfront development as between two properties only one jetty structure exists. The spatial separation between the proposed boat shed and the northern adjoining property's waterfront facilities is at minimum 8.3m. This is considered a sufficient distance within this established waterfront residential area. Further, the proposed boat shed is considered appropriate in terms of bulk and scale, and readily complies the P21DCP built form controls for boat sheds. Given the site is water-access only, the intention of the boatshed is to facilitate storage similar to the function of a garage on the 'mainland'.

The proposal is considered to satisfy the above objective.

D15.15 Waterfront development

c) Boatsheds

The boat shed as proposed meets the prescribed requirements. It is however noted that the roof eave of the front elevation extends beyond the 6m length of the boat shed. Given the boat shed structure itself complies with the numeric parameters of this Control, no further assessment is considered necessary.

d) Slipways and Launching Ramps

As prescribed within this Control, ramps are not generally favoured however the timber skid ramp as proposed meets the requirements of the variations provision. The proposed ramp extends from the top of the existing sea wall and decking associated with the boat shed, so as to minimise the height of the ramp as viewed from the Pittwater Waterway. Further, the ramp is to be constructed out of timber and no slip rails are proposed. In this regard, the proposed ramp satisfies the prescribed criteria and is therefore supported.

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 \$ 875 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 175,000.

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

Council is satisfied that:

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

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

Accordingly

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

The proposal includes a numeric non-compliance with the following PLEP 2014 Clause:

- 4.3 Height of Buildings.

The proposal includes non-compliances with the following P21DCP Clauses:

- D8.9 - Landscaped Area;
- D15.12 - Development seaward of mean high water mark;
- D15.14 - Minimum frontage for waterfront development; and
- D15.15 - Waterfront development.

The aforementioned non-compliances are considered to result in minimal material impact to adjoining properties and the surrounding Pittwater Waterway, and are considered reasonable when assessed against the relevant objectives of each control.

The proposal includes a more significant non-compliance in relation to Building Height. The proposed height breach has been considered in relation to the provisions of Clause 4.6 of the Pittwater LEP 2014 and the context of the site and surrounding locale, which includes a number of approvals inclusive of variations to the Height of Buildings development standard. While it is acknowledged that the proposed height contravention represents a moderate breach, the resulting impacts of the development on the amenity of the adjoining properties and the Pittwater Waterway has been assessed as reasonable.

Based on the above discussion and the full assessment undertaken, the proposal is considered to be acceptable having regard to all relevant Pittwater LEP 2013 and P21DCP controls, and is therefore recommended for approval, subject to conditions.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/1275 for Construction of a boat shed and associated works on land at Lot 5 DP 816673, 67 Florence Terrace, SCOTLAND ISLAND, 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
2069-DA01 - Site Plan/ Floor Plan	February 2019	Stephen Crosby & Assoc. Pty. Ltd.
2069-DA02 - Sections & Elevations	February 2019	Stephen Crosby & Assoc. Pty. Ltd.

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Report (Ref: 1353)	22 August 2019	Planning for Bushfire Protection
Coastal Engineering Report (Ref: AWE200056/L001:PDT)	16 October 2019	Cardno Pty Ltd
Geotechnical Report (Ref: PX00007)	10 September 2019	Hodgson Consulting Engineers

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

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

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

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

2. Prescribed Conditions

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

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

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars

- of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) 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.

- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) 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.
- (k) 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.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$875.00 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 \$175,000.00.

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.

5. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. **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 Hodgson Consulting Engineers dated 10 September 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.

7. **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 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.

8. **Estuarine Hazard Design Requirements**

The following applies to all development:

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

9. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 2.69m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- o All structural elements below 2.69m AHD shall be of flood compatible materials;
- o All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.69m AHD or waterproofed to this level; and
- o The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.69m AHD.
- o All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.69m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.69m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure aspect of the development are built at the appropriate level

10. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 100years unless otherwise justified and accepted by Council) the development is able to withstand the wave impact forces and loadings identified in the Coastal Engineering Report prepared by Cardno (NSW/ACT) Pty. Ltd. dated 16 October 2019

Note: The potential for component fatigue (wear and tear) should be recognised for the less severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

11. **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.

12. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

13. **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 TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

15. **Tree and vegetation protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site not approved for removal, excluding exempt vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties.

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,
- iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
- v) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 Project Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, including advice on root protection measures,
- ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- x) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
- xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

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

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

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

16. **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.

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

17. **No Plumbing to be installed**

Plumbing must not be installed within the boat shed. No sinks, toilets or showers are to be added to the boat shed.

Reason: To avoid the boat shed affecting the load on the onsite waste water system.

18. **Control of Weeds**

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

Reason: Weed management.

19. **No Planting Environmental Weeds**

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

Reason: Weed management.

20. **Works to cease if item found**

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

Reason: To protect Aboriginal Heritage.

Clause 4.6 Variation Request Clause 4.3 Height of Buildings

**67 FLORENCE TCE. SCOTLAND ISLAND
Lot 5 DP 816673**

Date: 1st November 2019

Prepared By: Stephen Crosby & Associates Pty. Ltd.
PO Box 204, Church Point, NSW 2105

For: D. & J. Suttie

Introduction

Concurrent with the above Development Application we submit this letter addressing the provisions of Pittwater Council **LEP 2014**, specifically **cl. 4.3– Height of buildings** regarding development that exceeds the maximum height on Council's Heights of Buildings Map under the provisions of **LEP 2014 cl.4.6 Exceptions to development standards**.

This document shall demonstrate compliance with the outcomes of **LEP control 4.3 Height of buildings** with regard to the proposed boat shed to supplement the existing water access only family dwelling.

Clause 4.6 of the Pittwater Local Environmental Plan 2014 enables Northern Beaches Council to grant consent to the development even though the boat shed contravenes a development standard. The clause aims to provide flexibility in applying certain development standards to achieve better outcomes for and from the development.

This clause 4.6 variation request demonstrates that compliance with the height standard is unreasonable and unnecessary in the circumstances of this case, and there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that the proposed development:

- Satisfies the objectives for development standard clause 4.3 PLEP 2014 Building Height,
- Satisfies the objectives of the W1 Waterways zone under PLEP 2014,
- Is consistent with applicable state and regional planning policies,
- Provides for a better planning outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

The DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.3 of the Pittwater LEP 2014.

VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

The finished floor level of the proposed boat shed is nominated at 1.85m AHD and the ridge is 6.35m AHD. From the LEP Heights of buildings map the maximum height of the boat shed should be no more than 4.0m above astronomical height tide (1.17m AHD), giving a total of 5.17m AHD. The proposed boat shed ridge exceeds this height by 1.18m.

The location of the boat shed is in accordance with Pittwater Council's DCP P21 Section D15.15 Waterfront Development, Clause c) Boat sheds part i. "Boat sheds shall be located above the MHW on freehold land, **where practicable**." The location of the approved inclinor access ramp and the form of the land makes it impracticable to locate the boat shed entirely on freehold land.

The height of the boat shed is entirely in accordance with Pittwater Council's DCP P21 Section D15.15 Waterfront Development, Clause c) Boat sheds part ii. "Boat sheds shall

be no greater than 4.5m in building height above the platform on which it is built..." In regard to height limits the DCP makes no distinction as to the location of the boat shed.

The nominated Highest Astronomical Tide (HAT) of 1.17m AHD has been in the Council's LEP documents unchanged for over 30 years. As such it takes no account of sea level rise, or the Council's more recent (Cardno 2015) report into sea levels in Pittwater. This Cardno report puts a sea level rise of 0.42m at 2078 (relative to 2010), giving a tide level of 1.59m AHD, with the 1 in 100 year ARI still water level at 1.94m AHD.

JUSTIFICATION FOR CONTRAVENTION OF THE DEVELOPMENT STANDARD

Clause 4.6(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 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) there are sufficient environmental planning grounds to justify contravening the development standard.

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

- (a) the consent authority is satisfied that:
 - (i) the applicants 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(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

The objectives of the standard are achieved notwithstanding non-compliance with the standard. The objectives of the standard are:

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

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

The proposed boat shed floor level is entirely consistent in form and height with the guidelines for boat sheds as set down in PDCP21 D15.15, with the ridge level similar to many of these structures built over that last 20 years in Pittwater.

As, such, the proposal's height, whilst seeking a variation to the height control, still results in a development which is consistent with the expectations for boat sheds on Scotland Island, and remains consistent with the desired character of the Pittwater waterway.

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

Many of the boat sheds on Scotland Is. and in Elvina and Lovett Bays, are similar in height and scale.

Objective (c) to minimise any overshadowing of neighbouring properties.

The proposal will not result in any overshadowing of neighbouring properties due to the location of the boat shed largely over water and the rising slope of the adjoining sites where dwellings are located.

Therefore, the variation to the height limit does not result in any overshadowing on neighbouring properties.

Objective (d) to allow for the reasonable sharing of views.

Due to the location of the boat shed being below the lowest floor levels of neighbouring dwellings, the proposed development, and the minor variation to the height limit, do not result in any view impacts, allowing for the reasonable sharing of views.

The proposal does not interrupt or obstruct any significant views to or from the site or Pittwater, making the proposed development consistent with this objective.

Objective (e) to encourage buildings that are designed to respond sensitively to the natural topography.

The proposed development has been designed to respond sensitively to the natural topography, which slopes steeply away from a level area just behind the Mean High Water Mark.

The building sits lightly on the existing terrain.

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

There are no heritage items affected by the proposal, and the building will have a similar visual impact on the existing environment being entirely consistent with waterfront boat sheds in this area of Pittwater.

Pittwater LEP 2014 cl. 4.6 Exceptions to development standards sets out the parameters for varying a development standard such as cl. 4.3 Height of buildings described above. Compliance with the relevant provisions of cl 4.6 is achieved as follows:

- (3) (a) as demonstrated above compliance with the development standard cl.4.3 is unreasonable or unnecessary in this case, and,
- (b) there are sufficient environmental planning grounds to justify contravening the development standard in this instance.
- (4) (a) (i) the proposed modification to the existing development is modest in scale and typical of boat sheds for water access only properties in Pittwater.

CLAUSE 4.6(4)(a)(ii) IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE ZONE AND DEVELOPMENT STANDARD.

Consistency with the objectives of the development standard.

The proposed development is consistent with the objectives of the height of buildings standard in clause 4.3, for the reasons discussed previously in **CLAUSE 4.6(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY.**

Consistency with the objectives of the zone.

The proposed development is consistent with the underlying objectives of the W1 Waterways zone. The primary driver of the variation is the result of designing a boat shed fit for purpose with minimal impact on the natural environment. The proposal will have minimal visual impact on the development on neighbouring sites or Pittwater.

The proposed siting and design of the boat shed will not affect public access along the waterfront.

The proposed development is of good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying the requirement that

the proposal, and the height limit standard variation, are in the public interest.

Overall public interest.

The proposed development is considered to be in the public interest for the following reasons:

- Boat sheds are a specifically permissible use of the site and consistent with the character of the Scotland Island locality.
- Boat sheds of this traditional form add character to waterways foreshores when viewed by the public using the waterway for recreational purposes.

On the basis of the above, we believe that the consent authority can be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard for building height contained in clause 4.3 of the PLEP 2014, and with the objectives of the W1 Waterways zone under the PLEP 2014.

CONCLUSION

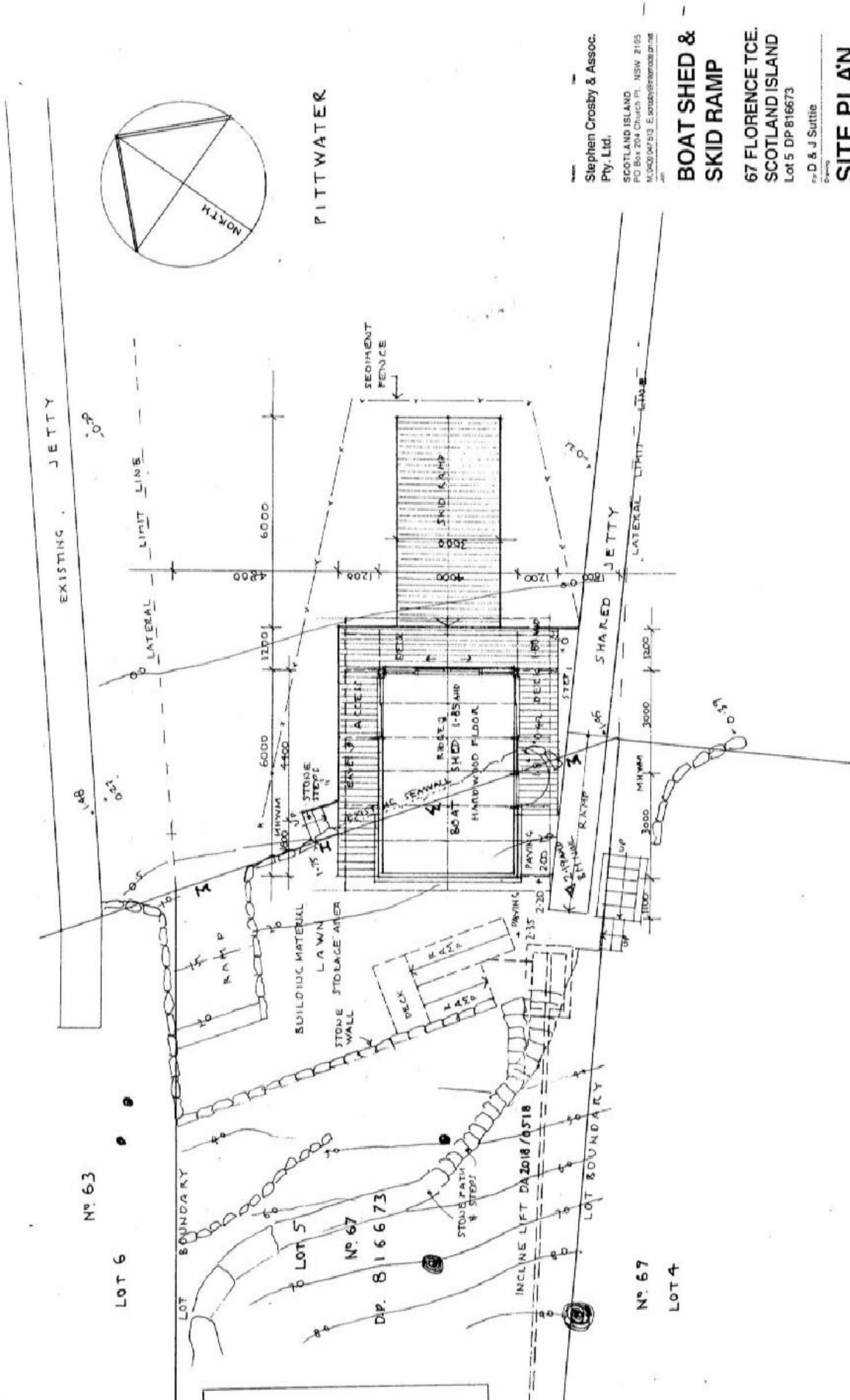
The assessment above demonstrates that compliance with the maximum building height development standard in Clause 4.3 of the PLEP 2014 is unreasonable and unnecessary in the circumstances of this case and that the justification is well founded. It is considered that the variation allows an orderly and economic use and development of the land, and that the structure is of good design that will reasonably protect and improve the amenity of the surrounding built environment.

This clause 4.6 variation demonstrates that, notwithstanding the variation to the maximum building height development standard, the proposed development:

- Satisfies the objectives of the development standard for height of buildings in clause 4.3 of PLEP 2014,
- Satisfies the objectives of the W1 Waterways zone under PLEP 2014,
- Provides for a better outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

As such, the Development Application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2014.

STEPHEN CROSBY



Stephen Crosby & Assoc.
Pty. Ltd.

SCOTLAND ISLAND
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**BOAT SHED &
SKID RAMP**

67 FLORENCE TCE.
SCOTLAND ISLAND
Lot 5 DP816673

For D & J Suttie
Drawing

**SITE PLAN
FLOOR PLAN**

Scale: 1:100 AT 1/2
Date: FEBRUARY 2018
Drawn: S.C.
Drawing Number:

2069 - DA 01



Stephen Crosby & Assoc.
Pty. Ltd.

SCOTLAND ISLAND
PO Box 204 Church Pt. NSW 2105
M 0403 047 513 E scosby@remodernsw.com.au

BOAT SHED & SKID RAMP

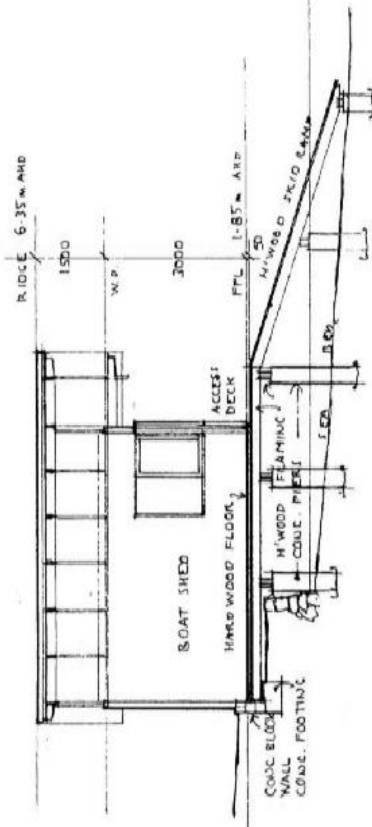
67 FLORENCE TCE.
SCOTLAND ISLAND
Lot 5 DP 816673

By D & J Suttle

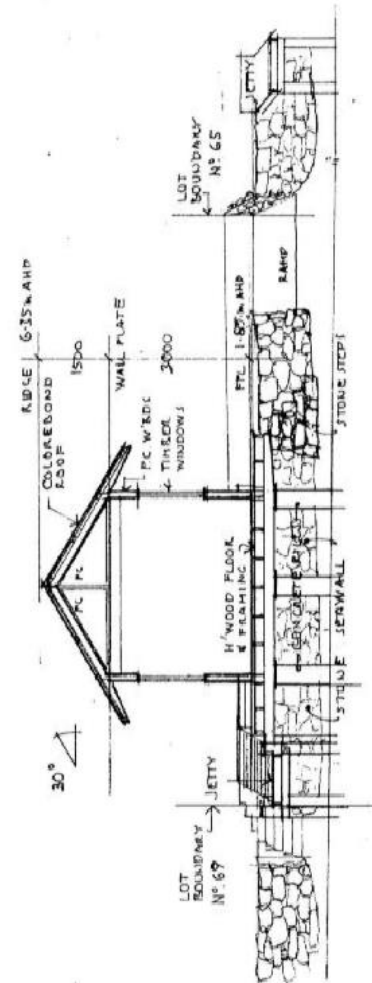
SECTIONS & ELEVATIONS

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Date FEBRUARY 2019
Drawn S.C.
Drawing Number

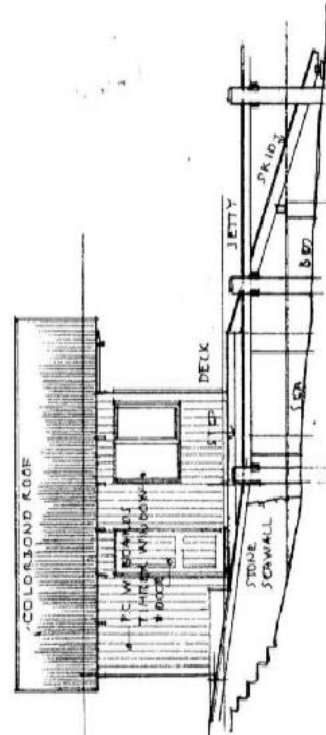
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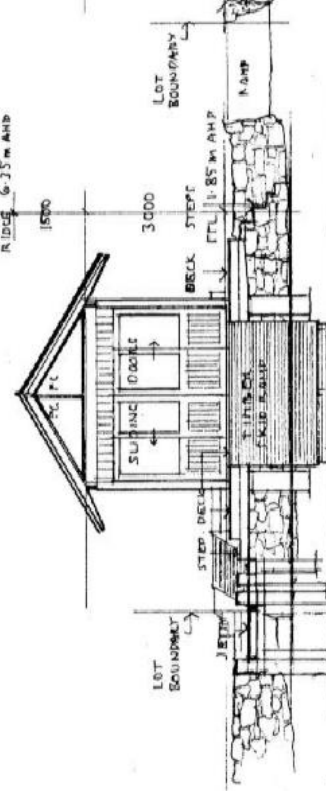
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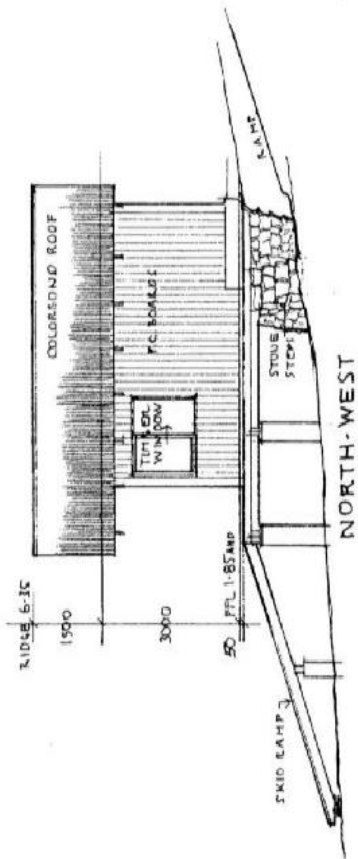
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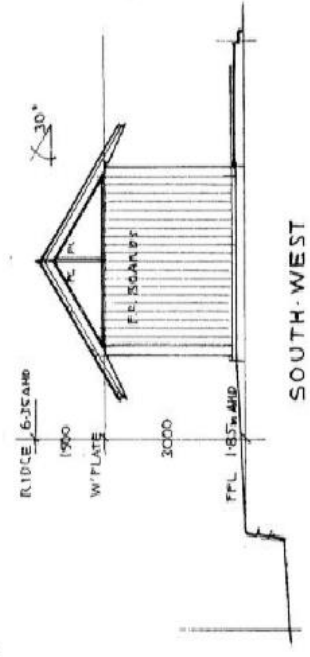
SOUTH-EAST



NORTH-EAST



NORTH-WEST



SOUTH-WEST

ITEM 3.3

**MOD2019/0378 - 49 LAUDERDALE AVENUE, FAIRLIGHT -
MODIFICATION OF DEVELOPMENT CONSENT DA2018/0880
GRANTED FOR CONSTRUCTION OF A DWELLING HOUSE
AND A SECONDARY DWELLING**

AUTHORISING MANAGER STEVE FINDLAY

TRIM FILE REF 2020/046090

ATTACHMENTS

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

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. Mod2019/0378 for Modification of Development Consent DA2018/0880 granted for construction of a dwelling house and a secondary dwelling at Lot 11 DP 1216827, 49 Lauderdale Avenue, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0378
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 11 DP 1216827, 49 Lauderdale Avenue FAIRLIGHT NSW 2094
Proposed Development:	Modification of Development Consent DA2018/0880 granted for construction of a dwelling house and a secondary dwelling
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	James Dempsey Manion Maureen Adele Manion
Applicant:	Brenchley Architects Pty Ltd
Application Lodged:	06/08/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/08/2019 to 02/09/2019
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	4.3 Height of buildings: %
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal involves a modification of consent for a dwelling and a secondary dwelling. Specifically, the modification involves the extension of a rear deck and the request to amend and delete a number of conditions provided in the original consent.

In particular, the changes relate to a request to enlarge the deck by 2 metres in length and enlarge windows from the approved situation.

The proposed modified design has an effect on the relationship between the development and privacy to neighbours, particularly to the east at 45 Lauderdale Avenue.

The proposed 2.0m extension to the rear suspended deck results in a height non-compliance due to the deck extending over a stone retaining wall and the land dropping away. This location above the stone wall does not cause any substantial additional privacy impact and conditions remain to require privacy screens to the side of the deck. Therefore, the non-compliance with the building height development standard is not considered unreasonable and the variation does not result in any unreasonable impacts to adjoining or surrounding properties.

The application has also been assessed against the planning controls of the MDCP 2013, and whilst there are still minor variations to the wall height control and setback controls, these have been found to be consistent with the objectives and requirements of the control (subject to conditions). In this regard, the built form will provide appropriate separation and design to minimise privacy impact.

The assessment concludes that the proposed design is appropriate for the site and would not have any unreasonable impacts on privacy, views or any other unreasonable amenity or visual impact.

Therefore, it is recommended that the application be approved.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for a modification to the approved "construction of a dwelling house and a secondary dwelling."

In detail, the modification involves:

- Request to amend DA condition 10 in regard to the BCA class. This includes modifying the entry stairs and entry way to the secondary dwelling to establish a separate entry and fire protection between the two dwellings (including extension of carport slab).
- Request to amend Condition 36 in regard to landscaping. This includes a new 3m high fence in place of boundary planting as prescribed by the condition.
- Request to amend Condition 20 in regard to window design for privacy. Request the condition be amended for ground floor windows 14, 15, and 16 (as a result of screen planting at western boundary and proposed fence to the eastern boundary).
- Change proposed window W21 to a glazed door and extension of W2
- Extend the first floor rear balcony to 2m in depth with privacy screens to either side

Request to amend DA condition 10

The proposed modification to separate the dwelling with a fire resistant wall results in the development no longer being a "Class 2" building. As such, it is recommended that Condition 10 relating to a Class 2 building, is deleted.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report)

taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.3 Height of buildings

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 3.4.2 Privacy and Security

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.10 Fencing

SITE DESCRIPTION

Property Description:	Lot 11 DP 1216827 , 49 Lauderdale Avenue FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site consists of an allotment located on the southern side of Lauderdale Avenue. The site is an irregular in shape with a frontage of 8.805m along Lauderdale Avenue and an approximate depth of 40m. The site has a surveyed area of 460.1m². The site is located within the R1 General Residential zone and accommodates a dwelling house on site. It is also noted that Council's mapping indicates part of the site (to the south-west) to be within the E4 Environmental Living zone. The site slopes from the front at Lauderdale Avenue down to the rear toward the foreshore. This slope involves approximately a 14 metre fall from the front to the rear. Additionally, there is a steep drop from a stone retaining wall toward the rear of this site, being approximately 10 metres from the top of the wall to the rear of the site. This splits the site into two with each side being at separate level. The site has vegetation at each level including a variety of tree species. Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development on each side of Lauderdale Avenue.

Map:

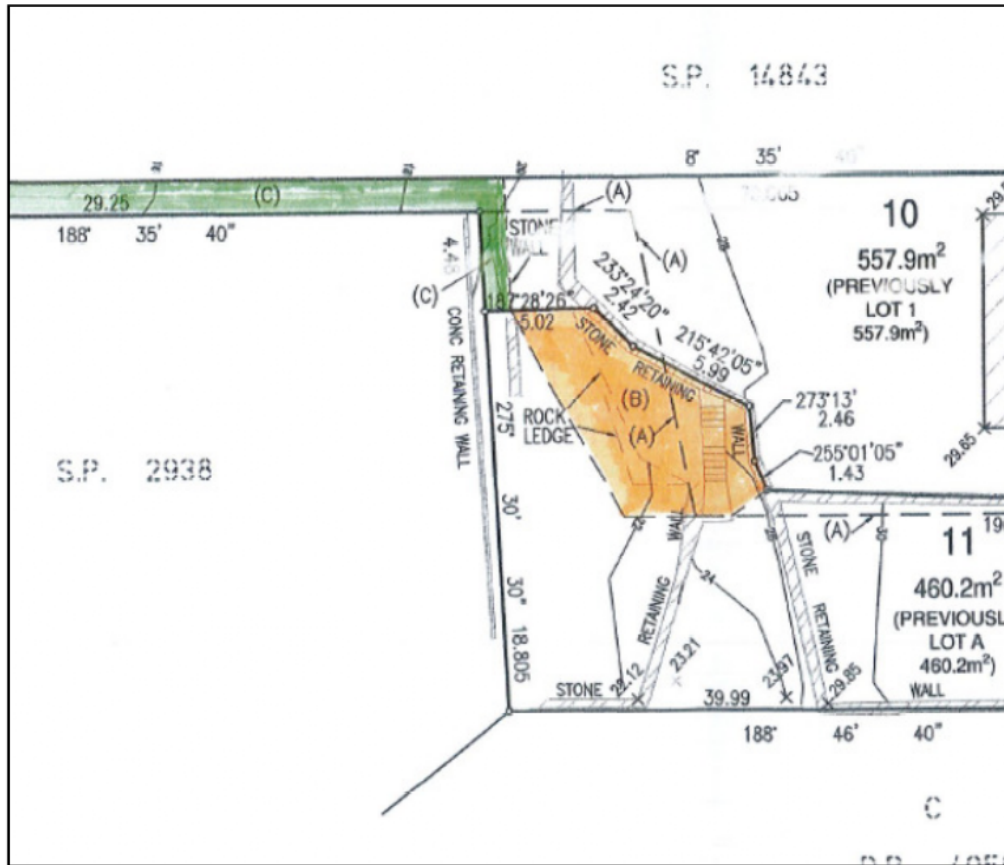


SITE HISTORY

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:

Development Application No.DA77/2015 - Boundary realignment (subdivision) of the existing two lots with new easements.

It is noted that this re-alignment involved the change of the boundary to be partially aligned with a stone retaining wall as below:



Development Application No.2018/0880 for alterations and additions to a dwelling house, including construction of a secondary dwelling (attached) was approved by the Northern beaches Planning Panel with deferred commencement conditions on 16/11/2018.

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 DA2018/0880, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/0880.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2013 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

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

Section 4.15 'Matters for Consideration'	Comments
development control plan	
Section 4.15 (1) (a)(iii) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <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. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Mr Rodney Daniel Timm	3 / 1 A Bolingbroke Parade FAIRLIGHT NSW 2094
Mrs Diana Christine Noyce	2 / 1 A Bolingbroke Parade FAIRLIGHT NSW 2094
Mr Philip Grenville Smith	6 / 1 A Bolingbroke Parade FAIRLIGHT NSW 2094
Particular Planning Pty Ltd Ms Alison Louise Wakefield Mr David Charles Wright	C/- 6a Penrose Place FRENCHS FOREST NSW 2086
Mr Trevor Stuart Kennedy Mrs Ann Patricia Kennedy	1 / 43 Lauderdale Avenue FAIRLIGHT NSW 2094
J Cronan	1 / 57 Lauderdale Avenue FAIRLIGHT NSW 2094
Mr Richard Daniel Evans	4 / 57 Lauderdale Avenue FAIRLIGHT NSW 2094

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

- Extension of deck and impact on amenity; potential for parties; privacy (acoustic and visual); the balcony exceeds height limit
Comment:
As further discussed under the section for Privacy in this report, the proposed extension to the deck is in a location which is well separated from neighbouring properties and the deck complies with the controls under the Manly DCP for setbacks. Furthermore, the balcony overhangs an existing stone wall so that the numerical development standard for height is exceeded. However, the level of the deck will remain and conditions require that privacy screens be provided to each side elevation. This results in a reasonable outcome for privacy.
- The large fig tree now having been removed, the decay of the root system and the impact on the significant retaining wall; concern as to whether the retaining wall will hold the build; Geotechnical report was completed on the basis of the approved DA; site stability
Comment:
This modification does not involve any change to the proposed excavation, ground floor footings

or any other matter that would significantly effect site stability. Furthermore, deferred commencement conditions relating to geotechnical issues, remain on the consent.

- Impact on views to 45 Lauderdale Avenue
Comment:
The proposed 3m fence is not supported and this will ensure appropriate view retention for 45 Lauderdale Avenue.
- Request to provide shadow diagrams for all times of year; lack of overshadowing diagrams to enable assessment of impact caused by deck
Comment:
The information provided was sufficient to assess that the proposal would comply with the requirements under the Manly DCP for Sunlight Access and Overshadowing.
- Request for dilapidation report.
Comment:
Condition 22 of the existing determination requires a dilapidation report. This report recommends no change to this.
- The privacy impact of the windows which do not comply with the control; Changes to windows and addition of fence; lack of louvers to windows; Level of the proposed development (on piers) and this being the reason for an oversized fence; request for conditions (relating to privacy screen and fence) to be returned to as imposed by the determination panel; lack of detail for the fence including lack of RL and materials
Comment:
The changes to the proposed eastern windows and the addition of a fence at the eastern elevation is not supported.
- Lack of side setback for secondary dwelling and location close to the public pavement; request for traffic assessment
Comment:
The proposed modification does not involve changes to the approved setback of the secondary dwelling. The secondary dwelling was approved under the previous development application and this included a consideration of traffic impact.
- Unacceptable finishes; aesthetics
Comment:
With Condition 17 requiring the roof to be medium to dark in colour, the proposal is acceptable and complementary with the area in terms of finishes and aesthetics.
- "A deferred commencement consent was issued and the consent at the time of the lodgement of this modification is not operational. Council cannot be in a position to approve further built form south of the retaining wall in which the deferred commencement conditions in part relate, due to the approved tree removal specifically the Port Jackson fig which abutted the retaining wall." (in relation to site stability)
Comment:
Under *Section 4.55 of the Environmental Planning and Assessment Act 1979* a consent may be modified (including a consent with deferred commencement conditions). The proposed extension of the deck to the south can be approved through the modification application whilst the retaining the deferred commencement conditions.
- Lack of updated Basix
Comment:

With the exception of windows as modified by condition, the original BASIX certificate relates to the modified proposal.

- Lack of parking (only one space for each dwelling); Secondary dwelling
Comment:
The proposed modification does not increase density and retains the approved Secondary Dwelling. As such, further parking is not required as a result of this modification.
- Development should be consistent with associated values of Manly Foreshore Scenic Protection Area
Comment:
Subject to the removal of the 3m fence the the associated visual bulk, the proposal will be be consistent with associated values of Manly Foreshore Scenic Protection Area.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. <i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i>

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 which was considered under the original related development assessment. 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 modification works proposed.

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 modification 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.

Other Service Infrastructure Authorities

The modification of the proposal was not required to be referred to the *Roads and Maritime Service* and no other service authority referral issues are raised pursuant to 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	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.1m	11.5m	34%	No (see comments)

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes
6.22 Development for the purposes of secondary dwellings in certain residential and environment protection zones	Yes

Detailed Assessment

4.3 Height of buildings

Whilst the modification application will result in a building height that exceeds the maximum height permitted by Clause 4.3 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

This application has been made under Section 4.55 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant s4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Nevertheless, an assessment in relation to the related objectives of the variation is as follows:

Assessment against the underlying objectives of the standard, pursuant to Clause 4.3 – ‘Building Height’ of the MLEP 2013

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

(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The modification involves an extension of the approved 'suspended deck' toward the rear of the site, over an existing stone retaining wall. This results in a breach of the numerical development standard. The dwelling retains a two storey presentation in the street and the enclosed section of the dwelling (walls and roof) remain numerically compliant with the development standard (8.5m). As a result of the extension being toward the rear of the dwelling, the balcony (or 'suspended deck' as labelled on the plans) will not result in any unreasonable visual impact which could be antipathetic to the desired future streetscape character. Furthermore, the open nature of the balcony ensures that the dwelling and secondary dwelling would present as a building with a height and roof form as to be expected for the

area.

The development satisfies this objective.

(b) to control the bulk and scale of buildings,

Comment:

The proposal maintains the approved number of stories and style of roof with the height variation relating to the extension of the balcony toward the rear of the dwelling. The extension of this open structure will not result in providing an unreasonable bulk or scale for the site. In particular, the presentation of the dwelling from the rear (below the steep stone wall) will remain similar due to the approved rear wall of the dwelling (which complies with building height), despite numerical compliance or non-compliance of the balcony with the development standard.

The development satisfies this objective.

(c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),**
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),**
- (iii) views between public spaces (including the harbour and foreshores),**

Comment:

The proposal including the open balcony will not have any unreasonable impact on views, subject to conditions.

The development satisfies this objective.

(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The proposed changes would not result in an outcome which has an unreasonable impact on solar access, subject to conditions.

The development satisfies this objective.

(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

Not applicable

Assessment against the underlying objectives of the R1 General Residential

In assessing the developments the non-compliance, consideration must be given to its consistency with

the underlying objectives of the R1 General Residential.

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

Comment:

The proposed development is for a residential use and is consistent with the objectives above.

Assessment of the variation against the objectives of Clause 4.6 of the MLEP 2013

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.

Comment:

In this circumstance, providing flexibility to the building height development standard is appropriate as the non-compliance does not lead to any unreasonable amenity impact and would be appropriate in the street context.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

It is appropriate to allow flexibility in this circumstances, as additional building height can be provided without having any unreasonable impact on amenity and the proposed development would be visually appropriate given the context of the site and topographical nature of the surroundings.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 460.1m ²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	East: 7.1m (based on gradient 1:10)	7.4m	7.4m	No (but no change to approved)
	West: 7m (based on gradient 1:12)	7.4m	7.4m	No (but no change to approved)
4.1.2.2 Number of Storeys	2	2	2	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.5m	1.5m	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	South: 2.37m (based on wall height)	0m-1.9m	0m-1.9m	No (see comments)
	North: 2.33m (based on wall height)	0m-1.0m	0m-1.0m	No (see comments)
	Windows: 3.0m	0.9m-2.0m	0.9m-2.0m	No (see comments)
4.1.4.4 Rear Setbacks	8.0m	11.7m	11.7m	Yes

4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	56.5% (260m ²)	57.5% (265m ²)	Yes
	Open space above ground 25% of total open space	13.96% (36.3m ²)	15.9% (42.3m ²)	
4.1.5.3 Private Open Space	18m	50sqm	55sqm	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 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	No	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Facilities)		
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	No	No
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

Subject to conditions, the 3.0m boundary fence to the eastern boundary is not supported. This will ensure an appropriate outcome for sunlight access and overshadowing.

3.4.2 Privacy and Security

Description of non-compliance

The proposed windows at the side boundaries are non-compliant with Clause 4.1.4.2 which requires new windows to be setback at least 3 metres from side boundaries. Additionally, these windows, do not use "use narrow, translucent or obscured glass windows to maximise privacy where necessary," as required by Clause 3.4.2.1 for privacy.

A request has been made by the applicant for Condition 20 (in regard to window design for privacy) to be amended. This involves selected windows (W14, W15 and W16) to be wide and full length, with the setbacks varying from 1.9m-2.1m.

The proposed 'suspended deck' to the rear has a rear section of the deck that is non-compliant with the height of building development standard being 11.5m, with the standard being 8.5m.

Merit consideration:

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

Objective 1) To 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:

An analysis of the potential for overlooking and the factors contributing to minimising privacy loss is made for each of the windows which have been requested to have a change of design (through

removal of condition):

i) Window 15 and Window 16- These windows have a setback of 1.9-2m from the eastern boundary.

It is noted that as discussed under Clause 4.1.10 Fencing, the 3.0m eastern boundary fence is not supported. As such, this cannot be relied upon to provide privacy.

The size, height above ground and design of the proposed windows in a location which would overlook neighbouring private open space and living spaces, provides for an unreasonable visual privacy outcome. Furthermore, the windows do not comply with the side boundary setback requirement of 3m.

As such, it is considered that Condition 20 should remain in order to provide a better design for privacy for Window 15 and Window 16.

ii) Window 14- This window has a setback of 2.1m from the western boundary.

This window is located on the western elevation and is well separated from the neighborhood private open space area and is also adjacent to smaller sized neighbouring windows. Potential for overlooking from this window is also reduced through the balustrade and proposed landscaping (although it is noted that minimal weight is given to landscaping for privacy under a established principle in the LEC).

As a result of these mitigating factors, reduction in the size or change to the design of this window is not considered necessary. As such, the condition is recommended to be amended as follows:

The proposed condition Condition 20 is as follows:

"Condition 20:

Window design for privacy

The proposed windows W4, W5, W6, W15, W16 are each to be redesigned to be one of the following:

-Highlight windows with a solid sill height to a level of 1.6m from finished floor level

-Wholly obscured and fixed (not able to be opened) glazing up to a height of 1.6m

-Provided with fixed louvre screens to a level of 1.6m above finished floor level with no individual

opening greater than 30 millimetres

Reason: To reasonably minimise privacy impact between the subject site and adjoining properties."

iii) Other proposed windows

The proposed modifications to W2 and W21 are reasonable due to the limited size and location well separated from neighbouring properties.

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 proposal involves extension of the approved balcony (or 'suspended deck') toward the rear of the site to form a rectangular shape. Condition 17 is recommended to remain on the consent to provide a privacy screen to the each elevation of the 'suspended deck.' The extension of the deck along with privacy screens ensures access to light and air from the rear of the site for the subject dwelling but also

an appropriate mitigation of privacy loss through the privacy screens to the side elevations.

This screen will provide a reasonable compromise between ensuring adequate privacy and allowing access to view light and air at other areas of the deck and private open space.

Despite the technical increase in building height as a result of the deck overhanging an existing stone wall, the proposed extension to the deck will match the approved level of the deck and will remain well separated from the neighbouring properties (through setbacks which comply with the control).

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal provides entrances areas at the front of the property that provide reasonable opportunity for awareness of neighbourhood security.

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

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

See comments under 'Privacy' in regard to windows within 3.0m of the side boundary. Subject to conditions, the proposal will meet the objectives of this clause.

4.1.10 Fencing

The proposal provides a notation for a 3.0m high side boundary fence at the eastern boundary. The Northern Beaches Local Planning Panel previously imposed a condition which removed this notation.

The 3m height of the fence provides a visual impact that is not acceptable, particularly given the scenic qualities of the Foreshore Scenic Protection Area.

As such, it is recommended that the condition to remove the notation of a 3.0m fence at the eastern boundary is to be retained.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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

Accordingly

Conclusions on the Assessment of the Application

The modification to the proposed development does not comply with the 'Height of Buildings' Development Standard of 8.5m under the MLEP 2013. However, the deck which breaches the development standard does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the MLEP 2013.

In this case, the proposed deck provides a design with privacy screens and a physical separation from neighbouring properties that allows for appropriate mitigation of privacy impact. A condition is also amended to provide a balanced outcome in design for privacy at the eastern elevation. Furthermore, an assessment against the objectives of the clause have found the proposal to be consistent and reasonable.

On balance, the proposal should be approved as the design is reasonable for the site and locality by virtue the compliance of the suspended deck with the setback controls and the conditions imposed to ensure there will not be unreasonable amenity impacts.

Therefore, the application is recommended for approval.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes the proper and orderly planning for the site or the locality. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2019/0378 for Modification of Development Consent DA2018/0880 granted for construction of a dwelling house and a secondary dwelling on land at Lot 11 DP 1216827,49 Lauderdale Avenue, FAIRLIGHT, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2018-050-A00- Site Analysis	June 2019	Brenchley Architects
2018-050-A01- Site Plan	June 2019	Brenchley Architects
2018-050-A02- Ground Floor	June 2019	Brenchley Architects
2018-050-A03- Level 1 Plan	June 2019	Brenchley Architects
2018-050-A04- Elevations	June 2019	Brenchley Architects
2018-050-A05- Elevations	June 2019	Brenchley Architects
2018-050-A06- Section 1	June 2019	Brenchley Architects
2018-050-A07- Section 2	June 2019	Brenchley Architects

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.

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

B. Modify Condition 20 - Window Design for Privacy to read as follows:

The proposed windows W4, W5, W6, W15, W16 are each to be redesigned to be one of the following:

- Highlight windows with a solid sill height to a level of 1.6m from finished floor level
- Wholly obscured and fixed (not able to be opened) glazing up to a height of 1.6m
- Provided with fixed louvre screens to a level of 1.6m above finished floor level with no individual opening greater than 30 millimetres

Reason: To reasonably minimise privacy impact between the subject site and adjoining properties."

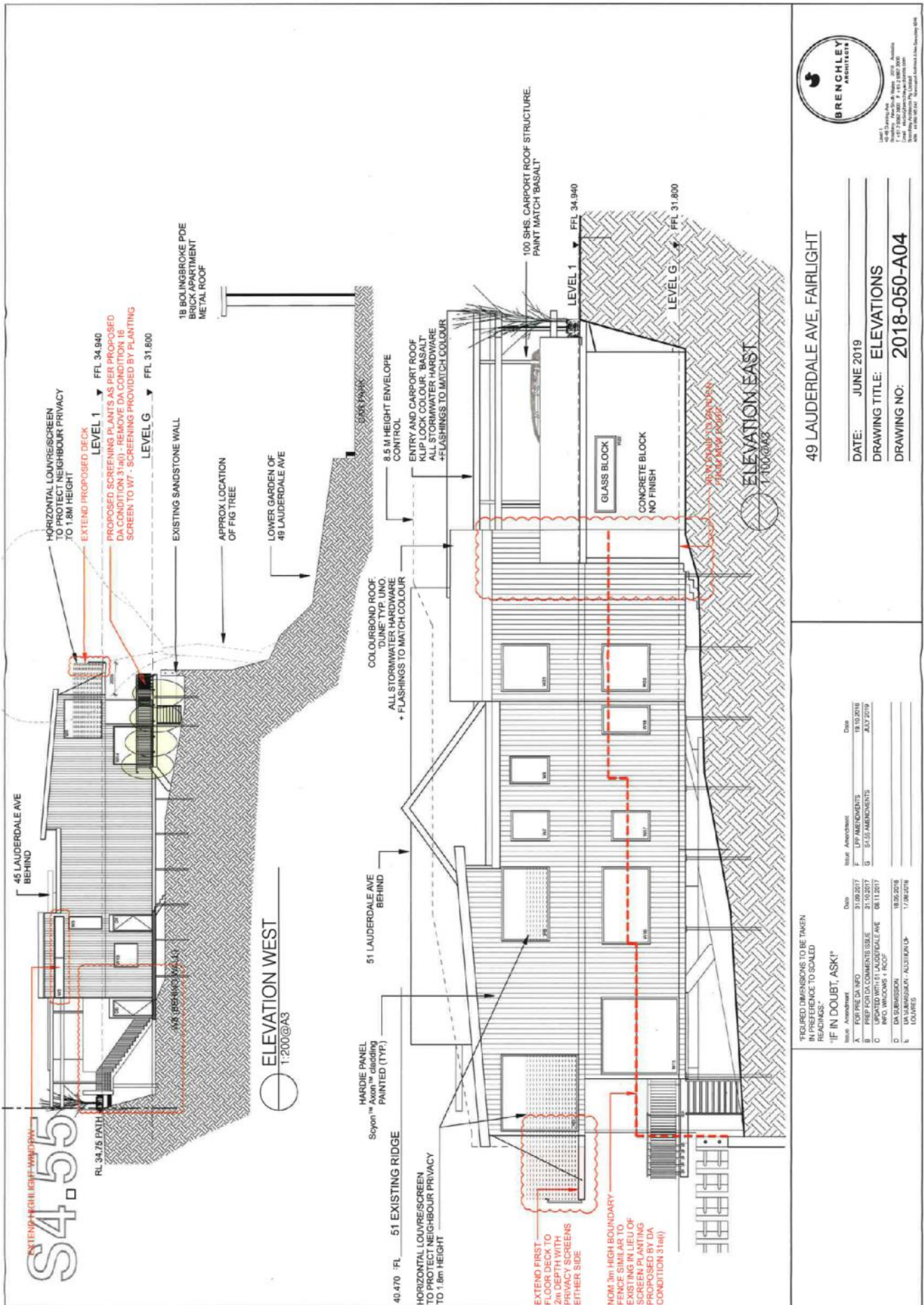
C. Delete Condition 10 - Change of Use/ Building Upgrade to read as follows:

The existing building that is proposed to be converted to a secondary dwelling will result in a change of classification to a Class 2 building and will be required to be upgraded to comply with the provisions of the Building Code of Australia.

Details of upgrading works are to be included in the Construction Certificate and be implemented prior to occupation of the new building or part.

Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety.







ITEM 3.4**DA2019/0238 - 10-12 WYATT AVENUE, BELROSE -
CONSTRUCTION OF A CHILD CARE CENTRE AND
ANCILLARY CARETAKER RESIDENCE****AUTHORISING MANAGER** STEVE FINDLAY**TRIM FILE REF** 2020/046102

ATTACHMENTS

- 1 [↓](#) Assessment Report - Independent Public Hearing Panel
- 2 [↓](#) Draft Conditions of Consent
- 3 [↓](#) Minutes - Independent Public Hearing Panel
- 4 [↓](#) Supplementary Report
- 5 [↓](#) Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/0238 for construction of a child care centre and ancillary caretaker residence at Lot 2616 DP 752038, 10-12 Wyatt Avenue, Belrose subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT ASSESSMENT REPORT

Responsible Officer:	Thomas Prosser
Land to be Developed (Address)	Lot 2616, DP 752038, 12 Wyatt Avenue BELROSE
Proposed Development:	Construction of a child care centre and ancillary caretaker residence

Development Application No:	DA2019/0238
Application Lodged:	8/0/2018
Integrated Development:	Yes (Bushfire Prone Land)
Amended Plans:	Yes (dated July 2019)
Applicant:	Frank Moschella
Owner:	Phillip Giardina and Rosemarie Moschella

WLEP 2000 Locality:	C8 Belrose North
Category of Land Use:	Category 3 "Childcare Centre"
Clause 20 Variations	Yes (Side Setbacks and Bushland Setting)
Referred to Independent Panel:	Yes – Pursuant to Clause 15 of WLEP 2000, an Independent Public Hearing is required
Land and Environment Court Action:	No
Submissions:	23
Recommendation:	APPROVAL

EXECUTIVE SUMMARY

This report is an assessment of a proposal to construct a child care centre and ancillary caretaker residence on the subject site.

Previous Development Applications lodged for a child care centre development on this site were subsequently withdrawn due to concerns raised in relation to non-compliances with planning controls and deficiencies in relation to stormwater management. Those planning and stormwater matters have been resolved under this application.

A detailed assessment of the application determined that the proposed development is consistent with the desired future character statement, the general principles of development control and relevant state policies.

On balance, the proposal is found to be a suitable and appropriate development for the site and is recommended for approval, subject to conditions.

The proposal is required to the subject of an independent public hearing prior to determination by the Northern Beaches Local Planning Panel.

PROPOSED DEVELOPMENT

The proposal seeks consent for the construction of a childcare centre and ancillary caretaker residence. The site plan for the proposal is shown in Figure 1 below.

In detail, the proposal involves the following:

- 60 child places
- 16 car parking spaces (including one accessible space)
- Hours of operation – 7.00am and 6:30pm (Monday to Friday)
- Four “activity rooms”
- Outdoor play areas
- Undercover play area
- Caretakers residence including 3 bedrooms, kitchen, laundry, en-suite and lift
- Storage shed
- Fencing
- Landscaping
- OSD
- New driveway crossing
- Stormwater management system
- Relocation of an existing drainage easement
- Establishment and maintenance of APZ’s on subject site and adjoining land (10 Wyatt Avenue)



Figure 1 – Site Plan
(Source : RFA Architects, dated 12.7.2019)

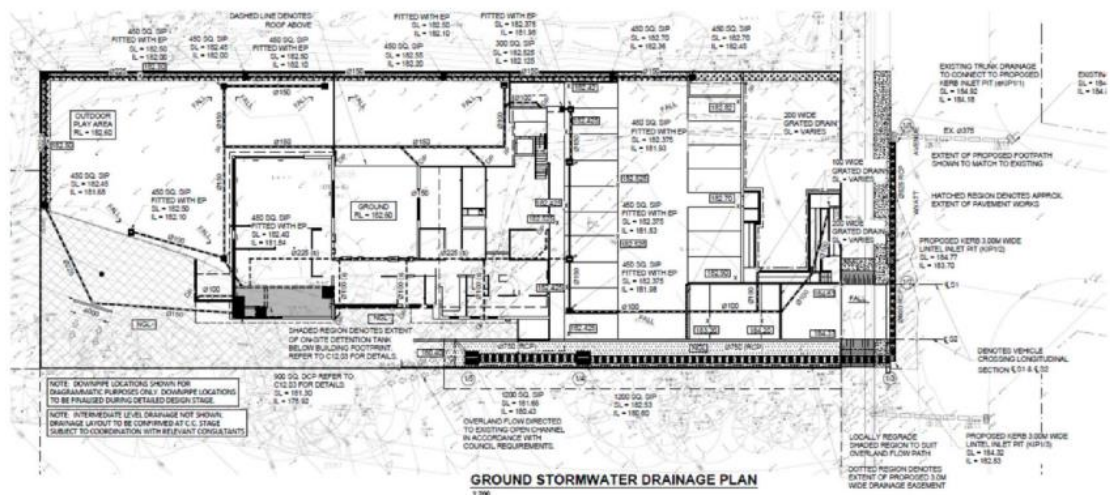


Figure 2 – Plan showing Relocation of Existing Stormwater Easement
(Source – Engineering Studio Stormwater Plans, dated 11.7.2019)

LOCALITY PLAN





(Source : Council SEA)

Subject Site: Lot 2616, DP 752038, 12 Wyatt Avenue, Belrose.

Public Exhibition: The subject application was publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan.

The application was notified to nine (9) adjoining properties for a period of 14 days from 6 June 2018 to 23 June 2018 and was re-notified from 23 April 2019 to 11 May 2019.

The application was also advertised within the Manly Daily on 27 April 2019 and a notice was placed upon the site.

SITE DESCRIPTION

The subject site is identified as Lot 2616, DP 752038 and is known as 10-12 Wyatt Avenue, Belrose. The subject site is located on the northern side of Wyatt Avenue, generally opposite the intersection of Wyatt Avenue and Cotentin Road.

The site is rectangular in shape, has an area of 2412m² and has a frontage of approximately 29.995m to Wyatt Avenue. The site has an existing grass verge and a vehicular access point is proposed in the south-eastern corner of the site.

The site slopes toward the north-western corner of the site, having a fall of approximately 8.5m between the front south-eastern corner and the rear north-western corner of the site.

The western portion of the site is steeply sloping and has partial vegetation cover. The eastern portion of the site is mostly cleared of vegetation.

The site is presently vacant land and the surrounding area comprises a mix of residential and low intensity uses to form the generally rural-residential character. The immediately surrounding uses include single dwellings, a sports field, bushland and the John Colet School.

BACKGROUND AND HISTORY

Relevant Applications on Subject Site

(a) Pre-lodgement Meeting (PLM2016/0102) – this PLM was held on 27 October 2016 for the construction of a child care centre and caretakers residence.

The main issues raised were as follows:

The proposed capacity of 86 children is not supported and should be reduced to a 60 place child care centre.

The required APZ needs to determine what ramifications it will have on surrounding environments and ecosystems, including the removal of vegetation on both the subject and surrounding sites.

The Applicant for the PLM is the same as that for the current DA and the following DA's that were lodged and subsequently withdrawn.

(b) Development Application (DA2017/0703)

The DA was lodged on 19.7.2017 and the assessment revealed significant issues, including

- Inconsistency with the Desired Future Character Statement (DFC)
- Non-compliance with Landscaped Open Space
- Non-compliance with side setback controls
- Inadequate Stormwater Management information
- Inadequate Wastewater Disposal information
- Excessively high retaining walls at the rear of the site
- SEE does not address the Childcare SEPP or the National Quality Framework Assessment Checklist

This application was subsequently withdrawn on 16.11.2017.

(c) Development Application (DA2018/1114)

The DA was lodged on 29.6.2018 and the assessment revealed significant issues, including:

- Inconsistency with the Desired Future Character Statement (DFC)
- Non-compliance with Landscaped Open Space
- Non-compliance with side setback controls

- Inadequate Stormwater Management information
- Lack of design and detail in response to traffic issues

This application was subsequently withdrawn on 22.11.2018.

Relevant Applications on Adjoining Property

(a) Boarding House Proposal at 14 Wyatt Avenue (DA2018/0401)

This DA was for a 27 room (plus manager's residence) boarding house development on the adjoining property to the west of the subject site and was refused by the Northern Beaches Local Planning Panel (NBLPP) on 17 October 2018 for the following reasons:

- 1. The flood risk assessment report submitted with the DA contained insufficient information to allow a proper and thorough assessment to determine if the development would be likely to have adverse flood risk impacts.*
- 2. For that reason the Panel is not satisfied that for the C8 Belrose North Locality the development is consistent with the Warringah Local Environmental Plan 2000 (WLEP 2000) desired future character requirement of protection and, if possible, enhancement of the natural environment.*
- 3. The Panel is not satisfied that the development is consistent with the WLEP 2000 desired future character requirement of conformity with the maximum housing development standard of 1 dwelling per 20 hectares. Although the Panel has a discretion to consent notwithstanding this contravention, it does not consent given the extent of the contravention, the smallness of the site relative to 20 hectares, the large size of the development relative to the site size, and the matters referred to in the other reasons for refusal. If the Panel were prepared to consent (which it is not), then the prescribed concurrence of the Director would be required because the contravention is far more than 10%.*
- 4. The Panel is not satisfied that the site is suitable given the matters referred to above and the Panel's assessment that it is an overdevelopment of the site because the building footprint and the total built upon area are too large for the site.*
- 5. It is not in the public interest to consent given the matters referred to above.*

(b) Review of Determination of Boarding House Proposal (REV2018/0035)

This review of determination application for the boarding house development (which was reduced to 24 rooms, plus manager's residence) under DA2018/0401 was lodged on 11.12.2018 and was refused by the NBLPP on 17.4.2019 for the following reasons:

- 1. The development application is for a 'boarding house' as defined under WLEP 2000. A 'boarding house' is a form of 'housing'. The housing density standard therefore applies.*

The proposal does not comply with the housing density standard contained within locality C8 Belrose North, whether considered to be one dwelling or 24 dwellings. Although the Panel has a discretion to consent notwithstanding this contravention, it

does not consent given the smallness of the site relative to 20 hectares, the large size of the development relative to the site size, and the inconsistency of the proposal with the C8 desired future character statement, in that:

- ✗ The present character will not remain unchanged,*
- ✗ The natural landscape, including landform and vegetation, will not be protected or enhanced,*
- ✗ The development will not be limited to 'new detached style housing' or will not be a low intensity or low impact use.*

2. The flood risk impacts of the proposal remain unresolved and further assessment of the supplementary information would be required.

3. The Panel is not satisfied that the site is suitable given the matters referred to above and the Panel's assessment is that it is an overdevelopment of the site because the building footprint and the total built upon area are too large for the site.

4. It is not in the public interest to consent given the matters referred to above.

AMENDMENTS TO THE CURRENT APPLICATION

a) **4 July 2019** – Updated survey plan and updated arborist report

b) **12 July 2019**- Updated architectural plans and stormwater plans

(NB : The amendments and additional information did not require re-notification in accordance with the Warringah Development Control Plan 2000)

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979)
- b) Environmental Planning and Assessment Regulations 2000
- c) Rural Fires Act 1997 (RFA 1997)
- d) State Environmental Planning Policy No 55 – Remediation of Land
- e) Warringah Local Environment Plan 200 (WLEP 2000)
- f) Warringah Development Control Plan 2000 (WDCP 2000)
- g) Northern Beaches 7.12 Contributions Plan 2019
- h) State Environmental Planning Policy (Infrastructure) 2007
- i) State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

PUBLIC EXHIBITION

The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, WLEP 2000 and WDCP 2000.

First Notification and Advertising

The DA was notified to fifteen (15) adjoining land owners and occupiers for a period of 14 calendar days, commencing on 27 March 2019 and finishing on 13 April 2019 and was advertised in the Manly Daily on 30 March 2019.

Second Notification

The application was re-notified, which included those persons who previously made a submission to the withdrawn DA2018/1114, which commenced on 9 April 2019 and finishing on 26 April 2019. A total of eighteen (18) persons were notified.

Third Notification

The application was re-notified again due to an administrative error in the second notification, which commenced on 9 April 2019 and finishing on 5 May 2019. A total of eighteen (18) persons were notified.

As a result of the total public exhibition process, Council received twenty-three (23) individual submissions from the following persons:

Name:	Address:
Mr Ryan Paul Maloney	17 Cotentin Road BELROSE
Marcelo Maia Perlingeiro	3 Charleroi Road BELROSE
Mark Johnston	2 Neridah Avenue BELROSE
Lorraine Judith Lilley	14 Neridah Avenue BELROSE
Bruce Ronald Hellmers	17 Stratford Drive BELROSE
Mr David Vaughan Berry	22 Charleroi Road BELROSE
Miss Michele Simone Rook Duncan	12 Rodborough Road FRENCHS FOREST
Blake Marc	Not provided
Mr Kenneth Ernest Small	19 Stratford Drive BELROSE
Mr Colin William McKersie Brown	1 - 3 Linden Avenue BELROSE
Mrs Sandra Elizabeth Young Mr Geoffrey Charles Young	29 Aranda Drive DAVIDSON
Sharon Jewell	25 Stratford Drive BELROSE
Ms Clare Danielle McElroy	1 Wyatt Avenue BELROSE
Chris Walsh	Not provided
Barry Burton Yeomans Beverly Ann Yeomans	15 Wyatt Avenue BELROSE
Christine Carter	1494 Oxford Falls Road OXFORD FALLS
Mrs Leissa Gai Therese Dawson Mr John Edward Dawson	8 Stratford Drive BELROSE
Mrs Wendy Ruth Maloney	5 Seeana Place BELROSE
Ms Judith Ann Reisemann	15 Cotentin Road BELROSE
Joy Williams	

Name:	Address:
Mr Ronald John Patton Mrs Cynthia Joy Patton	19 Wyatt Avenue BELROSE
Belrose Rural Community Association Inc	Po Box 224 BELROSE WEST
Mr John Richard Holman	P.O Box 125 BELROSE (owner of 14 and 16 Wyatt Avenue BELROSE)

It is noted that in some cases, more than one email was provided from each property. These have been counted as one (1) submission.

The matters raised within the submissions are addressed as follows:

- Character (Low intensity, Low impact), Streetscape and Desired Future Character**

Comment: The proposal is considered to be low intensity and low impact for the reasons outlined in this report. This includes reasonable number of child places, suitable opening times, reasonable noise levels, good building design and adequate setbacks and landscape treatment of the site.
- Bushfire Prone Area and Inaccurate Mapping**

Comment: The proposal was referred to NSW Rural Fire Service (NSW RFS) who support the application subject to conditions. As such, the information and design provided in relation to the bushfire prone nature of the site is adequate.
- Child care centres already in the area, lack of need for an additional childcare centre**

Comment: The viability and community need for a child care centre in this location is not a valid planning consideration.
- Traffic and access issues; congestion; traffic during pick up hours**

Comment: Councils Traffic Officer has reviewed the application and has not raised concerns in this regard. It is noted that the traffic report states that drop off and pick up times will be variable and that this will satisfactorily spread the impact of traffic arising from this development.
- Parking and traffic safety**

Comment: The proposal complies with the parking requirements for child care centres under WLEP 2000. Council's Traffic Officer has also recommended conditions to ensure safety issues are suitably managed.
- Inconsistency with Council controls and policies**

Comment: The proposal is consistent with the applicable planning and other controls.

- ***Commercial development in residential area, Commercial development in semi rural area***

Comment: The site is suitable for use as a child care centre as by virtue of the proposals consistency with the desired future character envisaged for the area and the general principles of development control, particularly in relation to the size and scale of the development, its character and built form and the landscaping of the site.
- ***Operating hours, extension of hours operating as a result of caretaker dwelling***

Comment: The proposal complies with *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* in relation to hours of operation. Any consent would restrict use of the childcare centre to be within these hours. The ancillary caretaker dwelling would operate with the same intensity as surrounding dwellings.
- ***Excessive Noise***

Comment: Subject to recommendations from the Acoustic Report and conditions provided by Council's Environmental Health officer, the proposal would not have an unreasonable noise impact on nearby residential properties.
- ***Wildlife, landform and vegetation***

Comment: Council's Landscape Officer originally identified that trees will be impacted on the neighbouring property at 14 Wyatt Avenue due to the proposed stormwater works on the subject site, and raised objection to the proposal accordingly. However, a further review of the Arborists Report has satisfied the Landscape Officer that the stormwater works can be undertaken without adverse impacts on the trees. Additionally, the Bushland and Biodiversity Officer has reviewed the application and has not raised any issues in relation to wildlife and bushland generally.
- ***Suitability of the site, Inadequate size and location of the site and Overdevelopment of the site***

Comment: The assessment under the relevant sections of this report reveals the proposal is suitable and appropriate in this regard.
- ***Amenity impact, outdoor lighting spill, reduction of Sunlight to 14 Wyatt Avenue and Overlooking from habitable rooms***

Comment: As a result of the proposed setbacks to neighbouring land uses and the height, size and bulk and scale of the development, the proposal would not have any unreasonable amenity impacts (subject to conditions).
- ***Impacts during construction***

Comment: Suitable conditions could be imposed to prevent unreasonable impacts during construction.

- ***Inappropriateness of conditions recommended by Environmental Health, the application should be refused rather than approved with these conditions and Inappropriate requirements of Acoustic Report***

Comment: A restriction on the number of children in the outdoor play area is not uncommon for this type of development and is considered to be a reasonable condition and can be practically managed by the operators.
- ***Safety of children given the potential for a neighbouring boarding house and compatibility***

Comment: The proposal for a boarding house on the neighbouring property is not a matter for consideration in this application as the application was refused and there is no current DA or appeal in relation to the application that was refused.
- ***Caretakers dwelling is not ancillary and queries as to necessity of caretaker dwelling***

Comment: The caretakers residence is considered to be ancillary based on the proposal outlined in the application and design integration and connectivity of the residence with the child care centre. A suitable condition has been included in the draft set of conditions to ensure the caretakers residence is occupied in conjunction with the operations of the child care centre.
- ***Stormwater drainage***

Comment: The proposed stormwater design has been assessed and addresses the relevant requirements. Full details of the assessment of stormwater is provided in the referrals section and "C76 - Management of Stormwater" section of this report.
- ***Lack of public benefit to outweigh negative impacts***

Comment: The proposal will cater for the demand for childcare within the local community in a manner that satisfies the applicable planning and related requirements.
- ***Landscaping, problems with measurement of landscaping, lack of landscaping in front setback***

Comment: The landscape assessment reveals the quantum and quality of landscaping is satisfactory.
- ***Garbage collection***

Comment: Suitable conditions can be imposed in relation to garbage collection.
- ***Helicopter noise***

Comment: A search of Councils records has not found an approval for the use of the site as a helicopter facility, nor is one proposed as part of this application.

- **Visual impact of parking, inappropriate front setback given locality statement**

Comment: The open car parking area with a landscaped buffer to the front of the site would not result in any unreasonable visual impact. This is contributed to by the slope of the site and the complementary nature of the parking with the parking diagonally opposite at Wyatt Reserve.

- **Inadequate Survey**

Comment: An updated survey has been provided and this is sufficient for the assessment of the application.

- **Neighbouring school should not be a precedent**

Comment: The neighbouring school has not been used as a precedent in the assessment of this application, however it is part of the existing character of the C8 Locality and the proposal is deemed compatible with that land use.

- **Impact on bushland character of the locality**

Comment: The proposed bulk, scale, colours, materials and new landscaping will appropriately complement the bushland setting.

- **Lack of justification for the development, Invalid justification for the development**

Comment: The suitability of the site for the proposed development and how it addresses the planning controls for a Category 3 land use are addressed in this report and is found to demonstrate sufficient justification.

MEDIATION

Has mediation been requested by the objectors?	No
Has the applicant agreed to mediation?	N/A
Has mediation been conducted?	No

LAND AND ENVIRONMENT COURT ACTION

No Court Appeal had been lodged at the time of finalising this report.

REFERRALS

External Referrals

Rural Fire Services (NSW RFS)

A Bush Fire Safety Authority under Section 100B of the 'Rural Fires Act 1997' has been issued by the NSW RFS by letter dated 12 August 2019, which is included within the draft set of conditions.

Ausgrid

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

The following advice was received:

"Reference is made to the proposed development at the above area and Aboriginal heritage.

No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.

Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.

Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted."

A suitable condition is included within the draft set of conditions.

Internal Referrals**Building Assessment – Fire and Disability Upgrades Team**

The Building Assessment Team provided the following comments:

"The application proposes construction of a 60-place child care centre with attached caretakers residence and a car parking area for 16 vehicles on-site.

The proposal is capable of compliance with the Building Code of Australia with conditions."

Environmental Health Officer (Noise and Wastewater) Team

The Environmental Health Officer provided the following comments:

"The site is not currently connected to the mains sewer.

Connection to Sydney Water sewer located nearby is a reasonable assumption.

Environmental Health raise issue with noise. This was first raised as an issue on a previous DA. The current Noise Assessment makes a number of specific assumptions and recommendations.

Critically, there are 2 main points:

1. To achieve compliance, only 20 children can be allowed out into the main activity area at any one time. A noise barrier is required along the north-eastern side boundary, and across the rear boundary. This noise barrier needs to be 4.8 metres high, extending 30 metres along the north-eastern side boundary (from the northern corner), and 13.5 metres across the rear boundary (from the northern corner).

2. As well as the limit of twenty (20) children in the main external activity area, and the 4.8 metre high noise barrier to the far side boundary & rear boundary, I would recommend that there be a 1.2 metre high noise barrier along the south-western side of the external activity area from the child care centre to the rear boundary. This barrier can be glass or acrylic. Also:

*-any air conditioning units (if installed) should only be run during business hours.
-any external air conditioning or ventilation unit or units would need to be assessed for their acoustic impact, prior to installation and Noise Management Plan*

-Each childcare centre should have a Noise Management Plan wherever there is a potential to cause disturbance to neighbours. An example Noise Management Plan is attached as Appendix A.

Of particular note is the requirement of a 4.8 metre high acoustic barrier running a significant length; although located below a batter this amenity/design issue, and discolouration of acrylic over time, is for other departments to assess, however it is a specific noise barrier and the compliance or otherwise is dependent on this structure being installed.

Recommendation

APPROVAL - subject to conditions."

Environmental Health (Other) Team

The Environmental Health Officer provided the following comments:

Recommended for approval, subject to conditions.

Bushland and Biodiversity Team

The Bushland and Biodiversity Team provided the following comments:

"The proposed development has been assessed against the following provisions

- WLEP 2000 Clause 56 - Retaining distinctive environmental features on site*
- WLEP 2000 Clause 58 - Protection of existing flora*

- WDCP E1 - Preservation of Trees or Bushland
- WDCP E2 - Prescribed Vegetation
- WDCP E6 - Retaining unique environmental features
- NSW Threatened Species Conservation Act 1995 (now repealed)

The Flora and Fauna Assessment prepared by Travers Bushfire and Ecology in April 2017, and submitted to Council on 13 March 2019, was prepared in accordance with the now repealed Threatened Species Conservation Act 1995. All Development Applications submitted to Council after 25 February 2018 are required to be assessed under the Biodiversity Conservation Act 2016.

Council's Bushland and Biodiversity section acknowledges the outcome of the Flora and Fauna Assessment would not change at the time of this assessment, if updated and prepared under the Biodiversity Conservation Act 2016. A Biodiversity Development Assessment Report and subsequent potential biodiversity offset requirements, would not be required due to the following reasons:

- *the area clearing threshold would not be triggered by the proposed development*
- *the land is not mapped on the NSW Biodiversity Value Map (as accessed 29 May 2019)*
- *the proposal would not trigger a significant impact on threatened biodiversity under Section 7.3 of the Biodiversity Conservation Act 2016.*

It is also understood Serious and Irreversible Impacts (SAIIs) to candidate threatened species would not be applicable to this Development Application. It is understood that a number of trees will require removal to facilitate the development, as described in the Statement of Environmental Effect prepared by Boston Blyth Fleming Pty Ltd, June 2018. It is acknowledged that no arborist report has been submitted with this Development Application to assess the impact of the proposal on trees to be removed and those trees to be retained.

*Nearby areas include bushland of high conservation value including occurrences of the Critically Endangered plant species, *Grevillea caleyi*. According to the *Grevillea caleyi* Recovery Plan, this species is prone to hybridisation with *Grevillea* cultivars such as those proposed in the Landscape Plan Revision G, prepared by Concept Landscape Architects June 2018.*

Conditions of consent have been provided accordingly."

Development Engineering Team

The Development Engineering Team provided the following comments:

Original Assessment - *Reference is made to Development Engineering Referral Responses dated 02/04/19 and 20/5/19 and the meeting held at Council on 4/6/19. It is understood that the additional information provided by the Applicant to address matters relating to the proposed drainage easement for the*

development only. Previous Development Engineering advice is still to be addressed and is attached below for reference.

Drainage Easement - As previously advised, the minimum easement width across the proposed pipeline is to be 3.0m and shall be amended on the submitted plans.

All retaining structures on the eastern side of the easement shall be relocated to be clear of the easement extent. This will require adjustment to the driveway and carparking layout. Any structures adjoining the easement shall be designed clear of the zone of influence in accordance with Council's Building Over or Adjacent to Constructed Council Drainage Easements Technical Specification.

It is understood that proposed OSD basin will be relocated as per previous advice. Please note that top water levels (TWL) as indicated have not been verified as no supporting information or modelling has been submitted to date.

Previous Advice:

Reference is made to Development Engineering Referral Response dated 02/04/19 and additional information provided by the Applicant.

External Works - The long sections provided for the proposed driveway indicate that the centreline of Wyatt Avenue is proposed to be raised. The existing level of the road centreline should be maintained and internal levels adjusted to suit, in order to minimise works within the road reserve.

Council's Stormwater Infrastructure - As previously advised, stormwater from Wyatt Avenue shall discharge within the extent of the western end of the existing easement. The current Stormwater Drainage Plan shows the rip rap rock outlet outside the extent of the existing easement. This outlet structure shall be relocated further south to be contained wholly within the easement extent.

The minimum easement width across the proposed pipeline is to be 3.0m and shall be amended on the submitted plans. The proposed OSD basin shall be relocated clear of the easement.

A HGL analysis for the proposed road drainage has not been provided. A DRAINS model shall be provided for the road drainage design, including consideration to appropriate blockage factors, to determine the capacity of the system. It shall be demonstrated that any overland flows in the 100-year ARI are safely conveyed to the drainage easement. Cross-sectional information has not been provided across the proposed drainage easement, including detail of the swale, any fencing, walls and/or batters. Cross-sections should also be provided within the road reserve.

Additional survey detail should be provided within Wyatt Avenue, particularly west of the site to adequately address the above.

Stormwater - The matter raised regarding the provision of a level spreader system for stormwater discharge from the development was not clearly addressed. The level spreader system shall be relocated to the rear of the

proposed development and not to discharge to the drainage easement. This may require the relocation of the proposed OSD basin. The easement along the western boundary shall only accommodate flows from Wyatt Avenue.

As previously advised, total stormwater discharge from the level spreader including bypass and controlled flows shall be limited to the 1 in 5 year ARI "state of nature" (0% impervious) storm event, for all storm events up to and including the 100-year ARI. This has still not been demonstrated.

Overland Flow - The Applicant has assumed 100% of stormwater within Wyatt Avenue is captured in the new pit and pipe system without any supporting information. A DRAINS model shall be provided for the proposed road drainage design, including consideration to appropriate blockage factors, to determine the capacity of the system. It shall be demonstrated that any overland flows in the 100-year ARI are safely conveyed to the drainage easement.

Additional survey detail should be provided within Wyatt Avenue, particularly west of the site to adequately address the above.

It is recommended that the Applicant's engineer contact Development Engineering discuss the above matters.

Note to Planner: - It has been raised in a submission that the survey plan lodged with the DA was undertaken in 2007. It is considered that the information should be updated and further survey information provided (as noted above).

- The proposed application cannot be supported by Development Engineering due to lack of information to address:*
- Stormwater drainage and overland flows for the development in accordance with clause C4 Stormwater.*
- Council's stormwater infrastructure relocation in accordance with clause C6 Building Over or Adjacent to Constructed Council Drainage Easements.*

Assessment of Additional Information

Further assessment (dated 28 August 2019), has included a review of the latest documentation submitted and a site visit. The requested post development overland flow report has not been submitted as requested. However, it was considered that this matter can be condition to be submitted prior to the issue of any Construction Certificate."

Riparian Lands and Creeks Team

The riparian Lands and Creeks Team provided the following comments:

Recommended for approval, subject to conditions.

Landscape Assessment Team

The Landscape Assessment Team provided the following comments:

Final Amended Comments 2/10/2019

The original DA plans did not include the removal of trees on the adjoining properties (14 Wyatt Avenue to the west and 10 Wyatt Avenue to the east), however the amended plans indicate trees to be removed on both adjoining lots.

No owners consent was provided with the amended plans authorising such tree removal on adjoining properties. However, it is noted that the updated Arborist's Report submitted with the amended plans addresses the issue of tunnel boring to retain the trees.

Suitable conditions are included in the draft set of conditions that no trees are approved for removal on adjoining properties.

Traffic Management Team

The Traffic Management Team provided the following comments:

"The revised proposal addresses previous concerns with respect to the following:

Pedestrian access – Line marking to indicate pedestrian desire lines from the footpath off Wyatt Road, and parking spaces to the footpath fronting the childcare centre.

Servicing – Loading bay provided in the car park

Parking – Car park layout in accordance with AS 2890.1:2004.

Traffic – Traffic generation negligible

Driveway Access

The Traffic Report acknowledges that the proposed driveway is located directly opposite the junction of Wyatt Avenue and Contentin Road, and within the prohibited zone specified by Figure 3.1 of AS2890.1-2004.

Drawing No. a8101 shows a reference line on the southern arm of Wyatt Avenue where it meets Contentin Road and 500mm wide median strip.

Noting the location of the driveway access to the intersection with Contentin Road.

Council recommends that the traffic priorities at the intersection be changed so that a 'Give Way' controls be installed where the plan shows a 'reference line' so that vehicles travelling north along Wyatt Avenue 'Give Way' to all traffic travelling through the intersection.

It is also recommended that the 500mm wide median strip shown along the centre of Wyatt Avenue (extending across the entire driveway access) only extend to the centre of the driveway access to allow vehicle to allow southbound vehicles to turn right into the driveway to the childcare centre instead of forcing all vehicles to do a U-turn further down the street.

Both of these conditions should be included prior to occupation along with the previous required condition (as below).

Condition for prior to occupation certificate - Construction of footpath, kerb and gutter

Footpath, kerb and guttering shall be constructed at cost of the applicant from its boundary with No.14.

Wyatt Avenue connecting to the existing footpath, kerb and guttering outside No. 10 Wyatt Avenue. The footpath, kerb and guttering shall be consistent with the existing and to comply with the Council's development engineers requirements.

Reason: Connectivity of the site to the existing footpath"

Waste Management Team

The Waste Management Team provided the following comments:

Recommended for approval, subject to conditions.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no Draft Environmental Planning Instruments applying to this site or proposal.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2000 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter has been address via a condition of consent. Clause 54 and 109 of the EPA Regulations 2000, Council requested additional information in relation to an updated survey and amended design for stormwater.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built	(i) The environmental impacts of the proposed development on the natural and built environment are addressed

Section 4.15 'Matters for Consideration'	Comments
environment and social and economic impacts in the locality	under the General Principles of Development Control in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) 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 suitable for the proposed child care facility for the following reasons: • The subject site is surrounded by a variety of uses including dwellings houses, a school, and a sports oval. These uses are compatible with a child care centre in that amenity impacts and use times will be similar to the surrounding uses, subject to conditions. • A historical search of Councils records, including of the subject site and surrounding sites, has found that no uses which provided unreasonable opportunity for evidence of environmental contamination or hazardous material. • The proposal is on a land which adjoins residential dwellings. The size of the land, being 2412m², and configuration of the lots, allows for sufficient spatial separation between the proposed centre, the neighbours and the public space. This will sufficiently ameliorate the overall impacts of such a use. • The proposal provides a car park to the front of the site with 15 spaces to comply with the requirement for the number of spaces under Schedule 17 of WLEP 2000. Along with the loading and turning bay, this provides for appropriate drop off and pick up areas. Furthermore, there are a number of on street car parking areas within close vicinity to the subject site. • The road conditions in front of the site and nearby in Wyatt Avenue are appropriate for the use.

Section 4.15 'Matters for Consideration'	Comments
	The subject site is not located in close proximity to any use that would be an incompatible use.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen that would justify the refusal of the application in the public interest.

ENVIRONMENTAL PLANNING INSTRUMENTS:

Warringah Local Environmental Plan 2011 (“Deferred Matter”)

The subject site falls within the area designated as a ‘deferred matter’ which is subject to future zoning considerations by the *NSW Department of Planning*. Previous advice from the Department applies and Council has not been informed of any zoning change that has become recently “imminent or certain” for the future incorporation of the subject land into Warringah LEP 2011.

Therefore, for the purposes of this assessment, no further consideration of the provisions of WLEP 2011 is required.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI’s)

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy No 55 – Remediation of Land

SEPP Educational Establishments and Child Care Facilities 2017

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

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

As previously outlined, this Development Application seeks development consent for the construction of a childcare centre and ancillary caretaker residence.

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

DESIGN QUALITY PRINCIPLES

Principle 1: Context

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

Well-designed childcare facilities respond to and enhance the qualities and identity of the area including adjacent sites, streetscapes and neighbourhood.

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

Comment: The proposed child care centre and ancillary caretaker residence provides for a streetscape presentation, overall built form and integration of landscaping that is appropriate given the context of the area. The context is formed by a mix of one-two storey residential development, bushland, a nearby school and a nearby sports ground. In particular, this forms a character with sense of openness at site frontages including vegetation buffers, and carparking along the frontage of Wyatt Reserve (diagonally opposite the subject site).

The subject site includes a 10 metre wide landscape buffer at the front of the site, and a significant setback (29m) of the two storey built from the street. Along with the integration of carparking in this area, the design provides a both functional and visually appropriate outcome given the context of the area.

Principle 2: Built Form

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

Good design achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Good design also uses a variety of materials, colours and textures.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

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

Comment: The proposal involves a built form that is compliant with the building height control, is well modulated at each side elevation and is setback 29 metres from Wyatt Avenue. This design provides a form in which the presentation of bulk from the public space is both minimised and sufficiently integrated with landscaping.

The proposal also provides an array of colours, material and textures which is visually pleasing and complements the context of the area. This includes a multi-coloured timber façade that matches and complements natural colours in the surrounding area.

Principle 3: Adaptive Learning Spaces

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

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

Comment: The proposal involves separate activity rooms, and separate outdoor play areas to cater for different ages within the centre. This results in appropriate opportunity for different modes of learning, technology, interaction and allows for a variety of settings.

Principle 4: Sustainability

Sustainable design combines positive environmental, social and economic outcomes.

This includes use of natural cross ventilation, sunlight and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and re-use of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

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

Comment: The proposed development achieves a suitable level of sustainability and internal amenity. This is contributed to by appropriate openings which surround the built form, allowing for cross ventilation, sunlight and passive thermal design. Additionally, the siting provides an appropriate balance for access to and protection from sunlight.

Principle 5: Landscape

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

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

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Comment: The proposal involves a landscaped buffer that surrounds the built form and car parking on the site. Furthermore, the outdoor play area is surrounded by a landscaped area and this design provides appropriate amenity for the use of the area. The landscaping surrounding the building, along with the outdoor play area which has a colour to complement the landscaping, provides an appropriate visual outcome for the site. Overall, the landscaping that surrounds each feature of the development results in a design that is appropriate for the use and area.

Principle 6: Amenity

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

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

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

Comment: The proposal provides an orientation of the building and location of the outdoor play areas that is well separated from the neighbouring dwellings. Along with the access to sunlight to the rear, including to the outdoor play area, this contributes to an adequate amenity outcome for the site.

Principle 7: Safety

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

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

Comment: The proposed development is appropriately designed to achieve safety and security on the site. This is a result of the numerous areas which are open to allow for passive surveillance but also have the ability to be closed from the rest of the site and public space for safety.

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

Objectives	Criteria/Guidelines	Comments
3.1 Site selection and location		

C1 To ensure that appropriate zone considerations are assessed when selecting a site	For proposed developments in or adjacent to a residential zone, consider: • the acoustic and privacy impacts of the proposed development on the residential properties • the setbacks and siting of buildings within the residential context • traffic and parking impacts of the proposal on residential amenity.	Complies The proposed Childcare Centre and ancillary caretaker dwelling is situated in an area that is characterised by landscaped space, detached style housing, and generally low intensity, low impact uses. The proposed child care centre will be consistent with this character and will also be a low intensity and low impact use. This is as a result of considered design for privacy and a restriction on child numbers, hours of operation and traffic. The design for privacy involves orientation of high usage areas away from neighbouring dwellings as well as a sufficient physical separation between the proposed centre and neighbouring properties. Furthermore, the development provides numerous areas for different ages of children so that intensity of the usage can be spread effectively across the site. Conditions are also recommended for noise barriers to be constructed and restrictions to be made on numbers of children to use the outdoor area at any one time. A traffic and parking report was submitted with the application to support the increase in children numbers and additional parking spaces. Councils Traffic Engineers have reviewed the application and raise no concerns and have provided suitable conditions.
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C2 To ensure that the site selected for a proposed child care facility is suitable for the use	When selecting a site, ensure that: • the location and surrounding uses are compatible with the proposed development or use • the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards • there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed. • the characteristics of the site are suitable proposed having regard: -size of street frontage, lot configuration, dimensions and overall site area -number of shared boundaries with residential properties -the development will not have adverse impact on the surroundings -the development will not have adverse environmental impacts on the surrounding particularly in sensitive and environmental cultural areas • where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use • there are suitable drop off and pick up areas, and off and on street parking • the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use • it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises.	Complies The site is suitable for the proposed child care facility for the following reasons: • The subject site is surrounded by a variety of uses including dwelling houses, a school, and a sports oval. These uses are compatible with a child care centre in that amenity impacts and use times will be similar to the surrounding uses, subject to conditions. • A historical search of Councils records, including of the subject site and surrounding sites has found that no uses have taken place or activities carried out which indicate any evidence of environmental contamination or hazardous material. • The proposal is on a land which adjoins residential dwellings. The size of the land (2412m²) and configuration of the lots, allows for sufficient physical separation between the center, neighbours and the public space. This will sufficiently minimise overall impact. • The proposal provides a car parking area to the front of the site with 15 spaces to comply with the requirement for number of spaces under Schedule 17 of WLEP 2000. Along with the loading and turning bay, this provides for adequate drop off and pick up areas. Furthermore, there are a number of on-street car parking areas within close vicinity to the subject site. • The road conditions and network adjoining Wyatt Avenue is appropriate for the use. • The subject site is not located in close proximity to any use that would be an incompatible use.
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C3 To ensure that sites for child care facilities are appropriately located.	A child care facility should be located: • near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship • near or within employment areas, town centres, business centres, shops • with access to public transport including rail, buses, ferries • in areas with pedestrian connectivity to the local community, businesses, shops, services and the like.	Complies The proposed child care facility is located in an area that has the following features: • A school, open space and a sports park existing within Wyatt Avenue. • The proposal is located within close vicinity (within 3 kilometres along Forest Way) to 'Belrose Super Centre' which business centre with various existing employment opportunity for employment. • The site is located close to numerous bus stops along Wyatt Avenue and Forest Way. • The subject site has a footpath opposite which runs along Cotentin Avenue and reaches a shopping area named 'Belrose Service Centre.' This is within a kilometre.
C4 To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazards.	A child care facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from: • proximity to: - heavy or hazardous industry, waste transfer depots or landfill sites - LPG tanks or service stations - water cooling and water warming systems - odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses - extractive industries, intensive agriculture, agricultural spraying activities • any other identified environmental hazard or risk relevant to the site and/ or existing buildings within the site.	A search of Councils records, a site visit, and evidence provided by the applicant has identified not evidence of adverse environmental conditions. Council's Environmental Officers also reviewed the application and raise no concerns and have provided conditions.
3.2 Local character, streetscape and the public domain		

C5 To ensure that the child care facility is compatible with the local character and surrounding streetscape	The proposed development should: • contribute to the local area by being designed in character with the locality and existing streetscape • reflect the predominant form of surrounding land uses, particularly in low density residential areas • recognise predominant streetscape qualities, such as building form, scale, materials and colours • include design and architectural treatments that respond to and integrate with the existing streetscape • use landscaping to positively contribute to the streetscape and neighbouring amenity • integrate car parking into the building and site landscaping design in residential areas.	Complies The design and siting of the development complements the existing character and desired future character of the area. The design and siting involves landscaping that surrounds the built form and car parking areas, a built form which is under the building height limit and that is well articulated and modulated, and materials that blend with the natural environment. The proposed development will adequately integrate into the surrounding area and complement the style of surrounding dwellings.
C6, C7, C8 To ensure clear delineation between the child care facility and public spaces	Create a threshold with a clear transition between public and private realms, including: • fencing to ensure safety for children entering and leaving the facility • windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community • Integrating existing and proposed landscaping with fencing.	Complies A clear transition between the centre and public space is formed through fencing, clear separation of areas on site and a landscaped buffer, which surrounds the development.

	On sites with multiple buildings and/or entries, pedestrian entries and spaces associated with the child care facility should be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.	Complies The proposed childcare centre and ancillary caretaker dwelling are clearly delineated as a result of being at different levels and having separate access points. Along with the varying colours and materials, this provides for appropriate legibility for children and visitors.
	Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions: • clearly defined street access, pedestrian paths and building entries • low fences and planting which delineate communal/ private open space from adjoining public open space • minimal use of blank walls and high fences.	Not applicable.
C9, C10 To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.	Front fences and walls within the front setback should be constructed of visually permeable materials and treatments.	Complies A condition has been imposed to ensure the front fence is of a visually permeable design.
	Where the site is listed as a heritage item, adjacent to a heritage item or within a conservation area front fencing should be designed in accordance with local heritage provisions.	
	High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary	A condition has been imposed to ensure acoustic fencing meets these requirements.
3.3 Building orientation, envelope and design		
C11 To respond to the streetscape and site, while optimising solar access and opportunities for shade	Orient a development on a site and design the building layout to: • ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: - facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties - placing play equipment away from common boundaries with residential	Complies The proposed new childcare involves an orientation and design that appropriately responds to the streetscape in the following ways (while optimizing solar access and opportunity for shade): • The siting of the childcare centre is well separated from neighbouring dwellings. Along

	properties - locating outdoor play areas away from residential dwellings and other sensitive uses • optimise solar access to internal and external play areas • avoid overshadowing of adjoining residential properties • minimise cut and fill • ensure buildings along the street frontage define the street by facing it • ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions.	with this, the windows and play areas are generally orientated away from neighbouring living spaces. • The external and undercover play areas are located toward the north of the site and this allows for optimal sunlight. • The proposed works are predominantly above ground so as to adequately minimise cut and fill. • The childcare centre faces Wyatt Avenue to assist in appropriately defining the street. • The outdoor play area is on two sides of the building and has a section of covered area. This allows for the building and covering to adequately screen and protect from varying climatic conditions.
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C12 To ensure that the scale of the child care facility is compatible with adjoining development and the impact on adjoining buildings is minimised	The following matters may be considered to minimise the impacts of the proposal on local character: • building height should be consistent with other buildings in the locality • building height should respond to the scale and character of the street • setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility • setbacks should provide adequate access for building maintenance • setbacks to the street should be consistent with the existing character.	Complies The design adequately minimises the impacts of the proposal on local character in the following ways: • The proposed building height complies with the standard and is consistent with that of a two storey dwelling. This is complementary with the area. • Along of the articulation of the building, the landscaped buffers and the physical separation of the centre away from neighbouring living spaces, the proposed setbacks provide for an appropriate level of privacy.
C13, C14 To ensure that setbacks from the boundary of a child care facility are consistent with the predominant development within the immediate context	Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use. On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.	Complies The front setback from the road to the child care facility is 29.25m. This is satisfactory given the visual presentation in the street and the lack of impact on neighboring properties. It is noted that there are not any comparable lots (in terms of configuration) that contain development that form a context or precedent for a front building line. Not applicable.

C15 To ensure that the built form, articulation and scale of development relates to its context and buildings are well designed to contribute to an area's character	The built form of the development should contribute to the character of the local area, including how it: • respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage • contributes to the identity of the place • retains and reinforces existing built form and vegetation where significant • considers heritage within the local neighbourhood including identified heritage items and conservation areas • responds to its natural environment including local landscape setting and climate • contributes to the identity of place.	Complies The proposal demonstrates articulation, bulk and scale that is consistent within the local area. The development on the site suitably relates to the context of the site and the character of the area through colours, materials and landscaping that complements the landscape setting.
C16 To ensure that buildings are designed to create safe environments for all users	Entry to the facility should be limited to one secure point which is: • located to allow ease of access, particularly for pedestrians • directly accessible from the street where possible • directly visible from the street frontage • easily monitored through natural or camera surveillance • not accessed through an outdoor play area. • in a mixed-use development, clearly defined and separate from entrances to other uses in the building.	Complies The facility allows for ease of access directly from Wyatt Avenue. The entry is clearly visible from the street frontage, and can be simply monitored through natural or camera surveillance. The facility is not accessed through an outdoor play area. Overall, the design provides a safe environment for all users.

C17 To ensure that child care facilities are designed to be accessible by all potential users	Accessible design can be achieved by: • providing accessibility to and within the building in accordance with all relevant legislation • linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry • providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible • minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath. NOTE: The National Construction Code, the Discrimination Disability Act 1992 and the Disability (Access to Premises – Buildings) Standards 2010 set out the requirements for access to buildings for people with disabilities.	Complies The centre provides access from the Wyatt Avenue to the built form and to the carpark areas. This is accessible by all potential users.
3.4 Landscaping		
C18, C19 To provide landscape design that contributes to the streetscape and amenity	Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space. Use the existing landscape where feasible to provide a high quality landscaped area by: • reflecting and reinforcing the local context • incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping.	Complies The proposal involves landscaping that surrounds the childcare centre and car park. Existing landscape features to the north-western corner are maintained to contribute to a high quality of area and conditions are provided to ensure an adequate outcome for planting and landscaping.

	Incorporate car parking into the landscape design of the site by: • planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings • taking into account streetscape, local character and context when siting car parking areas within the front setback • using low level landscaping to soften and screen parking areas.	Complies The proposed car park has a significant landscape setback to the street. This is an appropriate incorporation into the design and will be further improved through conditions for low level planting in this area.
3.5 Visual and acoustic privacy		
C20, C21 To protect the privacy and security of children attending the facility	Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.	Complies The proposed balcony is located toward the front of the building and does not directly overlook or overhang the outdoor play area.
	Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through: • appropriate site and building layout • suitably locating pathways, windows and doors • permanent screening and landscape design.	Complies The indoor rooms are well separated and screened to appropriately restrict visibility from the street.
C22 To minimise impacts on privacy of adjoining properties	Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through: • appropriate site and building layout • suitable location of pathways, windows and doors • landscape design and screening.	Complies The proposal will not result in any unreasonable direct overlooking as a result of adequate physical separation between spaces.

C23, C24 To minimise the impact of child care facilities on the acoustic privacy of neighbouring residential developments	A new development, or development that includes alterations to more than 50 percent of the existing floor area, and is located adjacent to residential accommodation should: • provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence). • ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure.	Complies The proposal involves the installation of a 4.8m high acoustic barrier (measured from the level of the Outdoor Play Area) on the common boundaries with No. 10 Wyatt Avenue, to protect the acoustic amenity of that adjoining dwelling-house as follows: <u>Eastern (side) Boundary</u> 30m long section comprising a 3.0m high lapped and capped timber fence topped with a 1.8m section of acrylic screen. <u>Northern (rear) Boundary</u> 13.78m long section comprising a 1.8m high lapped and capped timber fence topped with a 1.18m section of acrylic screen. The visual impact of the acoustic barriers will be mitigated by the level differences between the subject site and the adjoining property at No. 10 Wyatt Avenue and existing vegetation screening. The proposal also involves an acoustic barrier on the western side of the Outdoor Play Area to protect the nearby dwelling-house on the property at 16 Wyatt Avenue, as follows: <u>Western Side of Outdoor Play Area</u> 20m long overall section (made up of multiple sections) comprising a 1.2m high acrylic screen.
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	A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters: • identify an appropriate noise level for a child care facility located in residential and other zones • determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use • determine the appropriate height of any acoustic fence to enable the noise criteria to be met.	Complies The proposal is supported by an Acoustic Assessment Report by BGMA Pty LTD and is consistent with these requirements (see above proposed acoustic barriers). The recommendations within the Acoustic Assessment Report have been included within the draft set of conditions.
3.6 Noise and air pollution		
C25 & C26 To ensure outside noise levels on the facility are minimised to acceptable levels.	Adopt design solutions to minimise the impacts of noise, such as: • creating physical separation between buildings and the noise source • orienting the facility perpendicular to the noise source and where possible buffered by other uses • using landscaping to reduce the perception of noise • limiting the number and size of openings facing noise sources • using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens) • using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits • locating cot rooms, sleeping areas and play areas away from external noise sources	Complies The proposed childcare centre involves adequate physical separation to adjoining/surrounding dwellings, and provides numerous areas for use on site. This ensures that the intensity of the use is well distributed across the site so as to be sufficiently minimised (or low intensity). Additionally, the recommendations within the Acoustic Assessment Report by BGMA Pty LTD will minimise noise transmissions/sources (this could also be conditioned). Subject to conditions, noise barriers and restriction on the use of the outdoor area would also be implemented.
	An acoustic report should identify appropriate noise levels for sleeping areas and other non-play areas and examine impacts and noise attenuation measures where a child care facility is proposed in any of the following locations:	Complies The proposal is supported by an Acoustic Assessment Report by BGMA Pty LTD in response to this requirement.

	• on industrial zoned land • where the ANEF contour is between 20 and 25, consistent with AS 2021 – 2000 • along a railway or mass transit corridor, as defined by State Environmental Planning Policy (Infrastructure) 2007 • on a major or busy road • other land that is impacted by substantial external noise.	The recommendations within the Acoustic Assessment Report have been included within the draft set of conditions.
C27 & 28 To ensure air quality is acceptable where child care facilities are proposed close to external sources of air pollution such as major roads and industrial development	Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.	Complies The siting is sufficiently separated from any major road or industrial area.
	A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed child care facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines. The air quality assessment report should evaluate design considerations to minimise air pollution such as: • creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution • using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway • incorporating ventilation design into the design of the facility.	
3.7 Hours of operation		

C29, C30 To minimise the impact of the child care facility on the amenity of neighbouring residential developments	Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non- residential land uses.	Complies The proposed hours of operation are 7.00am-6:30pm weekdays.
	Within mixed use areas or predominantly commercial areas, the hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.	Not applicable
3.8 Traffic, parking and pedestrian circulation		
C31, C32, C33 To provide parking that satisfies the needs of users and demand generated by the centre	Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land. Where a Development Control Plan does not specify car parking rates, off street car parking should be provided at the following rates: Within 400 metres of a metropolitan train station: • 1 space per 10 children • 1 space per 2 staff. Staff parking may be stack or tandem parking with no more than 2 spaces in each tandem space. In other areas: • 1 space per 4 children.	Complies Schedule 17 of the WLEP 2000 requires 15 car parking spaces for this development type. The proposal provides 15 spaces.

	A reduction in car parking rates may be considered where: • the proposal is an adaptive re-use of a heritage item • the site is in a B8 Metropolitan Zone or other high density business or residential zone • the site is in proximity to high frequency and well connected public transport • the site is co-located or in proximity to other uses where parking is appropriately provided (for example business centres, schools, public open space, car parks) • there is sufficient on street parking available at appropriate times within proximity of the site.	
	In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high levels of vehicle movement or potential conflicts with trucks and large vehicles	Not applicable
	A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that: • the amenity of the surrounding area will not be affected • there will be no impacts on the safe operation of the surrounding road network.	Complies The Traffic and Parking Report has sufficiently demonstrated that the proposal will not result in unreasonable amenity or traffic safety impacts in the locality. Councils Traffic Engineer has reviewed the Traffic Report submitted with the application and is satisfied that the proposal will result in a safe outcome, subject to conditions.

C34, C35 To provide vehicle access from the street in a safe environment that does not disrupt traffic flows	Alternate vehicular access should be provided where child care facilities are on sites fronting: • a classified road • roads which carry freight traffic or transport dangerous goods or hazardous materials. The alternate access must have regard to: • the prevailing traffic conditions • pedestrian and vehicle safety including bicycle movements • the likely impact of the development on traffic.	Not applicable.
	Child care facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.	Not applicable.
C36, C37, C38 To provide a safe and connected environment for pedestrians both on and around the site	The following design solutions may be incorporated into a development to help provide a safe pedestrian environment: • separate pedestrian access from the car park to the facility • defined pedestrian crossings included within large car parking areas • separate pedestrian and vehicle entries from the street for parents, children and visitors • pedestrian paths that enable two prams to pass each other • delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities	Complies The pedestrian access is of a suitable design to ensure a safe pedestrian environment. This is enabled through the following design solutions: • a defined pedestrian crossing through the middle of the car park • a loading and turning bay located away from the main entry • ability for vehicles to enter and leave in a forward direction

	• in commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas • vehicles can enter and leave the site in a forward direction.	
	Mixed use developments should include: • driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by trucks • drop off and pick up zones that are exclusively available for use during the facility's operating hours with spaces clearly marked accordingly, close to the main entrance and preferably at the same floor level. Alternatively, direct access should avoid crossing driveways or maneuvering areas used by vehicles accessing other parts of the site • parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility.	A separate car park is provided for the ancillary caretaker dwelling so as to sufficiently minimise demand for parking.
	Car parking design should: • include a child safe fence to separate car parking areas from the building entrance and play areas • provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards • include wheelchair and pram accessible parking.	Complies The parking is suitable to service the facility and includes a disabled parking space near the entrance of the childcare centre.

APPLYING THE NATIONAL REGULATIONS TO DEVELOPMENT PROPOSALS

Regulation	Design Guidance	Comments
4.1 Indoor space requirements		

Regulation 107 Education and Care Services National Regulation Every child being educated and cared for in facility must have a minimum of 3.25m² of unencumbered indoor space. If this requirement is not met, the concurrence of the regulatory authority is required under the SEPP.	<i>The proposed development includes at least 3.25 square metres of unencumbered indoor space for each child.</i>	Complies The proposal is for a childcare centre with 60 children. As such, the minimum requirement for total unencumbered indoor space is 195m². The proposal involves the following: <u>Unencumbered Areas</u> (i) Activity room 1 (12 Children) 39sqm (ii) Activity room 2 (8 Children) 26sqm (iii) Activity room 3 (20 Children) 65sqm (iii) Activity room 4 (20 Children) 65sqm (iv) Outdoor covered area 76sqm Total Unencumbered: 271sqm
	<i>Storage</i> <i>-0.3m³ per child of external storage space</i> <i>-0.2m³ per child of external storage space</i>	Complies A height is not proposed for the outdoor storage shed. In lieu of this, a condition can be imposed to ensure the proposal complies with the storage requirement. The requirement for internal storage for 60 children is 12m³. The proposal involves 16.5m³ of indoor storage space.

4.2 Laundry and hygiene facilities Regulation 106 Education and Care Services National Regulations There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children. Child care facilities must also comply with the requirements for laundry facilities that are contained in the National Construction Code.	Laundry and hygiene facilities are a key consideration for education and care service premises. The type of laundry facilities provided must be appropriate to the age of children accommodated. On site laundry On site laundry facilities should contain: • a washer or washers capable of dealing with the heavy requirements of the facility • a dryer • laundry sinks • adequate storage for soiled items prior to cleaning • an on site laundry cannot be calculated as usable unencumbered play space for children (refer to Figure 2). External laundry service A facility that does not contain on site laundry facilities must make external laundering arrangements. Any external laundry facility providing services to the facility needs to comply with any relevant Australian Standards.	Complies The proposal includes laundry facilities that of an adequate size to service the facility.
4.3 Toilet and Hygiene facilities Regulation 109 Education and Care Services National Regulation A service must ensure that adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children.	The proposed development includes adequate, developmentally and age appropriate toilet, washing and drying facilities for use by children being educated and cared for by the service. Toilet and hygiene facilities should be designed to maintain the amenity and dignity of the occupants. Design considerations could include: • junior toilet pans, low level sinks and hand drying facilities for children • a sink and handwashing facilities in all bathrooms for adults • direct access from both activity rooms and outdoor play areas • windows into bathrooms and cubicles without doors to allow	Complies The proposal provides suitable toilet facilities to each of the playrooms within the childcare centre.

Child care facilities must comply with the requirements for sanitary facilities that are contained in the National Construction Code.	supervision by staff external windows in locations that prevent observation from neighbouring properties or from side boundaries	
4.4 Ventilation and natural light Regulation 110 Education and Care Services National Regulation Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children. Child care facilities must comply with the light and ventilation and minimum ceiling height requirements of the <i>National Construction Code</i>. Ceiling height requirements may be affected by the capacity of the facility.	Ventilation Good ventilation can be achieved through a mixture of natural cross ventilation and air conditioning. Encouraging natural ventilation is the basis of sustainable design; however, there will be circumstances where mechanical ventilation will be essential to creating ambient temperatures within a facility. To achieve adequate natural ventilation, the design of the child care facilities must address the orientation of the building, the configuration of rooms and the external building envelope, with natural air flow generally reducing the deeper a building becomes. It is recommended that child care facilities ensure natural ventilation is available to each indoor activity room. Natural light Solar and daylight access reduces reliance on artificial lighting and heating, improves energy efficiency and creates comfortable learning environments through pleasant conditions. Natural light contributes to a sense of well-being, is important to the development of children and improves service outcomes. Daylight and solar access changes with the time of day, seasons and weather conditions. When designing child care facilities consideration should be given to: • providing windows facing different orientations • using skylights as appropriate • ceiling heights. Designers should aim to minimise the need for artificial lighting during the day, especially in circumstances where room depth exceeds ceiling height by 2.5 times. It is recommended that ceiling heights be proportional to the room size, which can be achieved using raked ceilings and exposed trusses, creating a sense of space and visual interest.	Complies The proposal demonstrates that access to natural light and ventilation within the facility is achieved through various openings and varied orients for each area. The proposed development includes indoor spaces to be used by children that: • will be well ventilated; and • will have adequate natural light; and • can be maintained at a temperature that ensures the safety and well-being of children.

4.5 Administrative space Regulation 111 Education and Care Services National Regulation A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.	Design considerations could include closing doors for privacy and glass partitions to ensure supervision. When designing administrative spaces, consideration should be given to functions which can share spaces and those which cannot. Sound proofing of meeting rooms may be appropriate where they are located adjacent to public areas, or in large rooms where sound can easily travel. Administrative spaces should be designed to ensure equitable use by parents and children at the facility. A reception desk may be designed to have a portion of it at a lower level for children or people in a wheel chair.	Complies The proposed childcare facility includes a dedicated office and meeting room in close proximity to the entrance.
4.6 Nappy change facilities Regulation 112 Education and Care Services National Regulations	In circumstances where nappy change facilities must be provided, design considerations could include: • properly constructed nappy changing bench or benches • a bench type baby bath within one metre from the nappy change bench • the provision of hand cleansing facilities for adults in the immediate vicinity of the nappy change area • a space to store steps • positioning to enable supervision of the activity and play areas.	Complies The proposed childcare centre additions will include adequate nappy change facilities and appropriate hand cleansing facilities.
4.7 Premises designed to facilitate supervision Regulation 115 Education and Care Services National Regulations	Design considerations should include: • solid walls in children's toilet cubicles (but no doors) to provide dignity whilst enabling supervision • locating windows into bathrooms or nappy change areas away from view of visitors to the facility, the public or neighbouring properties • avoiding room layouts with hidden corners where supervision is poor, or multi room activity rooms for single groups of children • avoiding multi-level rooms which compromise, or require additional staffing, to ensure proper supervision. If multilevel spaces are proposed, consideration should be given to providing areas that can be closed off and used only under supervision for controlled activities (refer to Figures 5, 6 and 7).	Complies The facilities within the childcare centre are of a suitable design to ensure supervision of children at all times while maintaining the dignity and rights of a child.
4.8 Emergency and evacuation procedures	Facility design and features should provide for the safe and managed evacuation of	Complies

Regulations 97 and 168	children and staff from the facility in the event of a fire or other emergency. Multi-storey buildings with proposed child care facilities above ground level may consider providing additional measures to protect staff and children. For example: • independent emergency escape routes from the facility to the ground level that would separate children from other building users to address child protection concerns during evacuations • a safe haven or separate emergency area where children and staff can muster during the initial stages of a fire alert or other emergency. This would enable staff to account for all children prior to evacuation. An emergency and evaluation plan should be submitted with a DA and should consider: • the mobility of children and how this is to be accommodated during an evacuation • the location of a safe congregation/assembly point, away from the evacuated building, busy roads and other hazards, and away from evacuation points used by other occupants or tenants of the same building or of surrounding buildings • how children will be supervised during the evacuation and at the congregation/assembly point, relative to the capacity of the facility and governing child-to-staff ratios.	The design allows for sufficient emergency and evacuation procedures.
4.9 Outdoor space requirements Regulation 108 -7m of unencumbered outdoor space per child	Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children's play (refer to Figures 9 and 10). When new equipment or storage areas are added to existing services, the potential impact on unencumbered space calculations and service approvals must be considered.	Complies Required space for 20 children at a time/ for 60 children: 140m²/ 420m² The total proposed outdoor space is 656m²
4.10 Natural Environment Regulation 113 Education and Care Services National Regulations	Creating a natural environment to meet this regulation includes the use of natural features such as trees, sand and natural vegetation within the outdoor space. Shrubs and trees selected for the play space must be safe for children. Avoid plant species that risk the health, safety and welfare of the facility's occupants, such as those which: • are known to be poisonous, produce toxins or have toxic leaves or berries • have seed pods or stone fruit, attract bees, have thorns, spikes or prickly	Complies The outdoor space is surrounded by and integrated with the natural environment. The spaces are also separated from potentially dangerous parts of the natural environment.

	foliage or drop branches The outdoor space should be designed to: • provide a variety of experiences that facilitate the development of cognitive and physical skills, provide opportunities for social interaction and appreciation of the natural environment • assist supervision and minimise opportunities for bullying and antisocial behaviour • enhance outdoor learning, socialisation and recreation by positioning outdoor urban furniture and play equipment in configurations that facilitate interaction.	
4.11 Shade Regulation 114 Education and Care Services National Regulations	Providing the correct balance of sunlight and shade to play areas is important for the health and well-being of children and staff. Combining built and natural shade will often be the best option.	Complies The proposal provides a covered and protected outdoor area and also provides trees within the outdoor space.
4.12 Fencing Regulation 104 Education and Care Services National Regulations Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it. This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age. Child care facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the National Construction Code	Fencing at child care facilities must provide a secure, safe environment for children and minimise access to dangerous areas. Fencing also needs to positively contribute to the visual amenity of the streetscape and surrounding area. In general, fencing around outdoor spaces should: • prevent children climbing over, under or through fences • prevent people outside the facility from gaining access by climbing over, under or through the fence • not create a sense of enclosure. Design considerations for side and rear boundary fences could include: Figure 11 Heights and requirements for child care facility fencing • being made from solid prefinished metal, timber or masonry • having a minimum height of 1.8 metres • having no rails or elements for climbing higher than 150mm from the ground. Fencing and gates should be designed to ensure adequate sightlines for vehicles and pedestrian safety in accordance with Australian Standards and Roads and Maritime Services Traffic Management Guidelines. Gates should be designed to prevent children leaving/entering unsupervised by use of childproof locking systems (refer to Figure 11)	Complies The proposal involves fencing which surrounds the property including to the front of the car park and surrounding the outdoor play areas. Subject to conditions, this fencing will be both safe and visually appropriate.

4.13 Soil Assessment Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval. With every service application one of the following is required: • a soil assessment for the site of the proposed education and care service premises • if a soil assessment for the site of the proposed child care facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken • a statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children	To ensure consistency between the development consent and the service approval application, a soil assessment should be undertaken as part of the development application process. Where children will have access to soil the regulatory authority requires a preliminary investigation of the soil. This includes sites with or without buildings and existing approved children's services where: • the application is to alter or extend the premises • the alteration or extension requires earthworks or deep excavations (exceeding a depth of one metre) • the works are going to take place in an area used for children's outdoor play or will be used for children's outdoor play after the work is completed • a soil assessment has not been undertaken at the children's service. Minor landscaping, creation of sand pits, movement of play equipment and so on do not qualify as earthworks and do not require a soil assessment. An assessment of soil for a children's service approval application may require three levels of investigation: • Stage 1 - Preliminary investigation (with or without soil sampling) • Stage 2 - Detailed site investigation • - Stage 3 - Site specific human health risk assessment	Complies The statement provided by the applicant states that an assessment is not necessary given the vacant nature of the site. A search of Council's records confirms there that are no previous uses or activities that would have led to contamination.
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Warringah Local Environment Plan 2000 (WLEP 2000)

Desired Future Character

The subject site is located within the C8 Belrose North Locality under Warringah Local Environmental Plan 2000.

The Desired Future Character Statement for this locality is as follows:

The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

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

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

Development in the locality will not create siltation or pollution of Middle Harbour.

The proposal involves the construction of a "Child Care Centre" and "Dwelling" (caretakers residence) as defined under the WLEP 2000. Under the C8 Belrose North Locality Statement, "Child Care Centres" are a Category 3 land use and Dwellings are a Category 1 landuse, however, the subject dwelling is ancillary to the child care centre.

Clause 12(3)(b) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Desired Future Character (DFC) statement under the relevant locality statement.

Accordingly, an assessment of consistency of the proposed development against the various elements of the locality's DFC is provided hereunder:

The present character of the Belrose North locality will remain unchanged except in circumstances specifically addressed as follows.

Comment: A range of uses including schools, dwellings, and a sports field, form the character of the area. This includes designs, which involve built form that is well setback from the street along with landscaping and car parking to the front of the sites. The proposed childcare centre and ancillary caretaker dwelling is a two-storey building, with car parking to the front, outdoor play areas to the rear, and landscaping to surround the development. The proposed childcare centre involves a physical bulk, scale and intensity of use that is consistent with this present character.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be grouped in areas that will result in the minimum amount of disturbance of vegetation and landforms and buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

Comment: The proposal involves the removal of trees from the subject site and neighbouring properties. The proposed tree removal has been assessed as satisfactory and will maintain a landscaped setting and buffer to the development. Additionally, the colours and textures of the building and related structures will complement the natural setting.

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

Comment: A useful interpretation of what constitutes low intensity, low impact uses was used in the Land and Environment Court judgement *Vigor Master Pty Ltd v Warringah Shire Council* [2008] NSWLEC 1128. The interpretation within the judgement is provided as follows:

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

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

Low Intensity Assessment Comments

The proposed childcare centre and ancillary caretakers dwelling has a maximum of 60 children on a site that is 2412m², which equates to 40.2m² per child. This is a good level of space per child and for the following reasons it is considered to be a low intensity, low impact use:

- The proposed hours of operation are 7.00am- 6:30pm – Monday to Friday. This is marginally longer than the two nearby schools and complies with the requirement under the childcare SEPP. Additionally, the varied drop off and pick up times would ensure that the intensity of the use is sufficiently distributed across business hours. This is reasonable for surrounding residential uses.
- The use will not operate during weekends or during late night/early morning. This is with the exception of the caretaker dwelling which would have an intensity consistent with surrounding dwellings in the area.
- A traffic report provided with the application states that there are "*no traffic related issues that should preclude the approval of the development application*". Council's Traffic Officer has reviewed the application and supports the size and scale of the proposal with respect to consequential traffic intensity.
- There are numerous areas for use on site including age separated activity rooms and outdoor play areas. This ensures that the intensity of the use is well distributed across the site ensuring that the use of the areas would be low intensity.
- As stated below, the proposal will not have any unreasonable amenity impact. This is particularly due to the sufficient physical separation from neighbouring uses.
- The bulk and scale of the facility is consistent with dwellings and other uses in the area.

Low Impact Assessment Comments

- Visual - There is a landscape buffer to every boundary and the building is setback 29.25m from the front setback and 15.5m to the rear. This results in a lack of unreasonable visual impact.
- Noise - The location of the proposal on the allotment in relation to nearby residential premises has adequate physical separation and vegetative buffers to ensure a reasonable acoustic outcome. The proposed hours of operation of the child care centre (7.00am to 6.30pm) generally align with nearby businesses and this results in a reasonable outcome for surrounding residences. Furthermore, conditions would be placed to limit the number of children that are outdoors at any one time.
- Traffic - Councils Traffic Officer supports the application subject to conditions. It is noted that the traffic report states that drop off and pick up times will be variable and that this will reasonably limit impact on traffic in the area.
- Vegetation - A landscape buffer surrounds the building and carpark and this provides opportunity for reasonable screening vegetation.
- Streetscape Privacy/ Solar Access - The proposal is well separated from neighbouring dwellings, has a compliant front setback (to the building) from Wyatt Avenue and has a compliant building height. These features of the development ensure that there would be no unreasonable impact on streetscape, privacy or solar access.

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

Comment: Not applicable

Development in the locality will not create siltation or pollution of Middle Harbour

Comment: Subject to conditions, the proposal would not create siltation or pollution of Middle Harbour.

As detailed above, the proposed development is considered to be consistent the desired future character for the C8 Belrose North Locality.

Built Form Controls (Development Standards)

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

Built Form Standard	Required	Proposed	Compliance
Building Height	7.2m (ceiling)	7.1m (ceiling)	YES
	8.5m (overall building height)	7.5m (top of caretaker residence)	YES
Front Building Setback	20m	10m (car parking) 29.25m (child care centre)	NO (see comments) YES
Rear and Side Setbacks	10m	South-west side: 3m-6.2m North-east side 5m-9.5m Rear: 15.5m	NO (see comments)
Landscaped Open Space/ Bushland Setting	50%	33% (796m ²)	NO (see comments)
Car parking (schedule 17)	1 space for every 4 children (15 spaces)	15 spaces	YES

The proposed development does not satisfy the Front Setback, Side Setback, and Landscaped Open Space Built Form Controls. Accordingly, further assessment is provided against the provisions of Clause 20(1) hereunder.

Clause 20(1) stipulates:

“Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the general principles of development control, the desired future character of the locality and any relevant State environmental planning policy.”

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

(i) General Principles of Development Control

The proposal is generally consistent with of the General Principles of Development Control and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency).

(ii) Desired Future Character of the Locality

The proposal is consistent with the Locality’s Desired Future Character Statement and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “Desired Future Character” in this report for a detailed assessment of consistency).

(iii) **Relevant State Environmental Planning Policies**

The proposal has been considered consistent with all applicable State Environmental Planning Policies. (Refer to earlier discussion under 'State Environmental Planning Policies'). Accordingly, the proposal qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1).

Front Building Setback

The C8 Locality Statement requires development to maintain a minimum front building setback of 20.0m.

Control	Required	Proposed	Complies
Front Setback	20m	10m to 29.25m	NO

Area of inconsistency with control:

The proposed new open car parking area does not comply with the control. In this regard, the front of the car park is situated on a 10.0m setback to Wyatt Avenue.

Merit Consideration of Non-compliance:

Consideration of the proposal against the relevant merit considerations is detailed below:

- ***To create a sense of openness***

Comment: Despite the proposed car park being within the required front setback area, the setback of the actual building, at 29.25m, combined with the levels of articulation and modulation of the building, and landscape treatment proposed, provides an outcome which maintains a sense of openness to the front of the site.

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

Comment: The proposed carparking area, which is within the required front setback, consists of a design that appropriately responds to the streetscape of the area. This is formed by a mix of car parking and landscaping toward the front of the site. In particular, this maintains the pattern of landscaping to the front of the neighbouring sites but also the car parking to the front of Wyatt Reserve.

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

Comment: The proposed open style parking spaces are at ground level, located behind a 10 metre landscaped buffer and slightly downslope from the Wyatt

Avenue road reserve. This separation and landscaping would ensure the visual quality of the streetscape and public space is sufficiently maintained.

- ***To achieve reasonable view sharing***

Comment: The proposal would not result in any unreasonable view impacts.

Therefore, it is considered that the proposal will satisfy this merit consideration.

As detailed above, the proposed development is considered to satisfy the requirements to qualify for consideration under Clause 20(1). In addition, the proposal is considered to be consistent with the underlying objectives of the Front Setback Built Form Control. It is for these reasons, that the variation to the Front Setback Built Form Control (Development Standard) pursuant to Clause 20(1) is supported.

Side Building Setback

The C8 Locality Statement requires development to maintain minimum side building setbacks of 10.0m.

Control	Required	Proposed	Complies
Side Building Setback	10m	South-west Side: 3m to 6.2m	NO
		North-east Side 5m to 9.5m	NO

Area of inconsistency with control:

The proposed building and open carparking area does not comply with the control. In this regard, the proposed setbacks are between 3.0m and 9.5m to side boundaries.

Merit Consideration of Non-compliance:

Consideration of the proposal against the relevant merit considerations is detailed below:

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

Comment: The proposal involves landscaped areas along each side boundary and each of these areas involves a significant and reasonable extent in which there is deep soil opportunity for vegetation.

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

Comment: The proposed car parking area would not be a visually dominant element in the street because of the landscaped buffer to the front of the site, the location downslope from Wyatt Avenue, and the complementary nature with the car parking diagonally opposite at Wyatt Reserve. Furthermore the compliant front setback to the building, modulation of the side elevations and the compliant building height contributes to ensuring the development would not be

visually dominant.

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

Comment: The open style car parking to the front of the site along with a built form that complies with the building height, and is sited at a lower level than the street, provides a bulk and scale that is appropriately minimised. Furthermore, the proposal is surrounded by landscaping and outdoor play area that ensures the built form is well integrated into the natural setting.

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

Comment: The subject lot is within a subdivision pattern in which the neighbouring dwellings are setback further from the street as a result of the shape and size of those lots. Along with the compliant rear setback and landscape buffer around the childcare centre, this provides a situation in which reasonable levels of amenity are maintained.

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

Comment: The proposal would not have any unreasonable impact on views.

Therefore, it is considered that the proposal will satisfy this merit consideration.

As detailed above, the proposed development is considered to satisfy the requirements to qualify for consideration under Clause 20(1). In addition, the proposal is considered to be consistent with the underlying objectives of the Side Setback Built Form Control. It is for these reasons, that the variation to the Side Setback Built Form Control (Development Standard) pursuant to Clause 20(1) is supported.

Bushland Setting

The C8 Locality Statement requires development to provide a minimum of 50 per cent of the site area as natural bushland or landscaped with local species.

Control	Required	Proposed	Complies
Bushland Setting	50%	33%	NO

Area of inconsistency with control:

The proposed bushland setting does not comply with the control of 50%. In this regard the proposal involves 33% of the site area.

Merit Consideration of Non-compliance:

The landscaping that will surround the building, and the integration of colours and materials for both the building and the outdoor play area with the landscape character of the area ensures that the proposal would suitably maintain the bushland setting.

As detailed above, the proposed development is considered to satisfy the requirements to qualify for consideration under Clause 20(1). In addition, the proposal is considered to be consistent worthy of support on merit. It is for these reasons, that the variation to the Bushland Setting (Development Standard) pursuant to Clause 20(1) is supported.

General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development:

General Principal	Applies	Comments	Complies
CL38 Glare & reflection	Yes	The Development does not result in overspill or glare from artificial illumination, or sun reflection, and does not unreasonably diminish the amenity of the locality. Suitable condition(s) would ensure the development is satisfactory in addressing the General Principle.	Yes, subject to condition(s)
CL42 Construction Sites	Yes	Appropriate standard conditions would adequately address the construction requirements associated with the use proposed on the site.	Yes, subject to condition(s)
CL43 Noise	Yes	The location of the proposal on the allotment in relation to nearby residential premises has adequate physical separation and vegetative buffers to ensure a reasonable acoustic outcome. The proposed hours of operation the child care centre (7.00am to 6.30pm) generally align with businesses, and this results in a reasonable outcome for surrounding residences. The proposal involves the installation of a 4.8m high acoustic barrier (measured from the level of the Outdoor Play Area) on the common boundaries with No. 10 Wyatt Avenue, to protect the acoustic amenity of the adjoining dwelling-house as follows: <u>Eastern (side) Boundary</u> 30m long section comprising a 3.0m high lapped and capped timber fence topped with a 1.8m section of acrylic screen. <u>Northern (rear) Boundary</u> 13.78m long section comprising a 1.8m high lapped and capped timber fence topped with	Yes, subject to condition(s)

General Principal	Applies	Comments	Complies
		a 1.18m section of acrylic screen. The visual impact of the acoustic barriers will be mitigated by the level differences between the subject site and the adjoining property at No. 10 Wyatt Avenue and existing vegetation screening. The proposal also involves an acoustic barrier on the western side of the Outdoor Play Area to protect the nearby dwelling-house on the property at 16 Wyatt Avenue, as follows: <u>Western Side of Outdoor Play Area</u> 20m long overall section (made up of multiple sections) comprising a 1.2m high acrylic screen. Furthermore, conditions would be placed to limit the number of children outdoors at any one time and uptake recommendations of the acoustic report.	
CL44 Pollutants	Yes	Conditions could be imposed to place restriction on emissions of atmospheric, liquid or other pollutants.	Yes, subject to condition(s)
CL47 Flood Affected Land	No	Not Applicable	N/A
CL48 Potentially Contaminated Land	Yes	SEPP 55 and Clause 48 provide that the consent authority cannot grant development consent to an application unless it has considered whether the land is contaminated. A search of Council's records confirms there are no previous uses that could lead to dangerous levels of contamination.	Yes
CL49 Remediation of Contaminated Land	Yes	See above comments	Yes
CL50 Safety & Security	Yes	Subject to conditions.	Yes
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	No	Not Applicable	N/A
CL53 Signs	Yes	No signage is proposed as part of this application.	N/A
CL54 Provision and Location of Utility Services	Yes	The General Principle provides that utility services must be provided to the site. In this regard, it is noted that the development would be connected to water, gas, telecommunications, sewerage and electricity.	Yes

General Principal	Applies	Comments	Complies
CL56 Retaining Unique Environmental Features on Site	Yes	The proposed works are generally on the flat section of the site so as to retain the environmental feature toward the rear.	Yes
CL57 Development on Sloping Land	Yes	The proposal is generally located on the flatter section of the site and this is deemed appropriate.	Yes
CL58 Protection of Existing Flora	Yes	The General Principle provides "Development is to be sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species." Councils Landscape Officer supports the proposal. Inconsistencies were identified in the application in relation to the removal of trees on the adjoining property to the west, 14 Wyatt Avenue. In this regard, the Arborists Report states that the installation new stormwater pipeline within the relocated easement will use subterranean drilling and will not disturb or require removal of trees on 14 Wyatt Avenue. Council's Landscape Officer has reviewed the report and plans and concurs that the stormwater system can be implemented without trees removals. Suitable conditions have been included in the draft set of conditions.	Yes
CL59 Koala Habitat Protection	Yes	Complies	Yes
CL60 Watercourses & Aquatic Habitats	Yes	The property is not affected by a watercourse or aquatic habitats.	Yes
CL61 Views	Yes	The proposal is not located in an area in which there would be any significant impact on views given the reasonable bulk and scale of the development.	Yes
CL62 Access to sunlight	Yes	The development does not unreasonably reduce sunlight to surrounding properties. As a result of the compliant building height and sufficient physical separation, a reasonable and equitable level of sunlight is maintained and the development is satisfactory in addressing the General Principle.	Yes
CL63 Landscaped Open Space	Yes	The landscaped open space does not comply with the numerical control for landscaped open space. However, the merit assessment for	Yes

General Principal	Applies	Comments	Complies
		bushland setting above has found the proposal to be reasonable.	
CL65 Privacy	Yes	The development does not cause unreasonable direct overlooking of habitable rooms and principal private open spaces of adjoining dwellings due to the adequate physical separation between buildings. As above the proposal will also not result in any unreasonable acoustic impacts (subject to conditions).	Yes
CL66 Building bulk	Yes	The proposal involves a compliant building height and sufficient articulation and modulation. Along with the significant setback of the built form from Wyatt Avenue, this results in an adequate minimisation of building bulk.	Yes
CL67 Roofs	Yes	The proposed roof would complement the skyline and would present as a suitable architectural feature in the area.	Yes
CL69 Accessibility – Public and Semi-Public Buildings	Yes	All access points to buildings and circulation paths provide sufficient access to less mobile persons.	Yes, subject to condition
CL70 Site facilities	Yes	The site contains adequate space for general waste and recycling storage.	Yes
CL71 Parking facilities (visual impact)	Yes	The open style car parking with a landscaped buffer to the front of the site would not result in any unreasonable visual impact. This is contributed to by the slope of the site and the complementary nature of the parking with the parking diagonally opposite at Wyatt Reserve.	Yes
CL72 Traffic access & safety	Yes	Councils Traffic Engineer raised no objections to the proposal subject to conditions that could be contained within any consent.	Yes
CL73 On-site Loading and Unloading	Yes	The proposed development provides a sufficient area for loading and unloading.	Yes
CL74 Provision of Car parking	Yes	The proposal complies with the control for 15 off-street car parking spaces. The provision of parking for the site is deemed to be sufficient.	Yes
CL75 Design of Car parking Areas	Yes	Councils Traffic Engineer raised no objections to the proposal subject to conditions. The proposal also complies with the number of spaces required and involves a reasonable visual presentation.	Yes
CL76 Management of Stormwater	Yes	Council's Development Engineering Team have reviewed the application and provided support subject to conditions. <u>Stormwater Concerns raised by owner of 14 Wyatt Avenue</u>	Yes, subject to conditions.

General Principal	Applies	Comments	Complies
		The adjoining landowner (14 Wyatt Avenue) has raised objections to the proposed development due to there being no stormwater easement to convey stormwater from the end of the existing stormwater easement (over the subject site), to the downstream watercourse. Council's Manager Development Engineering (Major Projects) advises that the proposal relies upon reproducing the existing situation, whereby stormwater is diverted to an OSD system before it is connected to the new pipeline and eventually spread over the adjoining property via an overland flow path. This is a better solution for the site and locality compared to concentrating stormwater into a new piped section (which would require a new easement). The proposal is consistent with an historical circumstance, mimics the current situation and disperses stormwater in an environmentally sensitive manner.	
CL78 Erosion & Sedimentation	Yes	Erosion and sediment control measures are to be put in place during construction. Conditions could be placed to ensure this.	Yes, subject to condition.
CL79 Heritage Control	No	The subject site is not within the vicinity of any items of heritage significance or any heritage conservation area.	Not Applicable
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	No	The subject site is not located within the vicinity of any known or potential Aboriginal sites.	Yes
CL83 Development of Known or Potential Archaeological Sites	No	The subject site is not located within the vicinity of any known or potential archaeological sites	Yes

SCHEDULES

Schedule 6 – Preservation of Bushland

Bushland In Urban Areas	Not applicable as the provisions as called upon within Clause 17(5) and Clause 36(3) only related to the preservation of bushland on public open space and regional open space.
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Schedule 8 - Site analysis

1.1 Site Analysis	The details contained within the Statement of Environmental Effects, the survey and the architectural plans provide sufficient information to satisfy the requirements for a site analysis.
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Schedule 15 - Statement of Environmental Effects

Clause 15(1) of WLEP 2000 requires that the consent authority must consider a Statement of Environmental Effects prepared in accordance with the criteria listed in Schedule 15. In addition, Clause 15(2) requires the consent authority to consider the findings of an independent public hearing prior to the determination of the application.

The applicant has submitted a Statement of Environmental Effects, prepared by BBF Town Planners dated March 2019, which address Schedule 15 of WLEP 2000.

Consideration	Proposed
(1) Summary of the Statement of Environmental Effects (SEE)	<i>With regard to Point 1 of Schedule 15 the applicant has provided the following:</i> <i>"The application proposes the construction of a single storey child care centre for 60 children with ancillary caretaker residence above and car parking for 16 vehicles (including 1 accessible space). The proposed development is depicted on the Architectural plans A0000, A2001(c), A2100(c), A2101(c) to A2103(b), A3100(c), A4101(c) and A4102(c), A5101(c) to A6101(c), A7101(c) and A8101(c) to A8103(c) prepared by RFA Architects Pty Limited.</i> <i>Specifically, the child care centre is divided into 'activity' rooms with separate rooms designated for babies aged 0-2, toddlers aged 2-3, and preschool children aged 3-5. Each activity room has bathroom amenities with the babies room including a cot area. The western side of the building contains the entry court, reception area, office, storage area, kitchen, laundry, bathroom and staff area.</i> <i>The proposed hours of operation are between 7:00am and 6:30pm Monday to Friday.</i> <i>Activities overall, both indoor and outdoor, will be planned and managed to be conducive to the environment and to the amenity of the neighborhood. Contributing to acceptable noise levels will be the younger ages of children in the centre, the higher staff ratios (and therefore supervision) required for preschool-aged children, the nature of the planned activities and small group management.</i> <i>The application also proposes the implementation of an integrated site landscape regime as depicted on plan prepared by Concept Landscape Design. The landscape plan illustrates appropriate screen planting along the boundaries with larger screen planting being implemented along the front boundary to minimise the visual impact of the open carparking area and to comply with the bushfire hazard considerations as contained within the accompanying bushfire assessment prepared by Travers Bushfire and Ecology.</i>

Consideration	Proposed
	All stormwater will be disposed of the to the drainage easement on the adjoining property to the west as depicted in plans prepared by Engineering Studio with kerb and guttering and a footpath also provided at the front of the site. A new overland flow channel is proposed down the western boundary of the property and connecting into the existing open channel before it crosses into No. 14 Wyatt Avenue. Signage will be provided in accordance with the exempt and complying development provisions." <u>Comment:</u> This applicant has provided a sufficient summary of the SEE.
(2) Consistency of the proposal with the desired future character statement and general principles of development control established by the plan.	With regard to Point 2 of Schedule 15 the applicant has provided the following: <i>"In accordance with clause 12(3)(b) the consent authority must be satisfied the development is consistent with the desired future character described in the relevant locality statement. Accordingly, the proposal's consistency with the desired future character statement is addressed below.</i> <i>The development is considered to be consistent with and retain the existing character of the locality for the following reasons:</i> <i>The existing locality is characterised by a range of uses including residential and non-residential uses. The predominant non-residential uses in the locality include educational establishments, landscape supply yards/ retail plant nurseries, retirement villages and residential housing. The proposed child care centre use is consistent with the predominant non-residential land uses within the locality. In this regard, the proposed development does not alter the existing character of the locality.</i> <i>The proposed use will be consistent with the uses in the immediate vicinity of the site, including John Collet School, and will therefore not result in any change to the existing character of the locality.</i> <i>The development complies with the relevant built form controls, with the exception of a 50% variation to the front building setback to accommodate parking and variations to the side building setback controls which can be supported pursuant to Clause 20 of WLEP. Compliance with the 50% landscaped area control has been achieved. Both the front and side boundaries allow for appropriate levels of landscaping and screen planting and contextually appropriate setbacks. The built form of the development proposed is therefore consistent with the built form of development in the locality.</i>

Consideration	Proposed
	<i>The accompanying acoustic report prepared by BGMA Pty Limited confirms that compliance can be achieved subject to the adoption of a number of recommendations regarding acoustic screening and limiting the number of children in the rear external play area to a maximum of 20 at any one time.</i> <i>The Traffic and Parking Impact Assessment prepared by Thompson Stanbury Associates indicates that the traffic flow increase resulting from the proposed development will have no significant impact on existing traffic flows on the adjacent road network nor will it have any capacity implications for nearby intersections and junctions."</i> <i>Accordingly, the proposed use is appropriately described as a low intensity, low impact land use as it relates to traffic and parking impacts.</i> <i>The proposed child care centre will not give rise to any unreasonable levels of noise that would significantly adversely impact adjoining properties or public amenity. Accordingly, the proposed use is appropriately described as a low intensity, low impact land use as it relates to noise impacts.</i> <i>The proposed car parking has been located at the front of the child care centre. Screen planting and appropriate landscaping will minimise the visual impact from the street. A 10 metre landscape buffer is maintained at the front of the site with the majority of the building setback between 5 and 9.5 metres from side boundaries. The majority of the building matins a 19.3 metre setback to the rear boundary such the building will sit within a bushland setting.</i> <i>The application also proposes the implementation of an integrated site landscape regime as depicted on plan prepared by Conzept Landscape Design. The landscape plan illustrates appropriate screen planting along the boundaries with larger screen planting being implemented along the front boundary to minimise the visual impact of the open carparking area and to comply with the bushfire hazard considerations as contained within the accompanying bushfire assessment prepared by Travers Bushfire and Ecology.</i> <i>The development will result in minimal disturbance to natural vegetation and landforms.</i> <i>The colours and materials of the development, shown on the Schedule of External Finishes submitted with the application will blend with the colours and materials of the natural environment and with existing development within the site's visual catchment.</i>

Consideration	Proposed
	<i>The construction of the development will be managed to minimise erosion and sedimentation.</i> <i>Accordingly, the development will be consistent with this requirement of the desired future character statement.</i> <i>We have formed the opinion that the 1 and 2 storey building and child care centre use proposed will not impact upon the locality or existing streetscape in terms of built form or landscape outcomes and, given its usage, noise and traffic generation characteristics, is appropriately described as a low intensity and low impact use consistent with the existing and desired future character ("DFC") for the C8 Belrose North Locality."</i> <u>Comment:</u> Along with the above the applicant has also provided comments in regard to the general principles of development control.
(3) Objectives of the proposed development.	With regard to Point 3 of Schedule 15 the applicant has provided the following: "The objective of the proposed development is to provide a child care centre to meet the local demand for child care. The schools in the locality cater for students in Kindergarten through to Year 12. The proposed centre will provide an additional service to complete the range of educational services currently provided." <u>Comment:</u> The objective of catering to a demand for childcare is appropriate for the area given schools for other ages in the vicinity.
(4) An analysis of feasible alternatives. (including (a) Consequences of not carrying out the development and (b) Justification for the development)	With regard to Point 4 of Schedule 15 the applicant has provided the following: <i>"(a) the consequences of not carrying out the development, and</i> <i>The consequence of not carry out the development would be that families from the local area would be forced to travel to other areas to find child care places for their children. This will result in greater inconvenience for families, an increase in travel times and an increase in the number and/or length of vehicle trips.</i> <i>(b) the reasons justifying the carrying out of the development</i>

Consideration	Proposed
	<i>The childcare centre will provide greater convenience for parents that have children that require child care and children that are of an age where they attend school.</i> <i>The child care centre will also increase the number of child care places available in the local area and thereby reduce the current shortage of places."</i> <u>Comment:</u> There is a demand for child care on the Northern Beaches and given the location of the centre within close proximity of other schools and a business park, it is agreed as above that the location is feasible for a child care.
(5) Development and context analysis.	With regard to Point 5 of Schedule 15 the applicant has provided the following: <i>"(a) a full description of the development, and Refer to Part 3 of this statement.</i> <i>(b) a general description of the environment likely to be affected by the development, together with a detailed description of those aspects of the environment that are likely to be significantly affected, and</i> <i>The proposed development will not give rise to any adverse environmental consequences as detailed in the accompanying Flora and Fauna Report prepared by Travers Bushfire & Ecology which concludes:</i> <i>The proposal will remove and modify existing highly disturbed or planted vegetation present within the subject site. No threatened flora or fauna species, populations or endangered ecological communities were observed within the study area.</i> <i>The subject site contains no likely important habitat for threatened fauna species. No hollows or other unique habitat features likely important for life-cycles stages or central to the home range of threatened fauna were identified present. Some threatened fauna species have potential to frequent the site seasonally or on occasion for foraging only purposes.</i> <i>Given consideration to the available habitat present, local records and species with potential to occur, the 7-Part test of significance (Attachment 4) has concluded that the proposed development will not result in a significant impact with respect to threatened species, communities and populations. Therefore, a Species Impact Statement is not required for the proposed development.</i> <i>The Significant Impact Criteria for species listed under the EPBC Act was reviewed to assess the impacts of the proposed development on nationally listed species. It is concluded that there will not be a likely significant impact on any nationally</i>

Consideration	Proposed
	<i>listed threatened species and as such, a referral to the Commonwealth Department of Environment (DOE) is not required.</i> <i>The landscaped open space (bushland setting) provided on the site is compliant with the built form control with replacement plantings ensuring that a bushland setting is maintained.</i> (c) a description of the likely impact on the environment of the development, having regard to: (i) the nature and extent of the development, and <i>The proposed development will not result in any significant impacts on flora and fauna as previously identified. The noise generated by the proposed development will not result in any unreasonable impacts on the nearby dwellings subject to the adoption of the recommendations contained within the accompanying acoustic report. There are no unacceptable visual bulk impacts arising from the proposed development with safe and compliant car parking provided on-site to meet the car parking demand generated by the use.</i> (ii) the nature and extent of any building or work associated with the development, and <i>All hours of construction associated with the proposed construction works will be restricted in accordance with the Council and EPA guidelines.</i> (iii) the way in which any such building will be erected in connection with the development, and <i>A Construction Management Plan can be prepared should it be considered necessary however the site is of adequate size to accommodate all construction works, deliveries of materials and associated storage on site.</i> (iv) any rehabilitation measures to be undertaken in connection with the development, and <i>The landscape plan submitted with the application shows the extent of landscaping which will be undertaken.</i> <i>The landscaping proposed is considered to be adequate to complement the natural landscape and provide an appropriate landscaped setting for the proposed development having regard to the use proposed and required bushfire asset protection zone measures."</i> <u>Comment:</u> This consideration has been adequately addressed via the information supplied with the application including

Consideration	Proposed
	architectural plans, reports and within the Statement of Environmental (SEE).
(6) Biophysical, economic and social considerations and the principles of ecologically sustainable development.	With regard to Point 6 of Schedule 15 the applicant has provided the following: <i>"The proposed development and associated use will not change the existing character of the locality. The development has been designed to minimise the impact of the proposed on the biophysical environment.</i> <i>The development will generate employment during construction and post occupation. In this regard, the development will have a positive economic impact.</i> <i>The development will provide greater choice for families that require child care and it will also increase access to child care for families in the local area. In this regard, the development will result in a positive social impact."</i> <u>Comment:</u> This consideration has been adequately addressed via the information supplied with the application including the expert reports and within the Statement of Environmental (SEE) ensuring minimal impacts on the biophysical environment. As stated previously, the proposal will serve local residents and local employees providing a service of early education and child care for their children.
(7) Measures to mitigate any adverse effects of the development on the environment	With regard to Point 7 of Schedule 15 the applicant has provided the following: <i>"The proposed development and associated use will not change the existing character of the locality. The development has been designed to minimise the impact of the proposed on the biophysical environment.</i> <i>The development will generate employment during construction and post occupation. In this regard, the development will have a positive economic impact.</i> <i>The development will provide greater choice for families that require child care and it will also increase access to child care for families in the local area. In this regard, the development will result in a positive social impact."</i> <u>Comment:</u> The proposal provides reasonable mitigation against amenity impact, involves an appropriate visual presentation and caters to the need for childcare in the area. As such, the above statement is sufficient.
(8) Other approvals required	With regard to Point 7 of Schedule 15 the applicant has provided the following:

Consideration	Proposed
	<i>"Pursuant to Sections 91 and 91A of the EP&A Act, the development constitutes 'integrated development' as the development requires a Bush Fire Safety Authority in accordance with Section 100B of the Rural Fires Act 1997 and a Controlled Activity Approval in accordance with the Water Management Act 2000.</i> <i>The NSW Rural Fire Service is the approval body for the Bushfire Safety Authority and the NSW Office of Water within the Department of Environment and Climate Change is the relevant approval body for the Controlled Activity Approval. General Terms of Approval are required to be issued by the relevant approval body prior to the issuing of consent. The application is accompanied by a bushfire report prepared by Travers Bushfire & Ecology.</i> <i>The approval of the Department of Community Services is required prior to the commencement of the use of premises for child care."</i> <u>Comment:</u> Approval from NSW RFS has been granted.

It is considered that the submitted Statement of Environmental Effects prepared by BBF Planners dated March 2019 and in response to the provisions of Clause 15/Schedule 15 adequately addresses the compatibility of the of the development with the Locality and the DFC.

Schedule 17 - Carparking Provision

Carparking Provision	Schedule 17 of WLEP 2000 requires one car parking space for every four children. Based on the child care centre accommodating 60 children, 15 car parking spaces are required on-site. The proposed car-parking scheme provides for 15 spaces on-site. Accordingly the proposal is considered satisfactory.
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BUSHFIRE PRONE LAND

The site is Bushfire Prone Land under the Warringah Bush Fire Prone Land Map 2016, hence the application is for Integrated Development under S4.46 of the EPA Act, 1979, requiring a Bushfire Safety Authority under S100B of the Rural Fires Act, 1997. As mentioned previously, the NSW RFS has issued their General Terms of Approval.

The applicants Bushfire Report indicates that the required Asset Protection Zones are as shown in Figure 3 below:



Figure 3 – Plan showing Asset Protection Zones
(Source : Travers Bushfire Report, dated 25.2.2019)

As can be seen in the above plan, the proposal involves the establishment and maintenance of APZ's on the adjoining site (Lot 2565, DP 752038). The architectural plans also show the required APZ on Lot 2565. The bushfire report addresses this matter as follows:

An 88B easement is required over the adjoining land to the north. This will allow the owners of the childcare facility to enter the adjoining Lot 2565 DP 752038 to undertake ongoing maintenance of the APZ. The proposed 18.7m APZ is confined to an area which is devoid of trees, has limited native shrubs and abundance of exotic species. Maintenance of this area will involve routine removal of leaf litter and debris.

The Statement of Environmental Effects lodged with the DA also addresses this requirement. Based on the above, suitable conditions are included in the draft set of conditions requiring the creation of an easement over the adjoining property.

POLICY CONTROLS

Section 94A Development Contributions

The proposal is subject to the application of the Northern Beaches Section 7.12 Contributions Plan 2019. A suitable condition would be imposed should the application be approved.

CONCLUSION

An assessment of the proposed development has found the proposal has sufficient merit, has addressed the relevant planning and environmental issues and is a suitable and appropriate development for the site and locality.

The proposal is assessed as being consistent with the desired future character statement for the C8 Belrose North Locality and the general principles of development control, as well as the relevant SEPP's.

The resident issues are addressed in the relevant sections of this report and conditions have been imposed in relation to stormwater management, tree removal, the operational aspects of the child care centre and use of the caretakers residence.

The relevant statutory approvals have been issued by the NSW RFS and conditions have been imposed in relation to the establishment and maintenance of APZ on the adjoining property.

Pursuant to Clause 15 of WLEP 2000, the application is required to be the subject of an independent public hearing prior to determination by the relevant consent authority, being the Northern Beaches Local Planning Panel.

RECOMMENDATION

Part A:

That the Panel make its findings and recommendations on Development Application No. DA2019/0238 for construction of a Childcare Centre and ancillary caretakers dwelling at Lot 2616, DP 752038, No. 12 Wyatt Avenue, Belrose having regard to the assessment and recommendation for approval in the Assessment Report, subject to the draft set of conditions attached to this report.

Part B:

That the outcome of the Panel's findings and recommendations be provided to the Northern Beaches Local Planning Panel, as the consent authority for determination of Development Application No. DA2019/0238.



CONDITIONS OF APPROVAL

Application Number:	DA2019/0238
Land to be developed (Address):	Lot 2616 DP 752038, 10 - 12 Wyatt Avenue BELROSE NSW 2085 Lot 2565 DP 752038, 10 - 12 Wyatt Avenue BELROSE NSW 2085
Proposed Development:	Construction of a child care centre and ancillary caretaker residence

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
a2100, a2101, a2102, a2103, a3100, a4101, a4102, and a8101 - All Issue d	12/07/2019	Rfa architects
a5101 - Issue c	06/03/2019	Rfa architects

Engineering Plans		
Drawing No.	Dated	Prepared By
C10.01, C11.01, C12.01, C12.02, C12.03, C12.04, C12.05, C12.06, C12.07, C12.08, C13.01, C13.02, C13.03, and C13.04 - All Rev. F	11/07/2019	Engineering Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Access Report	14/02/2019	Wall to Wall
Acoustic Report - Ref. BGMA 170406 C	February 2019	BGMA Pty Ltd
Arborist Report	21/06/2019	Hugh the Arborist
BCA Report - Ref. P217_089-1	18/02/2019	Design Confidence
Bushfire Report - Ref. 18RFA02: NVD DA2019/0238	25/02/2019	TBE Environmental Pty



		Ltd
Emergency Management Plan	15/02/2019	Beaware Solutions Pty Ltd
Flora and Fauna Report - Ref. REF: A16240F	21/04/2017	TBE Environmental Pty Ltd
Overland Flow Report - Ref. 17111-005-r	July 2019	Engineering Studio
Traffic and Parking Report	April 2017	TSA

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
a8104 - Issue d	12/07/2019	Rfa architects

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
a6101 - Issue d	12/07/2019	Rfa architects
Waste Management Plan	26/02/2019	Frank Moschella

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

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

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
NSW Rural Fire Services	Response NSW RFS Referral	12 April 2019

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. Approved Land Use

Nothing in this consent shall authorise the use of the building as detailed on the approved plans for any land use of the site beyond the definition of a child care centre and ancillary caretaker residence.

A child care centre is defined as:

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"Child care centre means a building or place used (whether or not for profit) for the purpose of educating, minding or caring for children (whether or not any of the children are related to the owner or operator), but only if the following conditions are satisfied:

(a) the children number 6 or more, are under 6 years of age, and do not attend a government school, or a registered non-government school, within the meaning of the Education Act 1990,

(b) the building or place does not provide residential care for any of the children (other than those related to the owner or operator)."

(development is defined by the Warringah Local Environment Plan 2000 Dictionary)

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. (DACPLB03)

4. **No Approval for any Signage**

No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2000 and State Environmental Planning Policy No. 64). A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

5. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:



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

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

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

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

Reason: Legislative requirement.

6. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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



- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (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

7. Policy Controls

Northern Beaches Council Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 2,155,350.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 20,475.83
Section 94A Planning and Administration	0.05%	\$ 1,077.68
Total	1%	\$ 21,553.50

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.



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 Northern Beaches Council's Development Contributions Plan.

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.warringah.nsw.gov.au/your-council/forms).

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

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

A Bond of \$24,000.00 as security against any damage or failure to complete the construction of road pavement/shoulder reconstruction works as part of this consent.

Reason: Protection of Council's Infrastructure

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

A Bond of \$256,000.00 as security against any damage or failure to complete the construction of Storm-water drainage works as part of this consent.

Reason: Protection of Council's Infrastructure

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

A Bond of \$25,000.00 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.
Reason: Biodiversity/Vegetation Conservation and Management

Reason: Protection of Council's Infrastructure

12. **Construction, Excavation and Associated Works Bond (Maintenance for civil works)**

The developer/applicant must lodge with Council a Maintenance Bond of \$25,000.00 for the construction of storm-water drainage works that revert to Council's care and control. The Maintenance Bond will only be refunded on completion of the six month Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing confirmation of practical completion and may be exchanged for the works bond.



Reason: To ensure adequate protection of Council infrastructure

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

13. **On-site Stormwater Detention Compliance**

Drainage plans detailing the provision of the On-site Storm-water Detention in accordance with Northern Beaches Council's Water Management Policy PL850, and the approved concept drawings required under storm-water drainage deferred commencement condition.

Maximum total discharge from the development site for the 1 in 100 year design storm is to be restricted to the 1 in 5 year ARI, 0% fraction impervious discharge.

Storm-water discharge from the OSD tank must be directed to a suitably designed storm-water dispersion system located at the western end of the existing drainage easement.

Storm-water dispersion system must be located minimum 3 meters from the downstream boundaries and must be designed to ensure no scouring to downstream properties.
The OSD shall be redesign to be clear of the 3.0 m wide drainage easement allocated next to the western propriety boundary.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

Details demonstrating compliance to the above requirements are to be submitted to the Accredited Certifier prior to the issue of any Construction Certificate.

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

14. **Application for Infrastructure Works on Council Roadway**

Engineering plans are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The submission is to include four (4) copies of Civil Engineering plans for the design of the following (referred to as the "Works"):

- Construction of road shoulder and kerb and gutter along the full frontage of the site to provide for a 10 meter wide (kerb to kerb) road carriageway
- Construction of storm-water drainage pits and pipelines - pits must be constructed minimum 1 meter clear of the driveway layback
- Construction of 1.5 meter concrete footpath along the full frontage
- Construction of a 5.5 meter wide vehicle crossing
- Traffic Control Plan to be approved by Council's Transport Network Team

The Works are to be generally in accordance with the Development Application and Council's specification for engineering works – AUS-SPEC #1, relevant Australian Standards including AS/NZS 2890, and Council's Minor Works Specification.

The Fee Associated with the assessment and approval of the plans is to be in accordance with Council's Fees and Charges.



The developer/applicant must lodge with the Roads Authority the security bonds against any damage or failure to complete the construction of the Works as part of this consent is required.

The developer/applicant must lodge with the Roads Authority a Maintenance Bond for the construction of the Works. The Maintenance Bond will only be refunded on completion of the Maintenance Period, if the work has been completed in accordance with the approved plans and to the satisfaction of the Roads Authority.

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

Reason: Ensure engineering works are constructed in accordance with relevant standards.
(DACENCPCC4)

15. **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 Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted) - Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

Reason: Protection of Council's Infrastructure

16. **Structural Adequacy and Excavation Work**
Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:
(a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

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

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

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the



protection of adjoining properties and Council land.

18. **Stormwater Drainage Application**

A Stormwater drainage application under Section 68 of the Local Government Act 1993 is to be submitted to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design of the stormwater drainage system, overland flow/channel, headwall and associated works within the 3 meter wide drainage easement in accordance with the civil design approved to activate the Development Consent and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website using the following link. <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/stormwater-drainage-approval/4022-stormwater-drainage-approval.pdf>

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

Written approval from Council is to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

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

19. **Ability to connect to Sewer**

Prior to commencement, approval to connect to the sewer of Sydney Water shall be obtained.

Reason: To ensure the development can be connected to the Sewer. (DACHPCPC6)

20. **Tree Protection Plan**

In order to protect and enhance onsite vegetation and trees the following applies to the development site:

(a) A Tree Protection Plan prepared by a AQF Level 5 Arborist (or equivalent) showing the following:

- Layout of the approved development
- Location of trees identified for retention
- Extent of canopy spread
- Location of tree protection fencing / barriers (fencing in accordance with AS2470 – 2009)
- General tree protection measures

(b) The Tree Protection Plan is to be submitted to the Principal Certifying Authority for approval prior to issue of a Construction Certificate.

(c) Tree protection measures identified on the plan are to be in place prior to commencement of works.

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

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

Survey 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:

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<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 approval and the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure

22. **Delineation Asset Protection Zone**

Prior to the commencement of any onsite building works or commencement of vegetation clearance/modification, the extent of the bush fire Asset Protection Zone must be surveyed and marked on ground.

The clearing of vegetation for Asset Protection Zone establishment is to be confined within Asset Protection Zone boundaries.

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

Reason: Bushland Protection.

23. **Project Ecologist**

A Project Ecologist is to be employed for the duration of any vegetation removal works to safely relocate any displaced wildlife.

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

- Practising member of the NSW Ecological Consultants Association OR
- Biodiversity Assessment Method assessor accreditation under the NSW Biodiversity Conservation Act 2016

Details demonstrating engagement of the Project Ecologist for the duration of vegetation removal works are to be provided to the Principal Certifying Authority prior to issue of the Construction Certificate.

Reason: To protect wildlife in accordance with relevant biodiversity legislation and planning controls.

24. **Easement over Adjoining Land**

a. An easement shall be created burdening the area of the Asset Protection Zone on land outside of Lot 2616, as shown on the Site Plan and Landscape Plan for the benefit of Lot 2616 to enable asset protection zone maintenance works as outlined in the Travers Bushfire Report, dated XXXX 2019 to be carried out by the registered proprietor (or of any mortgagee in possession) of Lot 2616 for the life of the development.

b. The easement will burden Lot 2406, DP 752038, No. 10 Wyatt Avenue for the benefit of Lot 2616, DP 752038, No. 12 Wyatt Avenue.



c. The easement is to be registered on the titles of the burdened land and benefiting land prior to the issue of any occupation certificate.

Reason: To ensure that access is available for the provision and maintenance of Asset Protection Zones for the benefit of the subject land on adjoining land.

25. **Landscaping**

No Grevillea hybrids are to be used in the landscaping for this development. The Landscape Plan is to be amended and proposed Grevillea plantings must be substituted with an alternative local native plant species. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Biodiversity conservation and management

26. **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.

27. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

28. **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.

29. **Tree trunk, root and branch protection**

(a) Existing trees which must be retained

i) All trees not indicated for removal on the approved plans, unless exempt

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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 the Project Arborist on site.
- ii) All structures are to bridge tree roots greater than 30mm diameter unless directed otherwise by the Project Arborist on site.
- iii) All tree protection to be in accordance with the approved tree protection plan 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.

30. **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 approved tree protection plan 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.

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

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

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

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site (DACNED06)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

32. **Progress Certification (Road & Subdivision)**

Written certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Principal Certifying Authority for the following stages of works:

- (a) Silt and sediment control facilities
 - (b) Laying of storm-water pipes and construction of pits
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- (c) Proof Roll - AUSPEC Standard
- (d) Sub-grade trimmed and compacted **
- (e) Base-course laid and compacted **
- (f) Kerb and gutter construction
- (g) Pavement
- (h) Landscaping and vegetation
- (i) Clean-up of site, and of adjoining Council roadway and drainage system. (**To be tested by a recognized N.A.T.A. approved laboratory). Details demonstrating compliance are to be submitted to the Principal Certifying Authority.
- (j) All layers of the road formation are to be proof rolled to Council's satisfaction

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

33. **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.

34. **Notification of Inspections**

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

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

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

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

35. **Maintenance of Road Reserve**

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

Reason: Public Safety.

36. **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.

37. **Fauna and Tree Hollow re-location**

During any vegetation clearance for Asset Protection Zones and construction works the Project



Ecologist is to be present to re-locate any displaced fauna that may be disturbed during this activity.

Tree hollows are to be salvaged from trees within the development area and placed within the retained vegetation / Conservation Areas within the Lots. This is to be done by a qualified and experienced Arborist, under the direction of the Project Ecologist.

Details prepared by the project ecologist in writing demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To ensure bushland management in accordance with Local Habitat Strategy 2007.

38. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

39. **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.

40. **Footpath Construction**

Footpath, kerb and guttering shall be constructed at cost of the applicant from its boundary with No.14 Wyatt Avenue connecting to the existing footpath, kerb and guttering outside No.10 Wyatt Avenue. The footpath, kerb and guttering shall be consistent with the existing and to comply with the Council's development engineers requirements.

Reason: Connectivity of the site to the existing footpath.

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

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

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



OCCUPATION CERTIFICATE

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

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

Reason: To create encumbrances on the land.

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

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

Reason: To identify encumbrances on land.

44. **Restriction as to user - overland flowpath**

A restriction as to user shall be created on the title over the overland flowpath, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction, are to be prepared by a registered surveyor to Northern Beaches Council's satisfaction at the applicant's expense.

Northern Beaches Council shall be nominated as a party to release, vary or modify such restriction.

Evidence of creation of the restriction as to user on Title must be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure no modification of the overland flowpath without Council's approval

45. **On-Site Stormwater Detention, drainage line, overland flow channel Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved stormwater drainage plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

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

Reason: To ensure stormwater disposal is constructed to Council's satisfaction. (DACENF10)

46. **Certification of Structures Constructed Adjacent to Council Pipeline or Council Easement**

All structures constructed adjacent to any Council pipeline or easement are subject to structural
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certification process prior to the issue of any Occupation Certificate. Footings of any structure adjacent to an easement or pipeline shall be constructed in accordance with design of Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted).

A statement of compliance is to be prepared by a suitably qualified Structural Engineer and submitted to Council for acceptance of the certification. The certification accepted from Council is to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: Protection of Council's Infrastructure

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

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

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

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

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

48. **Easement for drainage**

The existing easement for drainage is to be extinguished and an easement for drainage is to be created on the Title to ensure all drainage infrastructure is located within the appropriate easement(s).

Dimension(s) of the easement are to be in accordance with Council's Section 6, Building Over or Adjacent to Council Drainage Systems and Easements of Council's PL 850 Water : Water Management Policy.

Evidence of created drainage easement on the Title must be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: Statutory requirements of the Conveyancing Act 1919 and specifications required under this consent

49. **Registration of Food Business**

The food business must be registered with the Appropriate Regulatory Authority, prior to Occupation Certificate being issued.



Reason: Food premises are required to be registered with the Appropriate Regulatory Authority.

50. **Kitchen Design, construction and fit out of food premises certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from a suitable qualified person that the design, construction and fit out of food premises kitchen is compliant with the requirements of AS 4674 Design, construction and fit out of food premises.

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

Reason: To ensure that the kitchen complies with the design requirements. (DACHPFPOC3)

51. **Mechanical Ventilation certification**

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the installer of the mechanical ventilation system that the design, construction and installation of the mechanical ventilation system is compliant with the requirements of AS1668 The use of mechanical ventilation.

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

Reason: To ensure that the mechanical ventilation system complies with the design requirements. (DACHPFPOC4)

52. **Required Planting**

a) Trees, shrubs and ground covers shall be planted in accordance with the approved landscape Plans

b) Street tree planting

i)

No. of Trees Required.	Species	Location	Minimum Pot Size
3	<i>Banksia serrata</i>	Wyatt Avenue road reserve forward of the property	75 litre

ii) all street trees shall meet the requirements of Natspec - Specifying Trees,

iii) all street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth,

backfilled with a sandy loam mix or approved similar, and mulched to 75mm depth minimum,

iv) all street trees shall be located clear of driveway sightlines, and shall generally be centralised within the road verge,

c) 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.

53. **Post-Construction Dilapidation Survey**

A post-construction 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 in order to determine if the asset has been damaged by the works. 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 dilapidation report must be submitted to the Council for review and the Principal Certifying Authority prior to the issue of the Occupation Certificate. Any damaged to Council's stormwater infrastructure 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

54. **Certification of Drainage Works and Works as Executed Data**

A suitably qualified Civil Engineer shall certify that the completed works have been constructed in accordance with this consent and the approved Construction Certificate plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Stormwater Assets' shall be submitted to the Council for approval prior to the issue of the Occupation Certificate - Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate

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

55. **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)

56. **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.

57. **Fire Safety Matters**

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

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

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

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

58. **Waste/Recycling Compliance Documentation**

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

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

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

59. **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.

60. **No Planting Environmental Weeds**

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

Reason: Weed management.

61. **Works to cease if item found**

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

Reason: To protect Aboriginal Heritage.

62. **Dead or Injured Wildlife**

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

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



63. **Landscape Plan to be Implemented**

Landscaping is to be implemented in accordance with the approved Landscape Plan, as amended by these conditions of consent. The new landscaping is to be certified as in accordance with the approved Landscape Plan by the landscape architect prior to issue of the Occupation Certificate.

Reason: To ensure establishment of new landscaping to be installed to compensate for loss of existing protected trees.

64. **Hours of Operation**

The hours of operation are to be restricted to:

- o Monday to Friday – 7.00am - 6.30pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

65. **Commercial Waste Collection (DACPLG18)**

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

Reason: To protect the acoustic amenity of surrounding properties.(DACPLG18)

66. **Loading and Unloading**

All loading and unloading of vehicles and the delivery of goods must be carried out wholly within the site.

Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity. (DACPLG20)

67. **Deliveries**

No deliveries, loading or unloading associated with the premises are to take place between the hours of 8am and 7pm on any day.

Reason: To protect ensure the acoustic amenity of surrounding properties. (DACPLG21)

68. **Children Numbers**

The maximum number of children to be cared for at any one time on the premises shall not exceed 60 children.

Reason: To ensure compliance with the approved development

3.0 CATEGORY 3 APPLICATIONS UNDER WLEP 2000

3.0 DA2019/0238 - 12 WYATT AVENUE, BELROSE - CONSTRUCTION OF A CHILD CARE CENTRE AND ANCILLARY CARETAKER RESIDENCE

PROCEEDINGS IN BRIEF

The proposal seeks consent for the construction of a childcare centre and ancillary caretaker residence.

The Panel viewed the site and its surrounds. At the public meeting which followed the Panel was addressed by four neighbours and two representatives of the applicant.

ASSESSMENT OF NORTHERN BEACHES INDEPENDENT PUBLIC HEARING PANEL

The Panel finds that a development of this type and conceptually along the lines proposed is consistent with the Desired Future Character prescribed by the WLEP 2000 and could be approved for the reasons stated in Assessment Report, subject to clarification, potential amendment and satisfactory resolution of the following:

1. Traffic Issues

Architectural drawing a8101 proposes a median strip generally located opposite the access to the proposed child care centre. The effect of this median strip as proposed is to preclude direct access to the proposed child care centre to vehicles travelling in a westerly direction. The shortening of this median strip, consistent with the recommendations of Council's Traffic Management Team (see page 23 of this panel's agenda papers) should be addressed, as should the recommendation for a Give Way control.

Condition 14 requires review, at least in so far as it provides for a 10 metre wide (kerb to kerb) road carriageway along the full frontage of the site since that is inconsistent with architectural drawing a8101 in relation to the frontage of the site to the west of the driveway entrance.

Further consideration should be given to the safe and orderly transition of the new road pavement to the existing road pavement to the west of the site.

2. Acoustic Barrier

There appear to be inconsistencies between the architectural plans (e.g. a4101) and landscape plans presentation of the proposed 4.8 metre high, 30 metre long acoustic barrier.

Greater clarity is required with respect to the acoustic barrier along the eastern and northern boundaries including in relation to any footings that may be required, materials, visual impacts, and any impacts of the barrier on the internal and external amenity. Further clarity is also required on the interactions between the proposed acoustic barrier and the Landscape Plan, proposed drainage swale and other drainage infrastructure.

3. Landscape Issues

The Landscape Plan specified in condition 1 in the Assessment Report is not in fact the applicant's proposed landscape plan, rather it is the Landscape Calculation by the applicant's architect being a plan which provides supporting information and would not normally be a plan for approval. The condition should reflect the proposed Landscape Plans by Concept Landscape Architects.

4. **Drainage**

The DRAINS Model and the Overland Flow Report referred to at page 22 of the agenda papers should be submitted and assessed and should include an analysis of any impacts of discharge of water on the adjoining property.

Proposed condition 13 headed 'On-site Stormwater Detention Compliance' incorrectly refers to 'deferred commencement condition'; those words should be deleted and the condition redrafted.

It is preferable that condition 24 headed 'Easement over Adjoining Land' should be redrafted and expressed as a deferred commencement condition.

Vote: 4/0

This is the final page of the Minutes comprising 5 pages
of the Northern Beaches Independent Public Hearing Panel meeting
held on Wednesday 6 November 2019.



northern
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**NORTHERN BEACHES LOCAL PLANNING PANEL
SUPPLEMENTARY REPORT**

DA Number	DA2019/0238
LGA	Northern Beaches Council
Proposed Development	Construction of a childcare centre and ancillary caretaker residence
Street Address	Lot 2616, DP 752038, 12 Wyatt Avenue BELROSE
Applicant/Owner	Phillip Giardina and Rosemarie Moschella
Date of DA lodgement	28 May 2018
Number of Submissions	23
Recommendation	Approval subject to conditions
List of all relevant s79C(1)(a) matters	• Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulation 2000 • Warringah LEP 2000
Report by	Tom Prosser- Planner
Report date	22 January 2020

Executive Summary

The Northern Beaches Independent Public Hearing Panel considered the application (DA2019/0238) for Construction of a Child Care centre and ancillary caretaker residence at 12 Wyatt Avenue, Belrose at its public meeting on 6 November 2019.

In considering the Council Assessment Report and Recommendation, the Panel provided the following findings for the consent authority (NBLPP) to consider:

“The Panel finds that a development of this type and conceptually along the lines proposed is consistent with the Desired Future Character prescribed by the WLEP 2000 and could be approved for the reasons stated in Assessment Report, subject to clarification, potential amendment and satisfactory resolution of the following:

1. Traffic Issues

Architectural drawing a8101 proposes a median strip generally located opposite the access to the proposed child care centre. The effect of this median strip as proposed is to preclude direct access to the proposed child care centre to vehicles travelling in a westerly direction. The shortening of this median strip, consistent with the recommendations of Council’s Traffic Management Team (see page 23 of this panels

agenda papers) should be addressed, as should the recommendation for a Give Way control.

Condition 14 requires review, at least in so far as it provides for a 10 metre wide (kerb to kerb) road carriageway along the full frontage of the site since that is inconsistent with architectural drawing a8101 in relation to the frontage of the site to the west of the driveway entrance.

Further consideration should be given to the safe and orderly transition of the new road pavement to the existing road pavement to the west of the site.

2. Acoustic Barrier

There appear to be inconsistencies between the architectural plans (e.g. a4101) and landscape plans presentation of the proposed 4.8 metre high, 30 metre long acoustic barrier.

Greater clarity is required with respect to the acoustic barrier along the eastern and northern boundaries including in relation to any footings that may be required, materials, visual impacts, and any impacts of the barrier on the internal and external amenity. Further clarity is also required on the interactions between the proposed acoustic barrier and the Landscape Plan, proposed drainage swale and other drainage infrastructure.

3. Landscape Issues

The Landscape Plan specified in condition 1 in the Assessment Report is not in fact the applicant's proposed landscape plan, rather it is the Landscape Calculation by the applicant's architect being a plan which provides supporting information and would not normally be a plan for approval. The condition should reflect the proposed Landscape Plans by Concept Landscape Architects.

4. Drainage

The DRAINS Model and the Overland Flow Report referred to at page 22 of the agenda papers should be submitted and assessed and should include an analysis of any impacts of discharge of water on the adjoining property.

Proposed condition 13 headed 'On-site Stormwater Detention Compliance' incorrectly refers to 'deferred commencement condition'; those words should be deleted and the condition redrafted.

It is preferable that condition 24 headed 'Easement over Adjoining Land' should be redrafted and expressed as a deferred commencement condition."

Applicant response to the Panel resolution

The applicant provided the following amended plans and updated information in order to address the issues raised by the panel:

- Amended architectural plans as follows

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By

a2101, a2102, a2103, a3100, - All Issue d	12/07/2019	RFA Architects
a2100 issue f a4101, a4102 and a8101 issue e a5101 - Issue c	06/03/2019	RFA Architects

- Amended Landscape Plans as follows:

Landscape Plans		
Drawing No.	Dated	Prepared By
a8104 - Issue d	12/07/2019	Rfa architects
1- Landscape Plan 2- Outdoor Play Facilities 3- Detail 1 4- Detail 2 + Specification 5- Sections and Barrier Details	December 2019	Conzept Landscapge Architects

- Overland Flow Path Assessment Report provided by Engineering Studio dated December 2019 and DRAINS Model provided by email to Council's Engineer on 13/01/2019.
- Updated Engineering plans as follows:

Engineering Plans		
Drawing No.	Dated	Prepared By
C10.01, C11.01, C12.01, C12.02, C12.03, C12.04, C12.05, C12.06, C12.07, C12.08, C13.01, C13.02, C13.03, and C13.04 – All Rev. G	5/12/2019c	Engineering Studio

Assessment Officers Additional Comment

The following comments are provided in regard to each of the points raised by the panel with reference to additional information submitted by the applicant:

1. Traffic Issues

Architectural drawing a8101 proposes a median strip generally located opposite the access to the proposed child care centre. The effect of this median strip as proposed is to preclude direct access to the proposed child care centre to vehicles travelling in a westerly direction. The shortening of this median strip, consistent with the recommendations of Council's Traffic Management Team (see page 23 of this panels agenda papers) should be addressed, as should the recommendation for a Give Way control.

Condition 14 requires review, at least in so far as it provides for a 10 metre wide (kerb to kerb) road carriageway along the full frontage of the site since that is inconsistent with architectural drawing a8101 in relation to the frontage of the site to the west of the driveway entrance.

Further consideration should be given to the safe and orderly transition of the new road pavement to the existing road pavement to the west of the site.

Comment:

Council's Traffic Engineer provided the following comments in regard to the amended plans:

*"The recommendations from the Transport Network team have not changed and this was even discussed at length and reiterated at the Panel Meeting in November last year.
The drawing is incorrect and I was unaware that the plan had been revised without the changes to this effect.*

*The median strip ends at the centre of the driveway to No.12 so that it maintains access for a vehicle travelling from the east without undertaking a U-turn to enter the site.
The purpose of the median is to prevent vehicles exiting the site from cutting across the intersection and travelling on the wrong side of the road when heading south along Contentin.Road.*

The updated plan should not show the median blocking the existing driveway access to No.14."

With regard to the above comment, Condition 14 has been redrafted and is recommended as follows:

"14. Application for Infrastructure Works on Council Roadway

Engineering plans are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The submission is to include four (4) copies of Civil Engineering plans for the design of the following (referred to as the "Works":

- *Construction of road shoulder and kerb and gutter along the full frontage of the site to provide for a 10 meter wide (kerb to kerb) road carriageway*
- *Construction of storm-water drainage pits and pipelines - pits must be constructed*
- *minimum 1 meter clear of the driveway layback*
- *Construction of 1.5 meter concrete footpath along the full frontage*
- *Construction of a 5.5 meter wide vehicle crossing*
- *Traffic Control Plan to be approved by Council's Transport Network Team*
- *Construction of a 500mm wide median strip along the centre of Wyatt Avenue, from south of the intersection with Contentin Road to the centre of the driveway access. Traffic Committee approval is required prior to construction of the traffic facility.*
- *Change the traffic priorities at the intersection by installing 'Give Way' controls (linemarking and signage) on the southern arm of Wyatt Avenue. Traffic Committee approval is required for changes to the traffic priorities and traffic devices*

The Works are to be generally in accordance with the Development Application and Council's specification for engineering works – AUS-SPEC #1, relevant Australian Standards including AS/NZS 2890, and Council's Minor Works Specification.

The Fee Associated with the assessment and approval of the plans is to be in accordance with Council's Fees and Charges.

The developer/applicant must lodge with the Roads Authority the security bonds against any damage or failure to complete the construction of the Works as part of this consent is required. The developer/applicant must lodge with the Roads Authority a Maintenance Bond for the construction of the Works. The Maintenance Bond will only be refunded on completion of the Maintenance Period, if the work has been completed in accordance with the approved plans and to the satisfaction of the Roads Authority.

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

Reason: Ensure engineering works are constructed in accordance with relevant standards."

For clarity, a condition is also recommended to require that the median strip will not block the existing driveway at 14 Wyatt Avenue. This condition is as follows:

“14B. The median strip should not restrict access to 14 Wyatt Avenue. Details are to be provided prior to the issue of a Construction Certificate.

Reason To ensure reasonable vehicle access is maintained to 14 Wyatt Avenue.”

2. Acoustic Barrier

There appear to be inconsistencies between the architectural plans (e.g. a4101) and landscape plans presentation of the proposed 4.8 metre high, 30 metre long acoustic barrier.

Greater clarity is required with respect to the acoustic barrier along the eastern and northern boundaries including in relation to any footings that may be required, materials, visual impacts, and any impacts of the barrier on the internal and external amenity. Further clarity is also required on the interactions between the proposed acoustic barrier and the Landscape Plan, proposed drainage swale and other drainage infrastructure.

Comment:

The applicant has provided an updated set of plans and removed the detail of the acoustic barrier on the architectural plans. In place of this, there is a plan in the set of Landscape plans, “Sections & Barrier Details,” which provides further detail of materials, construction and planting (see below).

As such, it is recommended that Condition DA1 be modified.

3. Landscape Issues

The Landscape Plan specified in condition 1 in the Assessment Report is not in fact the applicant’s proposed landscape plan, rather it is the Landscape Calculation by the applicant’s architect being a plan which provides supporting information and would not normally be a plan for approval. The condition should reflect the proposed Landscape Plans by Conzept Landscape Architects.

Comment:

The Landscape Calculation Plan refers to matters relevant to the consent such as removal of trees and for this reason performs as a “Landscape Plan” as well as a calculation plan. As such, it is not agreed that it should be removed as a reference document to this consent.

Furthermore it is recommended that the Landscape Plans by Conzept Landscape Architects are also added as a reference document to the consent.

4. Drainage

The DRAINS Model and the Overland Flow Report referred to at page 22 of the agenda papers should be submitted and assessed and should include an analysis of any impacts of discharge of water on the adjoining property.

Proposed condition 13 headed ‘On-site Stormwater Detention Compliance’ incorrectly refers to ‘deferred commencement condition’; those words should be deleted and the condition redrafted.

It is preferable that condition 24 headed ‘Easement over Adjoining Land’ should be redrafted and expressed as a deferred commencement condition.

Comment:

Additional information was provided by the applicant in the form of a DRAINS Model and an Overland Flow Report (as referenced above). Council’s Engineer provided the following the comment in regard to the additional information:

"Reference is made to Development Engineering Referral Response dated 4/9/19, the matters raised by the Hearing Panel in Point 4 Drainage and the additional information provided by the Applicant to address these matters.

The following comments are made for your consideration:

Stormwater and Overland Flows:

- *The Panel has requested the submission and assessment of the DRAINS model and Overland Flow Report.*
- *The Overland Flow Report demonstrates that there will be an adverse impact on the adjoining property at the downstream headwall discharge. The Report indicates discharge flow rates of 0.785m³/s in the pre-development scenario and 0.803m³/s in the post-development scenario. In addition, it appears that velocities and hazards may be increased in this location.*
- *The Overland Flow Report and modelling has not considered overland flow levels, velocities or hazards within the road reserve or at the downstream headwall discharge. The Report has not considered the impact on minor storm events (the 5% and 20% AEP events).*
- *The Overland Flow Report has not shown complete detailed cross-sectional information of the pre and post-development flow paths.*
- *The DRAINS model provided shows the post-development scenario only.*
- *As per previous Development Engineering advice, these matters were recommended to be addressed through the application of a condition "Prior to the issue of a Construction Certificate" (as amended below). Please note that any changes to the arrangement of the downstream headwall may impact on the development.*
- *It is noted that this condition was previously provided by Development Engineering but not included in the Draft Conditions presented to the Panel.*

<i>Stormwater Drainage Design</i>	<i>Stormwater design plans indicating all engineering details for works within Wyatt Avenue and the subject property regarding the management of stormwater from upstream catchments and the road reserve, must be submitted to Council for written approval. The submission shall include the following:</i> <i>1. An Overland Flow Flood Report is to be prepared to include appropriate modelling, design and reporting sufficient to inform works required to manage overland flows. The Report is to demonstrate comparison between the existing and post development overland flow and that the proposed works will have no adverse impacts on adjoining property (including the road reserve) relating to changes in flood levels, velocities, hazards or overland flow location, for the 1%, 5%, and 20% AEP events.</i> <i>2. Design plans for the proposed works shall be in accordance with the recommendations of the Report, and shall ensure no adverse impacts on adjoining property (including the road reserve). The plans shall address the following:</i> <i>a) Demonstrate how stormwater will be conveyed through the proposed drainage works and the proposed kerb and gutter within Wyatt Avenue.</i> <i>b) Demonstrate compliance with Council's AUS-SPEC ONE specifications and Water Management Policy PL 850.</i> <i>c) Ensure trees are not planted within the stormwater easement.</i>
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	d) <i>The discharge point of stormwater runoff from Council's road shall be within the development site, at the western end of the existing drainage easement.</i> <i>Details demonstrating compliance with the above are to be submitted to Council for confirmation of satisfaction, prior to the issue of any Construction Certificate.</i> <i>Reason: To ensure adequate provision is made for the storm-water drainage from the site in a proper manner that protects adjoining properties.</i>
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- Please amend Condition 13 headed "On-Site Detention Compliance" to read as follows:

On-Site Stormwater Detention Compliance	<i>Drainage plans detailing the provision of the On-site Stormwater Detention in accordance with Northern Beaches Council's Water Management Policy PL850, and the approved concept drawings.</i> <i>Maximum total discharge from the development site for the 1 in 100 year design storm is to be restricted to the 1 in 5 year ARI, 0% fraction impervious discharge.</i> <i>Storm-water discharge from the OSD tank must be directed to a suitably designed storm-water dispersion system.</i> <i>Storm-water dispersion system must be located minimum 3 meters from the downstream boundaries and must be designed to ensure no scouring to downstream properties.</i> <i>Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.</i> <i>Details demonstrating compliance to the above requirements are to be submitted to the Accredited Certifier prior to the issue of any Construction Certificate.</i> <i>Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.</i>
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Planning Comments

Condition 13 will be amended as per above advice and is included in the recommendation.

It is noted that Condition 24 does not relate to drainage as stated by the panel. Conditions 24 is stated as follows:

"24. Easement over Adjoining Land

- a. An easement shall be created burdening the area of the Asset Protection Zone on land outside of Lot 2616, as shown on the Site Plan and Landscape Plan for the benefit of Lot 2616 to enable asset protection zone maintenance works as outlined in the Travers Bushfire Report, dated XXXX 2019 to be carried out by the registered proprietor (or of any mortgagee in possession) of Lot 2616 for the life of the development.

b. The easement will burden Lot 2406, DP 752038, No. 10 Wyatt Avenue for the benefit of Lot 2616, DP 752038, No. 12 Wyatt Avenue.

c. The easement is to be registered on the titles of the burdened land and benefiting land prior to the issue of any occupation certificate.

Reason: *To ensure that access is available for the provision and maintenance of Asset Protection Zones for the benefit of the subject land on adjoining land."*

In response to the panels preference that Condition 24 be provided as a deferred commencement condition, the applicants planning consultant has provided the following statement on behalf of the applicant:

"I believe the registration of the required easement for fire protection purposes on the adjoining property is appropriately required prior to issue of the CC being the time at which the proponent has committed to commencing the DA."

Given the owner will have committed to commencing the DA at the time of requiring the easement, it is agreed that a condition prior to Construction Certificate is appropriate. As such, it is recommended that it is appropriate for the condition to be drafted as a condition that can be satisfied prior to issue of the Construction Certificate.

Additional submission

An additional submission has been submitted by Transgrid, which raised an issue that the median strip may prevent large truck movements. Council's Traffic officer has stated that the median strip would not prevent these large truck movements as the median would be a standard kerb height.

Conclusion

The amended plans and additional information submitted by the applicant provide an appropriate response to the issues raised by the panel.

As such it is recommended that the Local Planning Panel, as the consent authority, grant Development Consent to DA2018/00238 for Construction of a childcare centre and ancillary caretaker residence on land at Lot 2616, DP 752038, 12 Wyatt Avenue BELROSE, subject to the conditions attached to the original assessment report and the following additions/amendments to these conditions:

Condition 1 is to be amended as follows:

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
a2101, a2102, a2103, a3100, - All Issue d	12/07/2019	RFA Architects
a2100 issue f	06/03/2019	RFA Architects

a4101, a4102 and a8101 issue e a5101 - Issue c		
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Engineering Plans		
Drawing No.	Dated	Prepared By
C10.01, C11.01, C12.01, C12.02, C12.03, C12.04, C12.05, C12.06, C12.07, C12.08, C13.01, C13.02, C13.03, and C13.04 – All Rev. G	5/12/2019c	Engineering Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Access Report 14/02/2019 Wall to Wall	Access Report 14/02/2019 Wall to Wall	Access Report 14/02/2019 Wall to Wall
Acoustic Report - Ref. BGMA 170406 C	February 2019	BGMA Pty Ltd
Arborist Report	21/06/2019	Hugh the Arborist
BCA Report - Ref. P217_089-1	18/02/2019	Design Confidence
Bushfire Report - Ref. 18RFA02: NVD	25/02/2019	TBE Environmental Pty Ltd
Emergency Management Plan	15/02/2019	Beaware Solutions Pty Ltd
Flora and Fauna Report - Ref. REF: A16240F	21/04/2017	TBE Environmental Pty Ltd
Overland Flow Report - Ref. 17111-005-r	July 2019	Engineering Studio
Traffic and Parking Report	April 2017	TSA

- 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
a8104 - Issue d	12/07/2019	Rfa architects
6- Landscape Plan 7- Outdoor Play Facilities 8- Detail 1 9- Detail 2 + Specification 10- Sections	December 2019	Conzept Landscapge Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
a6101 - Issue d	12/07/2019	Engineering Studio

Waste Management Plan	26/02/2019	Frank Moschella
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Condition 13- On-Site Stormwater Detention Compliance - is to be amended as follows:

13. Drainage plans detailing the provision of the On-site Stormwater Detention in accordance with Northern Beaches Council's Water Management Policy PL850, and the approved concept drawings.

Maximum total discharge from the development site for the 1 in 100 year design storm is to be restricted to the 1 in 5 year ARI, 0% fraction impervious discharge.

Storm-water discharge from the OSD tank must be directed to a suitably designed storm-water dispersion system.

Storm-water dispersion system must be located minimum 3 meters from the downstream boundaries and must be designed to ensure no scouring to downstream properties.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

Details demonstrating compliance to the above requirements are to be submitted to the Accredited Certifier prior to the issue of any Construction Certificate.

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

Condition 14 - Application for Infrastructure Works on Council Roadway- is to be amended as follows:

14. Application for Infrastructure Works on Council Roadway

Engineering plans are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The submission is to include four (4) copies of Civil Engineering plans for the design of the following (referred to as the "Works"):

- *Construction of road shoulder and kerb and gutter along the full frontage of the site to*
- *provide for a 10 meter wide (kerb to kerb) road carriageway*
- *Construction of storm-water drainage pits and pipelines - pits must be constructed*
- *minimum 1 meter clear of the driveway layback*
- *Construction of 1.5 meter concrete footpath along the full frontage*
- *Construction of a 5.5 meter wide vehicle crossing*
- *Traffic Control Plan to be approved by Council's Transport Network Team*
- *Construction of a 500mm wide median strip along the centre of Wyatt Avenue, from south of the intersection with Contentin Road to the centre of the driveway access. Traffic Committee approval is required prior to construction of the traffic facility.*
- *Change the traffic priorities at the intersection by installing 'Give Way' controls (linemarking and signage) on the southern arm of Wyatt Avenue. Traffic Committee approval is required for changes to the traffic priorities and traffic devices*

The Works are to be generally in accordance with the Development Application and Council's specification for engineering works – AUS-SPEC #1, relevant Australian Standards including AS/NZS 2890, and Council's Minor Works Specification.

The Fee Associated with the assessment and approval of the plans is to be in accordance with Council's Fees and Charges.

The developer/applicant must lodge with the Roads Authority the security bonds against any damage or failure to complete the construction of the Works as part of this consent is required. The developer/applicant must lodge with the Roads Authority a Maintenance Bond for the construction of the Works. The Maintenance Bond will only be refunded on completion of the Maintenance Period, if the work has been completed in accordance with the approved plans and to the satisfaction of the Roads Authority.

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

Reason: Ensure engineering works are constructed in accordance with relevant standards.



Bushfire Maintenance

- Trees are to be maintained to ensure;
 - Canopy cover does not exceed 15%
 - Trees (at maturity) are to be maintained to ensure they do not touch or overhang the building
 - Tree canopies (at maturity) are to be maintained to ensure they are well spread out and not form a continuous canopy
 - Lower trees should be maintained / removed to a height of 4m above ground

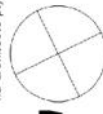
shrubs are to be maintained to ensure;

- Large discontinuities or gaps in vegetation have been provided
- Shrubs are not to be located under trees
- Shrubs do not to more than 10% of ground cover
- Clumps of shrubs should be separated from exposed windows a least twice the height of vegetation.

Grass is to be maintained to ensure:

- A height of 10cm or less
- Leaves and debris is removed

rfa architects Pty Ltd©



preliminary only. not for construction.

Ensure all drawings are printed or copied in colour.
All dimensions to be checked on site. Any discrepancies to be referred to architect

contact:
T+61 2 9901 4933

project: new childcare centre & caretaker residence at 12 wyatt avenue
belrose nsw 2085

pro. no.	16018
date:	may 17

site plan



preliminary only. not for construction.

Ensure all drawings are printed or copied in colour.

fa architects pty ltd ©

Contact:

Project: new childcare centre

Project: new childcare centre

pro. no.: 16018

pro. no.: 16018

pro. no.: 16018

pro. no.: 16018

fa architects pty ltd ©

Contact:

Project: new childcare centre

Project: new childcare centre

pro. no.: 16018

pro. no.: 16018

pro. no.: 16018

pro. no.: 16018

rfa
architects



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ITEM 3.5

**DA2019/0845 - 68A QUEENSCLIFF ROAD, QUEENSCLIFF -
DEMOLITION WORKS AND CONSTRUCTION AND STRATA
SUBDIVISION OF A SHOP TOP HOUSING COMPRISING 2
COMMERCIAL UNITS AND 5 RESIDENTIAL UNITS**

AUTHORISING MANAGER MATTHEW EDMONDS

TRIM FILE REF 2020/046120

ATTACHMENTS

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

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2019/0845 for demolition works and construction and strata subdivision of a shop top housing comprising 2 commercial units and 5 residential units at Lot A DP 961049, 68A Queenscliff Road, Queenscliff for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0845
Responsible Officer:	David Auster
Land to be developed (Address):	Lot A DP 961049, 68 A Queenscliff Road QUEENSCLIFF NSW 2096
Proposed Development:	Demolition works and construction and strata subdivision of a shop top housing comprising 2 commercial units and 5 residential units
Zoning:	Warringah LEP2011 - Land zoned B1 Neighbourhood Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Christine Coultis
Applicant:	Classic Plans
Application Lodged:	07/08/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	24/08/2019 to 07/09/2019
Advertised:	24/08/2019
Submissions Received:	38
Clause 4.6 Variation:	4.3 Height of buildings: 49.4%
Recommendation:	Refusal
Estimated Cost of Works:	\$ 1,943,930.25

Executive Summary

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposed shop top housing development is not suitable and appropriate development for the subject site.

The proposal is well above the height limit, and is generally bulky in appearance. This will contribute to unreasonable view loss and other unacceptable environmental impacts. The application is not consistent with the Apartment Design Guidelines under SEPP 65. Further, the proposal falls well short of the required amount of parking. The application has failed to satisfy a number of Council's referral

officers, including with respect to stormwater, driveway design, parking, elements overhanging the front boundaries, general design of the building and consistency with the Apartment Design Guidelines, and the design of the waste facilities.

Numerous submissions were received. The bulk of these submissions focused on the height and bulk of the building and resulting view impacts, the roof top terrace and resulting environmental impacts including noise, and on the short fall in parking. There were also other issues raised as discussed within the report.

The objections to these issues are generally supported, and the application is recommended for refusal for these and other reasons. The application falls generally short in various areas with respect to a number of relevant planning controls.

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

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves demolition of the existing structures on site and construction of a shop top housing development which will be strata subdivided into 7 lots. Specifically, the proposal comprises the following components:

Basement

- Access from Queenscliff road to parking for 6 vehicles, one of which is a small car space.
- Bicycle racks, storage areas and plant room.
- Lift installation and exit stairs to ground floor and Bridge Road.

Ground Floor

- Commercial space 1 (including kitchen, cool room and unisex toilet) opening onto covered awning terrace areas to be used as a cafeteria.
- Commercial space 2 including unisex WC.
- Residential and commercial waste storage facilities.
- Lift, entry lobby and stairs to basement and first floor level.

First Floor

- Units 1, 2 and 3, each comprised of open plan kitchen, living and dining room areas, balconies, 1 bedroom and 1 bathroom.
- Lift, lobby area and stairs to ground and second floors.

Second Floor

- Unit 4 comprised of open plan kitchen, living and dining room, balcony, 3 bedrooms, all with built

- in robe and bedroom 1 with en-suite, 1 common bathroom.
- Unit 5 comprising open plan kitchen, living and dining room, balcony, two bedrooms, each with built in robe, 1 bathroom.
- Lift installation lobby area and stairs to first floor and roof terrace areas.

Roof Plan

- Private roof terrace areas for units 5 and 6 comprising 40.5sqm and 28.6sqm respectively.
- "Tilt" pop up glazed roof sky lights over internal stairs.
- Common roof terrace area of 70sqm with access from common stair well.
- Lift installation and overrun.
- Central building services flute.
- Planter box and privacy screen divisions between respective terrace areas.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - Zone B1 Neighbourhood Centre
Warringah Development Control Plan - B6 Merit Assessment of Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C2 Traffic, Access and Safety
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - C4 Stormwater
Warringah Development Control Plan - C9 Waste Management
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D3 Noise
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D11 Roofs
Warringah Development Control Plan - F1 Local and Neighbourhood Centres

SITE DESCRIPTION

Property Description:	Lot A DP 961049 , 68 A Queenscliff Road QUEENSCLIFF NSW 2096
Detailed Site Description:	The site is a corner lot located at the intersection of Queenscliff Road and Bridge Road. The site is slightly irregular in shape, and has an area of 315.2sqm. The site falls from the northern front boundary on Queenscliff Road to the southern side boundary by up to approximately 1.6m. The surrounding topography continues to fall to the south and rise to the north. There is an existing brick three storey shop top housing development on site. The development includes limited parking at the western end of the site and a raised timber deck in the south east corner of the site attached to one of the commercial units. Surrounding development consists mainly of residential flat buildings of various ages and architectural styles to the north, east and west. The adjoining neighbour to the south is a single detached dwelling. Both the subject site and the southern neighbour are zoned B1 Neighbourhood centre. There are views of the ocean and Manly/Queenscliff Beach and surrounds available across the site from the neighbouring residential flat buildings across the road to the north and north west.

Map:



SITE HISTORY

PLM2018/0143 - A prelodgement meeting was held between Council and the applicants on 17 July 2018. The notes from this meeting stated that the proposed height was unlikely to be supported by Council, particularly if the proposed height contributed to unreasonable view loss or other unreasonable environmental impacts. Reduction to a compliant 8.5m overall height was recommended. Concerns were also raised with the possible impacts caused by the roof top terrace, side setbacks, and number of parking spaces.

DA2015/1079 - Alterations and additions to the existing shop top housing development and strata subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009 was approved by Council on 5 April 2016. These alterations and additions, though over the height limit in places, generally resulted in a reduction in height of the existing building, by replacement of the existing pitched roof with a flat roof.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters can be addressed via a condition of consent should the application be approved. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.

Section 4.15 Matters for Consideration'	Comments
	<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 should the application be approved. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter can be addressed via a condition of consent should the application be approved. <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 should the application be approved. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent should the application be approved.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. As discussed throughout this report, the proposal is considered to have unreasonable environmental impacts in terms of impacts to the surrounding vicinity. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the development as proposed. The use of the site as shop top housing is acceptable, but the intensity of development and built form proposed is considered to be an over-development of the site.
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	This assessment has found the proposal to be contrary to the relevant

Section 4.15 Matters for Consideration'	Comments
public interest	requirements of the Warringah LEP and DCP, and State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development, and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

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 38 submission/s from:

Name:	Address:
Mr Bruce James Geddes	1 / 12 Bridge Road QUEENSCLIFF NSW 2096
Mr Phillip James Bailey Mrs Nicole Simone Bailey	8 / 48 Pavilion Street QUEENSCLIFF NSW 2096
Guilherme Guaragni Flavia Martins Pereira E Silva	2 / 48 Pavilion Street QUEENSCLIFF NSW 2096
Mr Paul Anthony Cook	4 / 12 Bridge Road QUEENSCLIFF NSW 2096
Peter John Rawling	11 / 63 - 67 Pavilion Street QUEENSCLIFF NSW 2096
Ms Lyn Rhodes Ellis	57 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Bret Stephen Gambrill Mrs Mary Geraldine Gambrill	74 Queenscliff Road QUEENSCLIFF NSW 2096
Withheld	QUEENSCLIFF NSW 2096
Sally Mills Glover	6 / 61 - 63 Queenscliff Road QUEENSCLIFF NSW 2096
Deborah Mary McMeniman	7 / 75 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Chris Liell-Cock	94 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Martin Joseph Hartcher	8 / 61 - 63 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Gregory Sydney Sullivan	5 / 61 - 63 Queenscliff Road QUEENSCLIFF NSW 2096
Mrs Karen Lisa Birch	119 Woodland Street BALGOWLAH NSW 2093
Mr Paul James Mitchell	6 / 53 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Sean Andrew Kiely Sally Frances Kiely	49 Pozieres Parade ALLAMBIE HEIGHTS NSW 2100

Name:	Address:
Jennifer Dean	16 / 15 a Pine Avenue BROOKVALE NSW 2100
Grant Raymond Davis	PO Box 140 NOOSA HEADS NSW 4567
Mr Malcolm Craig Hanlon	8 / 53 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Andreas Ulrich Faeste	88 Queenscliff Road QUEENSCLIFF NSW 2096
Dean Cameron Andrews	5 / 53 Queenscliff Road QUEENSCLIFF NSW 2096
George Davis	23 Greycliffe Street QUEENSCLIFF NSW 2096
Phillip Andrew Callaghan	3 / 55 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Shane Andrew Wynnoven	4 / 53 Queenscliff Road QUEENSCLIFF NSW 2096
Miss Sophie Helen Rouse	6 / 55 Queenscliff Road QUEENSCLIFF NSW 2096
David Peter Steindl Mrs Jennifer Jane Steindl	72 Queenscliff Road QUEENSCLIFF NSW 2096
Greg Oreilly	2 / 68 Queenscliff Road QUEENSCLIFF NSW 2096
Mr Peter Gregory Richter	29 Crown Road QUEENSCLIFF NSW 2096
Mr Paul Robert Corbitt	2 / 55 Queenscliff Road QUEENSCLIFF NSW 2096
Ms Bronwyn Joy Cameron	8 / 55 Queenscliff Road QUEENSCLIFF NSW 2096
Jessica Train	2 / 53 Queenscliff Road QUEENSCLIFF NSW 2096
Ms Gillian Margaret Ruskin	21 A Greycliffe Street QUEENSCLIFF NSW 2096
Mr Robert Joseph Mather	78 Queenscliff Road QUEENSCLIFF NSW 2096
Peter Gray	2 / 12 Bridge Road QUEENSCLIFF NSW 2096
Mr Antonios Kanis	9 / 55 Queenscliff Road QUEENSCLIFF NSW 2096
Mark Lindsay Robinson	1 / 55 Queenscliff Road QUEENSCLIFF NSW 2096
Hedwig Williams Martina Williams	7 / 53 Queenscliff Road QUEENSCLIFF NSW 2096

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

- Height
- Views
- Parking and traffic
- Solar access
- Excavation
- Building bulk, design, neighbourhood character
- Roof terrace
- Apartment Design Guidelines

The matters raised within the submissions are addressed as follows:

- **Height**
Concerns were raised regarding the height of the proposal.

Comment:

The height of the development is addressed in detail under clause 4.6 in this report. In summary, the proposal is well above the 8.5m height limit, and is not considered acceptable. The concerns raised in the submissions are supported in this regard, to the extent discussed

within this report. The height of the proposal is a recommended reason for refusal.

- **Views**

Concerns were raised with respect to impacts on views.

Comment:

This issue is addressed in detail under clause D7 Views in this report. In summary, the proposal is not considered to maintain a reasonable sharing of views as required. The submissions are supported in this regard, and the application is recommended for refusal partly on this basis.

- **Parking and traffic**

Concerns were raised with regard to the lack of off-street parking provided, particularly in relation to the lack of on-street parking available in the surrounding area. Concerns were also raised with regard to traffic generation from the development.

Comment:

Parking is discussed in detail under clause C3 Parking Facilities in this report. In summary, the proposal is not considered to provide adequate off-street parking, and the submissions are supported in this regard. This forms part of the reasons for refusal.

With respect to extra traffic being generated in the area, the proposal was referred to Council's Traffic Engineer who stated that the traffic generation would have no adverse impact on the road network. The intensity of the development is not such that the amount of traffic generated would be unreasonable in the medium density area. The submissions are not supported in that respect.

- **Solar access**

Concerns were raised by the southern neighbour, particularly with regard to shading of their back yard area between dwelling and pergola, and in their front yard also.

Comment:

The shadow diagrams provided indicate that the proposal will not create any greater overshadowing of the southern neighbour's rear private open space than is currently caused by the existing building on site (the extended shadows will fall on the roof area of the southern neighbour).

It is noted that the rear private open space is highly vulnerable to overshadowing, being both to the south and downhill from the subject site. Further, the southern neighbour has their own shade casting pergola in the north west corner of the rear yard, which shades a significant portion of the rear, and the area between this pergola and the rear of house is immediately adjacent to the northern boundary, making it difficult to be protected from overshadowing even if the proposal complied with the height limit.

Given these factors, the proposal is not considered to result in unreasonable overshadowing. The submission is not supported in this regard. However, the proposed height of the building is not supported for other reasons, as discussed throughout this report.

- **Excavation**

Concerns were raised regarding the amount of excavation proposed, and possible impacts on the neighbouring building to the south.

Comment:

The application includes a geotechnical report (Geo-Environmental dated 21 June 2019). This

report has addressed the potential impacts to surrounding buildings due to vibrations from excavation, and includes recommendations to limit any risk in this regard. The report also recommends a dilapidation report be carried out on surrounding properties. Subject to the recommendations of this report, the proposal is considered acceptable in this regard.

If the application was to be approved, a condition of consent requiring all recommendations of this report to be carried out would be recommended for inclusion in the consent. The submission is considered to be reasonably satisfied in this regard.

- **Building bulk, design, neighbourhood character**

Concerns were raised regarding the overall design of the development, particularly with regard to the bulk and scale created by blank dominant facades, broken up only by features attached to the facades, and the cluttered roof top caused by the lift and privacy screens. Further concerns were raised regarding the bulky design of the upper levels in particular, and lack of awnings for pedestrians to take shelter, and that this meant the proposal would fail to create a 'village like atmosphere'.

Comment:

These concerns are generally supported, as discussed throughout this report. The proposed building is lacking in articulation and depth, and the features on the front (northern and eastern) facades in particular, attached to create some articulation and visual interest, are generally overhanging the boundary (and are therefore not supported by Council), and are inadequate to sufficiently break up the bulk of the building in any case. Council's Urban Designer has also raised various concerns regarding the overall design. These concerns form part of the reasoning for refusal.

- **Roof terrace - Privacy, noise, safety**

Concerns were raised with regard to potential environmental impacts caused by the roof top terrace, including privacy, noise, safety, and general cluttered design of the roof being out of character with the neighbourhood.

Comment:

These concerns are generally supported, as discussed throughout this report. The roof terrace is entirely above the permitted height limit for the site, and there are no other roof terraces in the vicinity which create any precedent for such development. The application has not demonstrated that noise from use of the terrace will be adequately contained within the site. These concerns form part of the recommended reasons for refusal.

- **Apartment Design Guidelines**

Concerns were raised with respect to various aspects of the Apartment Design Guidelines, particularly with regard to the floor to ceiling heights of the commercial units, the amount of storage provided, lack of deep soil area, and setbacks to the southern boundary in particular.

Comment:

These concerns are supported to the extent discussed under the SEPP 65 section of this report. In particular, the floor to ceiling heights of the commercial units is inadequate, and Council's Urban Designer has recommended that the southern side setbacks of balconies be increased somewhat. Inconsistency with the requirements of SEPP 65, including the Apartment Design Guidelines, is a recommended reason for refusal.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. It is noted that the Juliet balconies and polystyrene window surrounds encroach over the property boundary, but this is a matter for Planning to determine. Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.
Environmental Health (Food Premises, Skin Pen.)	General Comments Primary concerns are with regards to noise from the commercial occupations , mechanical ventilation, plant and the rooftop deck. Despite a kitchen fit out being shown for commercial unit No 1 it is noted that commercial units will be subject to a separate development application at which time the acoustic implications and fit out requirements for the kitchen including mechanical exhaust can be taken into consideration. For the residential component , basement mechanical exhaust can be dealt with by way of a condition relating to the acoustic engineers report. Concern is expressed for the rooftop terrace areas. The applicant is proposing to restrict " groups" of people using these areas between 10 pm and 7 am however I believe the condition should relate to any use of the area, as it is difficult to define and police a group. Therefore Environmental Health believe that the application can be approved provided robust conditions are put in place with regards to Environmental Health issues Recommendation

Internal Referral Body	Comments
	APPROVAL - subject to conditions
Landscape Officer	The proposed development provides little by way of soft landscape, however it is noted that the site is zoned B1-Neighbourhood Centre with nil front setback and landscape open space requirements. The plans indicate some paving and landscape works within the road reserves surrounding the site. No details have been provided regarding treatments, Comment from Council's Roads Assets section should be sought regarding the suitability of the proposed paving, paths and stairs in the road reserve. The plans indicate street tree planting to Queenscliff Rd, but no details are provided. If the proposal is to be approved, recommended small coastal tolerant species have been included in conditions.
NECC (Coast and Catchments)	The proposed development has been assessed to comply with clauses 13 and 15 of SEPP Coastal Management and is supported without condition. It is not likely to alter coastal processes to the detriment of the environment or other land and is not likely to reduce public amenity or existing access to and use of a foreshore.
NECC (Development Engineering)	Based on the above mentioned issues the proposal is not supported for approval due to inadequate information to address: - Storm-water drainage for the site and road drainage in accordance with Council Water Management Policy PL 850 Water. - Driveway crossing design in accordance with AS/NZS2890.1. - Pedestrian access for the site in accordance with the latest version of AS1428.1. It is recommended that the Applicant consult further with Council's Development Engineers regarding any future proposal of civil works.
NECC (Development Engineering)	<u>General Information</u> Development application for demolition of the existing structures and construction of a shop top housing development and strata subdivision into 7 lots at Lot A DP 961049 No 68A Queenscliff Road, Queenscliff. The proposal was the subject of a pre-lodgement meeting 17 July 2018 and the application incorporates appropriate responses to the recommendations from this meeting. DA 2015/1079 for Subdivision - Alterations and Additions to an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009 Consent granted 5 April 2016. Construction Certificate CC2018/0053 Alterations and Additions to

Internal Referral Body	Comments
	an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009 – Approved 15 January 2018 • NOC2018/0068 Notification of Commencement - Alterations and Additions to an existing Shop Top Housing Development and Strata Subdivision of low rental dwellings under SEPP (Affordable Rental Housing) 2009 17 January 2018. The Applicant has stated that the development in accordance with the above consent and approval has “physically commenced”. <u>Stormwater Assessment comments</u> The proposed design for connection of the development storm-water drainage discharge, via required OSD, directly to Council's pipe in Bridge Road by using "Flowcon Conconnect" is not in accordance with Council's standard requirements, and for that reason, the proposed design shall be amended. It is recommended to relocate the OSD to the most suitable location (north east corner of the development) and connect discharge by gravity to the existing pit with kerb inlet fronting the site. The grated access hatch to OSD shall be accessible. A Drains model shall be provided with the amended storm-water design. <u>Civil Works Assessment comments</u> The proposed profile for vehicular crossing access from Queenscliff Road (dwg No 040/19) is very different from the approved proposal under DA2015/1079 and is not in accordance with Council's Standard. The Applicant shall provide long sections along the center line and both edges of the vehicular access in accordance with AS/NZS2890.1 and Council Standard. The sections are to be taken from the center line of the street through to the Basement Parking and must show ground clearance in accordance with AS/NZS2890.1 for B85 and B99. Proposed layout for the allocated basement parking spots is not in accordance with AS/NZS2890.1 and the layout shall be rearranged to comply with Council requirements imposed at the pre-development meeting in regards to number of parking lots. However, this issue will be addressed from Council Traffic Engineer. • The proposed footpath shall be aligned in continuation of the existing footpath along Queenscliff Road. The amended plan shall provide design for 1.5 m wide footpath, placed adjacent to the kerb and a long section through the main pedestrian access to the property/Lobby to justify complying of the proposed design with the requirements of Australian Standard - Access for people with Disabilities.
Road Reserve	The building encroaches into the airspace of Council's road reserve. The encroachment of the building is not supported. The building should be contained within the property boundaries of the subject site.

Internal Referral Body	Comments
	There are known flooding problems of adjoining properties associated with the low level profile of the existing driveway. Details are required to demonstrate the driveway to the development can accommodate Normal Low Standard Vehicle Crossing Profile to reduce flooding of downstream properties. As per Development Engineering comments, the proposed paving on road reserve shall be subject to Road Act approval and include kerb ramp crossings on both the Queenscliff Road and Bridge Road frontages. No other impact on existing road assets.
Strategic and Place Planning (Urban Design)	1. Built Form Controls WLEP 2011 4.3 Height of Buildings <i>(1) The objectives of this clause are as follows:</i> <i>(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</i> <i>(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,</i> <i>(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,</i> <i>(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.</i> The upper storey rooftop common and private spaces are not supported. There are several instances of the lift overrun and associated elements obstructing medium to long distance views from the northern side of Queenscliff Road. As such any built form elements to the rooftop area should be minimised and where necessary for external mechanical plant, screened from view appropriately and with minimal height of built form obstructions. Additionally the final flight of risers to the stair that leads to the rooftop is unsupported. Given the rooftop common area is not supported the need for the stair is questioned. 2.1 Land Use Zone B1 Neighbourhood Centre Objectives of zone <i>• To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.</i> <i>• To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.</i> <i>• To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential</i>

Internal Referral Body	Comments
	<i>land uses.</i> RESPONSE The proposed use represents the desired future land uses for the property. As will be mentioned herein a fine grain approach to the detailing of level access to the premises and the resolution of the frontage to Bridge Road to provide more opportunities for activation; rest or pause areas that have a pedestrian friendly interface with the premises is highly recommended. At the moment the elevation from ground plane to the ground floor FLL is a blank wall. WDCP 2011 B7 – Front Boundary Setback Requirements <i>A - nil setback</i> RESPONSE Nil setback applies to the property. The drawings demonstrate entrances from both street frontages. Access to premises standards should be adopted for the ground floor tenancies with access provisions for all tenancies in accordance with the relevant standards. It is noted there is a significant level change on the short north south frontage of Bridge Road. Street activation along both frontages is encouraged with design details at the building line and public interface providing a well resolved final built form outcome; avoid high street wall effect on the lower southern side of the Bridge Road frontage. (Existing Use Rights application – proposed development will be required to maintain the existing building setbacks.) B7 – Side Boundary Setback Requirements A - Merit Assessment RESPONSE Whilst it is noted the existing building approved DA 2015/1079 has provided a 3 metre setback to the southern boundary from the building line, the pre-lodgement meeting advice (provided PLM2018/0143) reinforced the need for a minimum 3metre setback. Whilst the ground level terrace extends to the boundary the planter screening device is supported and would provide better acoustic attenuation. It is recommended this planter screening device be returned at the western end to run the short length of the terrace at the western most point thus providing further acoustic separation to the property at 21 A Bridge Road. (Existing Use Rights application – proposed design would be required

Internal Referral Body	Comments
	to remain within the existing building footprint and setback alignments.) 2. Apartment Design Guide (ADG) 3F Visual Privacy The recommendation notes separation from habitable rooms; balcony, living and bedroom require a nominal 6 metre setback from the boundary. It is noted that the site is constrained and the previous merit assessment (see above) nominates a 3 metre setback to all three street frontages. The balconies of the upper levels on all three street frontages should be within the boundaries of the site on the northern and eastern elevations and within the 3 metre setback control on the south. The Juliet balconies to the north elevation overhang the public pedestrian thoroughfare and as such cannot be supported. Recessing the balconies back into the building and providing full height vertical operable privacy screening to the balconies would be the preferred outcome. The balconies to the southern elevation should similarly be set back within the building line, aligned with the three metre setback, recessed and with full height vertical operable privacy screening to the whole balcony(s). 3G – Pedestrian Access and Entries The drawings demonstrate the front entry to the apartments has a nil setback to the boundary. This also relies on the weather protection awning overhanging the public pedestrian path. Whilst an awning over a public path is not strictly prohibited the entry and lobby poses a few issues in terms of adequate circulation space. Upon entering the building the circulation access stairs from the upper levels exits directly onto a cross path of travel from both the entry door and the lobby inside the building. Ideally there would be a recessed porte cochere entry with minimum 2 metres from the boundary and an internal lobby with adequate circulation space for several occupants to pass and circulate comfortably once inside the building. Moving the kitchen wall in Commercial 1 by approx. 2 metres to the east would assist to create a more generous lobby and circulation zone, minimise circulation conflicts and allow for a more realistic entry into the private lobby without obstructing pedestrians in the public zone. The applicant is directed to the above mentioned clauses from the ADG to guide design of the public private interfaces of the development.
Traffic Engineer	Proposal

Internal Referral Body	Comments
	The proposal is for demolition of the existing structure and construction of a multi-dwelling mixed-use development comprising 2 retails at ground floor with a total GFA of 112m², and 5 dwellings. The proposal provides six (6) car parking spaces within the basement level with the breakdown of 5 residential parking spaces; and one commercial parking space with driveway access on Queenscliff Road. Parking In compliance with Warringah DCP, the provision of 14 parking spaces is required for the proposed development, this is whilst there are 6 spaces provided within the car parking area. Given that the proposal is for construction of a new development, the compliance with the DCP will be required. Access and internal design The proposal includes a signal system to control the traffic movement on the driveway. Whilst this will improve the sightline issue on the proposed driveway, given the proposed driveway being a long and curved single lane driveway, to prevent any reversing and adverse impact on the frontage road, the provision of a passing bay is considered necessary. The passing bay is to be minimum 5.5m wide for at least first 6m from the property boundary. The driveway gradients shall be designed in compliance with Australian Standards AS2890.1:2004. In this regard, the gradient of the first 6m of the driveway shall be maximum 1:20. The car space No.2 is proposed to be a small car space. The proposed small space is not supported particularly given the significant shortfall in parking provision. All parking spaces are to be designed for a standard vehicle in accordance with AS2890.1:2004. It should be noted that the swept path analysis indicates that this space will not be accessible without intruding on the adjacent car space when turning in / out of the spaces, which is not acceptable. Traffic generation The proposed development is expected to generate 7.5 veh/hr during the AM and PM peak period. The anticipated traffic generation is not considered to have adverse impact on the road network, and is acceptable. Conclusion In view of the above, the proposal cannot be supported on traffic grounds.
Waste Officer	The applicant has not complied with the Northern Beaches Council

Internal Referral Body	Comments
	Waste Management Guidelines as follows. A redesign is required to ensure compliance. The access between the Waste Storage Area and Collection Point must be a minimum width of 1200mm. Any doors fitted on the Waste Storage Area, pathway and access must be: a) A minimum width of 1200mm. b) Able to be latched in an open position. c) Unobstructed by any locks and security devices. d) Open in an outward direction. Recommendation Refusal

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 mixed residential / commercial purposes for a significant period of time. 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 mixed residential and commercial land use.

SEPP 65 - Design Quality of Residential Apartment Development

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

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

- (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a three storey shop top housing development plus basement car parking for the provision of five self-contained dwellings.

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

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

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment: The subject site is zoned B1 Neighbourhood Centre and is surrounded by a mixture of traditional and modern apartment style buildings interspersed by two storey dwelling houses within landscape settings. Shop top housing development is permissible development within the zone. A shop

top housing development was constructed on the site during the mid 1960's (Land Use Consent No.65/61) and has since been modified.

Council's Urban Designer has raised concerns regarding the design of the development with regard to access to the premises and activation of the commercial units, elements overhanging the front boundaries, and inadequate articulation of the bridge road elevation in particular. Given these concerns, the proposal is not considered to be consistent with principle 1.

Principle 2: Built Form and Scale

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

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

Comment: The proposal is generally well above the 8.5m height limit applicable to the site, and the design in general does not provide a great deal of articulation to the northern, eastern and western elevations in particular to break up the general bulk of the building. The features used on these elevations to provide visual relief are comprised in large part of juliet balconies and window treatments which overhang the front boundary (and are not supported for that reason), with little depth otherwise provided to these elevations by varying setbacks or similar. Council's Urban Designer has raised concerns with various aspects of the design (see Referrals section of this report), and as such, the proposal is not considered to be consistent with principle 2.

Principle 3: Density

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

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

Comment: The proposal results in a significant height non-compliance in order to provide the roof top terrace in particular, which is intended to provide the common open space required by the SEPP. The upper level of units is also above the height limit with a minimum height of 8.66m at the lowest point, even if the roof terrace was deleted entirely. Despite this non-compliance the proposal is still unable to fully achieve the minimum floor to ceiling heights for the commercial units under both the SEPP and the Warringah DCP. The proposal provides only six car spaces (one of which is a small car space), which falls well short of the 13 spaces required by the Warringah DCP. Taken together these non-compliances indicate an over development of the site in terms of density.

Principle 4: Sustainability

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

Comment: The application includes a BASIX certificate, and generally provides for internal natural cross ventilation and solar access, and is largely consistent with the requirements of the SEPP in this regard.

The proposal is considered to be generally consistent with Principle 4.

Principle 5: Landscape

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

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

Comment: Minimal landscaping is provided by the proposal, which is limited to 3.6sqm of deep soil area in the south western corner of the site, and planter boxes on the southern deck off Commercial unit 1, and on the roof top terrace. Given the size of the site, provision of landscaping in accordance with the minimum requirements of the SEPP is perhaps unrealistic. However, this emphasises the need for excellence in design of the building to wholly provide a visually attractive development with good amenity, that provides a positive image and contextual fit, in the way that this principle suggests could be contributed to by landscaping. Given the concerns raised in the above principles with regard to the overall design of the building, the proposal is not considered to be consistent with this principle.

Principle 6: Amenity

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

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

Comment: The proposal is generally well designed in terms of internal amenity for the units. However, as discussed throughout this report, the proposal is considered to result in unreasonable amenity impacts to surrounding neighbours, particularly in terms of view loss and possible acoustic and visual privacy impacts from the roof top terrace.

Principle 7: Safety

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

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

Comment: The proposal will provide for casual surveillance of the surrounding area, and all units will be accessible via the stairwell and lift which will be behind lockable doors. The proposal is generally consistent with this principle.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment: The proposal provides for 3 x 1 bedroom units, 1 x 2 bedroom unit and 1 x 3 bedroom unit. A mix of apartment sizes is therefore provided. A large communal space is provided on the roof top terrace, with views towards the ocean and Manly Beach (although this roof terrace is not supported for other reasons as discussed throughout this report). The proposal is generally consistent with this principle.

Principle 9: Aesthetics

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

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

Comment: As discussed above, Council's Urban Designer has raised concerns with various aspects of the design (see Referrals section of this report). The articulation of the building to break up the bulk on the northern elevation in particular is largely provided by juliet balconies and window treatments which overhang the boundary (and are not supported for this reason). The general design of the building without these features is lacking in articulation and depth provided by varying setbacks. The proposal is not considered to achieve this principle.

APARTMENT DESIGN GUIDE

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

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		
Site Analysis	Does the development relate well to its context and is it sited appropriately?	Inconsistent The proposal is not satisfactory in relation to this clause. The proposed shop top housing use is suitable in the context of the site, being land zoned B2 Local Centre. However, the proposal presents excessive development for the subject site given the large proposed non-

		compliances with the height and parking controls in particular, and creates unacceptable impacts to surrounding neighbours in this regard.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	Inconsistent The proposal is situated to the north eastern corner of the site, minimising overshadowing of the southern and western neighbours. The shadow diagrams provided indicate that solar access generally in accordance with the minimum requirements will be maintained to neighbours, noting that the southern neighbour is highly vulnerable to overshadowing. The proposed units are generally orientated to the south to take advantage of the views as opposed to maximising northern sun to living areas. This is generally acceptable in the circumstances of the site. However, with regard to the streetscape, concerns have been raised by Council's Urban Designer around the design of the building, particularly with regard to the elements overhanging the front boundary which are not supported. The proposal is not therefore satisfactory in relation to this clause.
Public Domain Interface	Does the development transition well between the private and public domain without compromising safety and security? Is the amenity of the public domain retained and enhanced?	Consistent The private access to the units is generally separate from the public access to the commercial units on the ground level, and

		locked door access will be provided to the private areas of the development. The proposal is satisfactory in relation to this clause.						
Communal and Public Open Space	Appropriate communal open space is to be provided as follows: - Communal open space has a minimum area equal to 25% of the site - Developments achieve a minimum of 50% direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)	Consistent The proposal complies with these requirements due to the common area proposed on the roof top terrace. As discussed throughout this report, the roof terrace is considered unacceptable for other reasons such as the height and impact on views.						
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td>7%</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	Inconsistent The proposal provides for 1.2% (3.6sqm) of the site as deep soil landscaped area, located in the south western corner of the site. Given the size of the site, provision of compliant deep soil area may be unrealistic. However, the proposal does not comply with the minimum requirements, and this may be considered as another potential sign of over development of the site.
Site area	Minimum dimensions	Deep soil zone (% of site area)						
Less than 650m ²	-	7%						
Visual Privacy	Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> </tbody> </table> Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms. Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Inconsistent The proposal provides for a minimum 1.865m setback to the southern side boundary from the residential balconies, and a minimum 3m to western side boundary from the west facing windows. The lower level southern terrace of the commercial unit is on a nil setback to the southern boundary, with a planter box proposed along the southern edge. Given the size of the site, greater setbacks than
Building height	Habitable rooms and balconies	Non-habitable rooms						
Up to 12m (4 storeys)	6m	3m						

		these may be unrealistic. The neighbouring site to the south, although presently occupied by a single detached dwelling, is also zoned B2. The site is a relatively high density area, and given the views available to the south, it is always likely that any development of the subject site will primarily orientate itself in that direction. Council's Urban Designer has recommended increased setbacks (minimum 3m) to the southern side boundary, by recessing the balconies into the development. The proposal is not considered to have adequately addressed visual privacy and setback concerns in this regard.
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	Inconsistent Council's Urban Designer has made some comments in relation to the access points (see referral response), in relation to the design of the private entry lobby area and circulation space. Given these comments, the proposal is not considered to have satisfied this clause.
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Inconsistent Council's Traffic Engineer has recommended refusal based on various traffic issues (see referral response in this report), including lack of a passing bay on the driveway, driveway gradient, lack of parking, and the design of the parking being inaccessible in parts.
Bicycle and Car	For development in the following locations:	Inconsistent

Parking	- On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or - On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street. Parking and facilities are provided for other modes of transport. Visual and environmental impacts are minimised.	The proposal results in the requirement for 13.5 car spaces, based on the Warringah DCP requirements. The proposal provides for six spaces, one of which is a small car space, which Council's Traffic Engineers have raised concerns may not be accessible. Lack of parking in the surrounding area was a significant issue for neighbours, and was raised as a concern by almost all of the submissions received. The proposal is for a complete knock down and rebuild of the existing development on site. The proposal is well below the minimum requirement for parking, and is not consistent with this clause. As such, inadequate parking is a recommended reason for refusal of the application.
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: - Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. - A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	Consistent Four of the five proposed residential apartments (80%) have north facing living area windows. The private open spaces are generally located to the south, to take advantage of the southern views. This is considered acceptable in the circumstances of the site in relation to this clause. Consistent 20% (1 of 5) of the apartments receives no sunlight, as proposed Unit

		2 is wholly south facing. Given the number of apartments, and the views to the south available, the minor non-compliance is considered acceptable in the circumstances of the site.												
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	Consistent Four of the five (80%) of the apartments are naturally cross ventilated. The other unit (unit 2) is a maximum of 4m in depth from the windows/doors. The proposal is consistent with this clause.												
	Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Consistent The maximum cross-through depth for any of the units is 9m in Unit 5. The other units are less deep.												
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	Inconsistent The proposal includes a minimum 2.84m floor to ceiling height for the commercial unit 2, and 3.24m for commercial unit 1, which is marginally non-compliant with the minimum 3.3m requirement. Further to this, for cafes/restaurants a minimum 4m ceiling height is recommended (which is the intended use for Commercial unit 1). The residential units comply with the minimum 2.7m requirement. Given the significant non-compliance with the overall height control proposed, and that despite this non-compliance, the floor to ceiling heights are still unable to comply, the proposal is not considered
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													

		satisfactory in relation to this clause.										
Apartment Size and Layout	Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m ² each.	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Consistent The one bedroom units are all 50sqm or greater. The two bedroom unit is 72sqm in area. The three bedroom unit is 90sqm, but includes a second bathroom, meaning it results in non-compliance of 5sqm. This non-compliance is considered to be minor, and could easily be fixed by deletion of the bathroom. However, deletion of the bathroom wouldn't improve the unit in terms of internal amenity, and the minor non-compliance is supported in this instance.
	Apartment type	Minimum internal area										
	Studio	35m ²										
	1 bedroom	50m ²										
	2 bedroom	70m ²										
	3 bedroom	90m ²										
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Consistent Complies											
Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Consistent The floor to ceiling heights of the units are 2.7m, meaning 6.75m is the maximum depth requirement under this clause. All cross-through unit's rooms are within this distance to a window, and the guidelines note that a distance of up to 3 x the floor to ceiling height is acceptable with open plan layouts. The only non cross-through unit is a maximum of 4m deep. The proposal is considered acceptable in relation to this clause.											
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Consistent Complies											
Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe	Consistent Complies											

	space).																
	Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the 3.0m minimum dimension.	Consistent Complies															
	Living rooms or combined living/dining rooms have a minimum width of: 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments	Consistent Complies															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Consistent Complies															
Private Open Space and Balconies	All apartments are required to have primary balconies as follows: <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	Consistent A minor non-compliance is proposed for the 3 bedroom apartment which has a balcony that is only 2.15m wide. However, this balcony will open up directly off the open plan living area, and is over 10m in length. The minor non-compliance is acceptable.
	Dwelling Type	Minimum Area	Minimum Depth														
	Studio apartments	4m ²	-														
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
	The minimum balcony depth to be counted as contributing to the balcony area is 1m																
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.																
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Consistent Complies															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	N/A															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	Consistent The amount of storage provided complies in terms of total areas. However, less than 50% is internal to the apartments. Given the total amount of storage is provided, and the generally limited amount of development space available on the small site, the non-compliance is supported.					
	Dwelling Type	Storage size volume															
Studio apartments	4m ²																
1 bedroom apartments	6m ²																
2 bedroom apartments	8m ²																
3+ bedroom apartments	10m ²																
	At least 50% of the required storage is to be located within the apartment.																

Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent Some of the bedrooms are located adjacent to the stairwell. However, given the small number of units in the building, there will be limited noise created by passing foot traffic in the lobby/stair areas. No concern is raised in this instance.
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Inconsistent Concerns are raised with respect to the roof terrace, which may create unreasonable noise impacts by its use. The acoustic report provided with the application recommends limiting the use of the terraces to 10pm at night to avoid unreasonable noise impacts to neighbours. However, in the absence of a building manager on site, this is not likely to be readily enforceable. Any noise complaints would need to be dealt with by police or council. For these reasons the roof top terrace is not supported.
Configuration		
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent A mix of apartments is provided.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?	N/A
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Inconsistent The proposal largely relies on juliet balconies and window treatments that overhang the front boundaries to provide articulation to the northern facade. These are not acceptable due to overhanging the boundary,

		and do not generally provide a high level of articulation and visual interest to the building.																																			
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Can the roof top be used for common open space? This is not suitable where there will be any unreasonable amenity impacts caused by the use of the roof top.	Inconsistent As discussed throughout this report, the roof top terrace is not supported in this instance as it causes unreasonable view impacts to neighbours, and may result in unreasonable noise impacts to the surrounding residential properties.																																			
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	N/A																																			
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes: <table border="1"> <thead> <tr> <th>Plant type</th> <th>Definition</th> <th>Soil Volume</th> <th>Soil Depth</th> <th>Soil Area</th> </tr> </thead> <tbody> <tr> <td>Large Trees</td> <td>12-18m high, up to 16m crown spread at maturity</td> <td>150m³</td> <td>1,200mm</td> <td>10m x 10m or equivalent</td> </tr> <tr> <td>Medium Trees</td> <td>8-12m high, up to 8m crown spread at maturity</td> <td>35m³</td> <td>1,000mm</td> <td>6m x 6m or equivalent</td> </tr> <tr> <td>Small trees</td> <td>6-8m high, up to 4m crown spread at maturity</td> <td>9m³</td> <td>800mm</td> <td>3.5m x 3.5m or equivalent</td> </tr> <tr> <td>Shrubs</td> <td></td> <td></td> <td>500-600mm</td> <td></td> </tr> <tr> <td>Ground Cover</td> <td></td> <td></td> <td>300-450mm</td> <td></td> </tr> <tr> <td>Turf</td> <td></td> <td></td> <td>200mm</td> <td></td> </tr> </tbody> </table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm		Turf			200mm		Inconsistent No details have been provided of proposed planting in the planter boxes or on the Council road reserve. The proposal has failed to demonstrate consistency with this clause.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																																	
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Shrubs			500-600mm																																		
Ground Cover			300-450mm																																		
Turf			200mm																																		
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing	Inconsistent The application has not																																			

	Guideline's silver level universal design features	provided any specific information in this regard. All units have accessible paths of travel for people with a disability.
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	N/A
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	Inconsistent The site is within walking distance of bus stops along Queenscliff Road to the west, and North Steyne to the south. As discussed throughout this report, concerns are raised with regard to the overall design of the building and the contribution to the public domain.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.	Consistent A small awning is provided above the residential entry to the building. Commercial unit 1 will have a covered eastern and southern terrace, within the site boundaries. Given that the area immediately adjacent to the site is not a thoroughfare for passing foot traffic (on the northern side in particular, pedestrians will pass closer to the road where the footpath is, no awning is considered necessary. The one provided to the residential area is considered acceptable. No signage is proposed as part of this application.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Consistent Complies
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Inconsistent Council's Development Engineers are not satisfied with provisions for

		stormwater (see Referrals section of this report).
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Inconsistent Council's Waste Officer has raised concerns with aspects of the design of the Waste storage and collection points (see Referrals section of this report).
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Consistent The proposal is acceptable with respect to this clause.

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

Comment: As discussed above, the proposal does not achieve the minimum parking requirements, does not fully achieve the minimum floor space areas (due to an extra bathroom being provided), and does not achieve the minimum floor to ceiling height requirements. The proposal is not therefore exempt from refusal on the above matters. Parking is one of the recommended reasons for refusal, as is the proposed overall height of the building.

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

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

(3) To remove doubt:

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

applies.

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

Comment: As discussed above, the design is considered inadequate in a number of aspects, and does not achieve the design quality principles or the objectives of the Apartment Design Guide. Inconsistency with SEPP 65 is therefore a recommended reason for refusal.

SEPP 70 - Affordable Housing (Revised Schemes)

In relation to the discussion under SEPP (Affordable Rental Housing) in this report, SEPP 70 - Affordable Housing (Revised Schemes) includes the following relevant clauses:

3 Aims of Policy

(1) *(Repealed)*

(2) *This Policy:*

(a) *identifies that there is a need for affordable housing across the whole of the State, and*

(b) *describes the kinds of households for which affordable housing may be provided, and*

(c) *makes a requirement with respect to the imposition of conditions relating to the provision of affordable housing.*

9 Identification of need for affordable housing

For the purposes of section 7.32 (1) of the Act, this Policy identifies that there is a need for affordable housing within each area of the State.

10 Requirement for imposition of section 7.32 conditions

Pursuant to section 7.32 (3) (a) of the Act, the following requirement is prescribed with respect to the imposition of conditions under section 7.32 of the Act on development consents:

A consent authority is to have regard to the affordable housing principles set out in Schedule 2 before imposing such a condition.

As discussed under SEPP (ARH) in this report, and given the proposal is recommended for refusal, no conditions are recommended in this regard.

SEPP (Affordable Rental Housing) 2009

The applicant has noted in the Statement of Environmental Effects that:

"The pre-existing development contained four low rental dwellings, as defined under clause 47 ARH SEPP. The Statement of Environmental Effects which accompanied the DA 2015/1079 included a comprehensive assessment of the provisions of the ARH SEPP. In accordance with division 6A of the EP and A Act 1979 and part 3 of the ARH SEPP, condition 8 of the consent required a contribution of \$56,700.00 to account for the loss of affordable housing associated with that development, which was duly paid by the release of the Construction Certificate.

As indicated in the background section of this report, physical commencement of the development under consent 2015/1079 has occurred.

The requirement for contribution for the loss of all rental dwellings from the site would be an expected

condition of consent. This amount would take account of the contribution already made as per the terms of consent 2015/1079."

Clause 49 of the SEPP states:

Part 3 Retention of existing affordable rental housing

49 Buildings to which Part applies

(1) This Part applies only to those buildings that were low-rental residential buildings as at 28 January 2000, and does not apply to any building that becomes a low-rental residential building after that date.

Clause 50 goes on to state:

50 Reduction of availability of affordable housing

(1) A person must not do any of the following in relation to a building to which this Part applies except with development consent:

(a) demolish the building,...

(2) In determining a development application referred to in subclause (1), the consent authority is to take into account the **guidelines (bolding added)** and each of the following:

(a) whether there is likely to be a reduction in affordable housing on the land to which the application relates,

(b) whether there is available sufficient comparable accommodation to satisfy the demand for such accommodation,

(c) whether the development is likely to cause adverse social and economic effects on the general community,

(d) whether adequate arrangements have been made to assist the residents (if any) of the building likely to be displaced to find alternative comparable accommodation,

(e) the extent to which the development contributes to any cumulative loss of affordable housing in the local government area,

(f) the structural soundness of the building, the extent to which the building complies with any relevant fire safety requirements and the estimated cost of carrying out work necessary to ensure the structural soundness of the building and the compliance of the building with the fire safety requirements,

(g) whether the imposition of a condition requiring the payment of a monetary contribution for the purposes of affordable housing would adequately mitigate the reduction of affordable housing resulting from the development,

(h) in the case of a boarding house, the financial viability of the continued use of the boarding house.

The guidelines referred to in subclause (2) are the *Guidelines for the Retention of Existing Affordable Rental Housing*, approved by the Director-General and published in the Gazette. These guidelines state the following:

Buildings excluded from Part 3

Part 3 only applies to boarding houses or residential flat buildings that became low rental dwellings before 28 January 2000. It does not apply to forms of accommodation that are lawfully characterised as an alternative land use.

Examples of alternative residential uses defined in the Standard Instrument (Local Environmental Plans) Order 2006 are attached dwellings, backpackers accommodation, bed and breakfast accommodation, dual occupancy, dwelling house, group home, hostel, hotel or motel accommodation, multi dwelling housing, residential care facility, secondary dwelling, semi-detached housing, seniors housing, serviced apartment or **shop top housing. (Bolding added)**.

Given the above, Part 3 of the SEPP is considered not to apply to the proposal, as the existing building is defined under the standard instrument as shop top housing. However, the guidelines go on to state the following:

What if Part 3 does not apply?

If a development application is not subject to Part 3 but there is concern that loss of the accommodation may have adverse impacts on the local housing market, criteria similar to those in Part 3 can be considered when assessing the social and economic impacts of the development under section 79C(1)(b) of the Act.

Conditions requiring contributions for the loss of affordable housing can only be imposed on development applications which are subject to Part 3. It is not possible to impose those conditions on other development applications, even if the existing building meets the definition of "affordable housing" in the SEPP. However, imposition of conditions under section 94F(5) requiring other arrangements for the provision, maintenance or retention of affordable housing can be considered in those cases.

The applicant has previously identified that the building has been used for low rental dwellings as defined by the SEPP, and Council has previously imposed the requirement for contributions as a condition of consent DA2015/1079 (which was for alterations and additions to the existing building). Given these considerations, it may be open to Council to impose a similar condition on this application if it was approved, under section 7.32 (previously section 94F) of the Environmental Planning and Assessment Act 1979. However, the application is recommended for refusal for other reasons, as discussed in this report. As such, no further consideration has been taken with regard to this issue, and no such contributions condition would currently be recommended should the application be approved.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

13 Development on land within the coastal environment area

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

Comment:

The site falls within the coastal environment area. Council's Coast and Catchments officer has assessed the proposal against this clause and is satisfied that the proposal is not likely to cause any adverse impacts on the above matters for consideration (refer to Referrals section of this report).

- (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:

Given the assessment above, Council is satisfied that the proposal is consistent with clause 2(a) above.

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

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

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

Comment:

Council's Coast and Catchments officer has assessed the proposal against this clause and is satisfied

that the proposal is not likely to cause increased risk of coastal hazards on that land or other land (refer to Referrals section of this report).

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	12.7m (lift)	49.4%	No

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	No
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone B1 Neighbourhood Centre

Proposed Use	Permitted or Prohibited
Shop top housing	Permitted without consent

The underlying objectives of the B1 Neighbourhood Centre zone

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

Comment:

The proposal is for a permissible use in the zone, being shop top housing, that will provide two commercial units for providing for the needs of people in the surrounding neighbourhood. The proposal is generally consistent with this objective.

- To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*

Comment:

The proposed shops at the ground level may be expected to provide services to locals and help to create a village-like atmosphere, without creating any significant impacts on safety or comfort for pedestrians. The proposal is generally consistent with this objective.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Comment:

The proposed height of the development will result in unreasonable impacts on the amenity of nearby residential land uses, in particular in the form of view loss, and visual and acoustic privacy impacts from the roof terrace (see relevant discussions within this report). The proposal is not considered to achieve this objective.

4.6 Exceptions to development standards

incoDescription of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	12.7m
Percentage variation to requirement:	49.4%

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 has not demonstrated that the objectives of the development standard are achieved (see assessment against objectives below).

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *"The bulk of the non-compliant additional areas will for the most part, remain under the relative height of the existing building on the site and the maximum height of 12.7m relates to the lift installation only.*
- *Significant portions of non-compliant portions of the building are largely due to the slope of the site, which falls away to the south. The proposed development provides for a modest floor plan layout only of the residential units and strict numerical compliance would unreasonably limit the redevelopment of the site.*
- *The resultant height of the proposed development is commensurate with and or well under the height of nearby development in the immediate locality, including that immediately opposite the site in Queenscliff Road.*
- *The proposed roof form will improve the articulation of the building when viewed from surrounding properties and the streetscape without adversely impacting privacy or solar access from surrounding properties.*
- *The proposed development, inclusive of the strict numerical non-compliance, generate in a minor to negligible view loss from surrounding properties and facilitate a reasonable sharing of views, consistent with the objectives of the DCP and the planning principle established in Tenacity Consulting versus Warringah Council (2004) NSWLEC 240.*
- *The proposal is generally compliant with the other planning controls under the WLEP and DCP applicable to the proposed development.*
- *The proposed development will have a positive impact on the scenic quality of Warringah's coastal and bush environments.*
- *The visual impact of the proposed development when viewed from public places including the surrounding road reserves and at a distance, from Queenscliff and Manly Beaches, will be enhanced.*
- *The proposed development will replace an existing building on the site which has served its life cycle with a new development and superior outcome to that endorsed under DA2019/1079. The end development will contribute positively to corner location of the subject site and the desired future character of the area."*

The applicant also argues that environmental planning grounds which justify contravening the development standard are as follows:

- *"The proposed development is of high-quality residential design and is accompanied by a BASIX certificate conforming to the requirements of the SEPP in relation to potable water consumption, energy efficiency and thermal comfort.*
- *Shadow diagrams which accompany the application demonstrate solar access and overshadowing impacts which, inclusive of the strict numerical non-compliance, conform to the requirements of the relevant SEPP and Council controls for this type of development.*
- *Safeguards included into the proposed development in accordance with expert recommendations will ensure acceptable impacts on visual and acoustic privacy, which will not be adversely exacerbated by the strict numerical no-compliant components of the proposed development.*
- *The comprehensive view loss analysis which accompanies the application demonstrates that the proposed development, inclusive of the non-compliant components, achieves a level of view sharing that is reasonable, comparable to that associated with the approved development under DA 2015/1079 and entirely consistent with the planning principle established in Tenacity Consulting v Warringah Council (2004) NSWLEC 140.*
- *The proposed development will have demonstrated sustainable environmental impacts on surrounding development and the public domain in respect of solar access and overshadowing, visual and acoustic privacy and view loss."*

These arguments are not generally concurred with, and are not considered to provide adequate justification of the proposed non-compliance. In particular, the following points are made:

- The proposed height non-compliance is a major breach of the 8.5m limit under clause 4.3 Height of buildings. The proposal involves a height of up to 12.7m for the proposed lift (a 49.4% variation to the control), and the entire roof area (the floor of the roof terrace) is between 8.66 and 9.5m high. The privacy screens and other features associated with the roof terrace are up to 11.1m high.
- This height non-compliance will be directly responsible for significant view impacts to neighbours, of highly valuable views of Manly Beach and the surrounds (see discussion under clause D7 Views in this report).
- The proposal is for a complete demolition and rebuild of a wholly new development on site. As such, the height of the existing building, or the alterations and additions to that building approved under DA2015/1079, hold little weight in justifying non-compliance with the height control. Despite this, it is noted that the proposed new building goes significantly beyond the existing building and what was previously approved under DA2015/1079, and creates significantly greater view impacts than the existing building or previously approved alterations and additions.
- Similarly, justification of the non-compliance in relation to the slope of the site may hold weight in some circumstances. But the extent of the proposed non-compliance, combined with the fact that the proposal is for a complete demolition and rebuild means that the site constraint created by the slope is limited in providing justification for non-compliance. The site falls by approximately 1.6m from north to south, a slope of approximately 12%-13%. The building does not comply with the 8.5m height limit at any point (i.e. it is not just the 'downhill' elements that protrude above the height limit), and the slope is not such that a height non-compliance of the extent proposed is considered to be justified.

- The proposal is inconsistent with various other controls under the Warringah Development Control Plan (as discussed in this report) including parking requirements (a function of the number of units proposed), impacts on noise and views created by the roof terrace above the height limit, and non-compliance with the minimum floor to ceiling heights required by clause F1 Local and Neighbourhood Centres (even despite the significant overall height non-compliance). The proposal is also inconsistent with various aspects of State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development (as discussed in this report) relating to floor to ceiling heights, amenity impacts on neighbours from the roof terrace in terms of views and noise, and falls well short of landscaping and parking requirements. These non-compliances are all symptomatic of an over development of the site.
- Council's Urban Designer has raised various concerns with the design of the proposal (see Referrals section of this report).

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, nor that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment. Therefore clauses 1.3 (c) and (g) of the EPA Act have not been satisfied.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

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 B1 Neighbourhood Centre 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 height of the proposal is not necessarily visually incompatible with surrounding development. Due to the slope of the land, surrounding buildings generally step down from north to south. There are numerous examples of older buildings in the area that are above the height limit and of similar scale to the proposed building. The proposal is therefore considered to be generally consistent with this objective given the surrounding older development, though is not consistent with various other objectives and controls (as discussed throughout this report) due to its height and scale.

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

Comment:

The proposed height non-compliance will directly contribute to an unreasonable disruption of views (see discussion under Clause D7 Views in this report), and the roof terrace will not minimise loss of visual and acoustic privacy in the area. The proposal is not considered to achieve this objective.

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

Comment:

The proposal is unlikely to have any significant adverse impact on the scenic quality of Warringah's coastal and bush environments given the distance from any coast or bush area. The proposal is generally consistent with this objective.

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

Comment:

Given the comments of Council's Urban Designer (see referrals section of this report), the proposal is not considered to be of a good design that adequately manages the visual impact of the development when viewed from the immediately surrounding public area. The proposal is not considered to achieve this objective.

Zone objectives

The underlying objectives of the B1 Neighbourhood Centre zone are:

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*

Comment:

The proposal is for a permissible use in the zone, being shop top housing, that will provide two commercial units for providing for the needs of people in the surrounding neighbourhood. The proposal is generally consistent with this objective.

- *To ensure that neighbourhood centres provide a village-like atmosphere and safety and comfort for pedestrians.*

Comment:

The proposed shops at the ground level may be expected to provide services to locals and help to create a village-like atmosphere, without creating any significant impacts on safety or comfort for pedestrians. The proposal is generally consistent with this objective.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Comment:

The proposed height of the development will result in unreasonable impacts on the amenity of nearby residential land uses, in particular in the form of view loss, and visual and acoustic privacy impacts from the roof terrace. The proposal is not considered to achieve this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the B1 Neighbourhood Centre 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 Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard can not be assumed.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B5 Side Boundary Setbacks	South (Merit assessment)	Nil	N/A	No
	West (Merit assessment)	3.0m	N/A	Yes
B7 Front Boundary Setbacks	Nil	Nil	N/A	Yes
B9 Rear Boundary Setbacks	N/A - no rear boundary on corner lot	N/A	N/A	N/A

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	No
B6 Merit Assessment of Side Boundary Setbacks	No	No
B7 Front Boundary Setbacks	Yes	Yes
B10 Merit assessment of rear boundary setbacks	N/A	N/A
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	No
C3(A) Bicycle Parking and End of Trip Facilities	Yes	Yes
C4 Stormwater	No	No
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	No
D2 Private Open Space	No	Yes
D3 Noise	No	No
D6 Access to Sunlight	Yes	Yes
D7 Views	No	No
D8 Privacy	No	No
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	No	No
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E10 Landslip Risk	Yes	Yes
F1 Local and Neighbourhood Centres	No	No

Detailed Assessment

B6 Merit Assessment of Side Boundary Setbacks

See comments under SEPP 65 and Urban Design referral response in relation to side boundary setbacks.

B7 Front Boundary Setbacks

The proposal generally complies with the nil setback requirement to the front boundaries. However, some elements overhang the front boundary including Juliet balconies and window treatments, and are not supported (see referral responses from Urban Design and Road Reserve in this report).

C2 Traffic, Access and Safety

The proposed driveway design, and parking layout, are not in accordance with Council standards. Further concerns were raised regarding the design of the footpath in the road reserve. (see Development Engineer referral response in Referrals section of this report). Given these concerns, the proposal has not achieved the requirements or objectives of this control.

C3 Parking Facilities

Merit consideration

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

- *To provide adequate off street carparking.*

Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Shop (includes retail / business component of shop top housing, retail premises and neighbourhood shop)	1 space per 16.4 m ² GLFA (6.1 spaces per 100 m ² GLFA).	112sqm GLFA = 6.8 spaces	1 'small car' space	- 6.8
Shop-top housing (residential component)	1 space per 1 bedroom dwelling 1.2 spaces per 2 bedroom dwelling 1.5 spaces per 3 bedroom dwelling 1 visitor space per 5 units or part of dwellings	3 dwellings = 3 spaces 1 dwelling = 1.2 spaces 1 dwelling = 1.5 spaces 5 units = 1 space Total = 6.7 spaces	5 spaces	-1.7
Total		13.5	5 + 1 small space	-7.5

The proposal provides less than half the amount of required parking. The site is situated in an area where on-street parking is very limited, and it is notable that almost all 43 submissions received by Council raised parking as a concern with the development. Given the large shortfall

to the requirements, and the generally limited amount of on-street parking opportunity available in the area, the proposal is not considered to provide adequate off street carparking in accordance with this objective.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The proposed parking area is partially below ground, and will minimise visual impacts in accordance with this objective.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

The proposed parking area is partially below ground and will not dominate the street frontage.

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

C4 Stormwater

The proposed stormwater design is not in accordance with Council's Water Management Policy (see Development Engineer referral response on Referrals section of this report).

C9 Waste Management

The design of the waste storage area and collection point is inconsistent with the Northern Beaches Council Waste Management Guidelines (refer to Waste Services referral response in this report). As such, the proposal is not considered to achieve the requirements or objectives of this control.

D2 Private Open Space

The requirements of SEPP 65 overrule the DCP control in this regard. See discussion under SEPP 65 in this report. The proposed private open space is considered generally acceptable in this case.

D3 Noise

The proposed roof terrace area has been the subject of numerous objections from neighbours in regard to noise impacts. The roof terrace is proposed with one large common area in the centre of the roof (70sqm), and two private roof top terraces for the top floor units at the eastern and western ends of the roof (40.5sqm and 28.6sqm respectively).

The acoustic report provided with the application recommends that large groups using the common terrace should be restricted to 10 pm in the evening to ensure that an exceedance of night criteria at Northern neighbours does not occur.

The site falls within an almost entirely residential area, and is surrounded on all sides generally by medium density housing (with the exception of a single detached dwelling adjacent to the south). There

is therefore a potential for greater noise concerns arising out of the large roof top terrace areas from large gatherings. It is noted that there are no other roof top terraces in the vicinity. A condition limiting the use of the terraces to 10pm for large groups is unlikely to be easily enforceable given there will be no building manager on site. Council's Environmental Health referral response states that the application could be approved (in relation to the noise issue) only with 'robust conditions'.

However, this is a new development on a vacant site (given the proposed demolition), and the introduction of a large roof top terrace into the residential area is not considered to be an ideal outcome for development, particularly given the lack of any precedent in the surrounding vicinity.

The application is not considered to have adequately demonstrated that unreasonable noise impacts will be contained, and the application is therefore recommended for refusal in this respect.

D7 Views

Numerous objections were received from neighbours across the road to the north in relation to view loss. Height poles were not requested to be erected, as the view analysis provided by the applicant was considered to be adequate in this case to make a reasonable assessment that the proposal is not acceptable in relation to view sharing (see assessment below).

Site visits were carried out which confirmed the view analysis provided with the application is reasonably accurate, and given that the proposal is considered to be well beyond what would be considered acceptable in terms of height and impacts on views in particular, requiring the additional cost of height poles was not considered necessary.

Note regarding the view analysis: The view analysis provided with the application has made errors in identifying the neighbouring addresses. Number 55 Queenscliff Road in the view analysis actually shows the views from number 53, and vice versa. Number 59 Queenscliff Road has been identified as number 9. The unit numbers shown on the view analysis are also incorrect. For the purposes of this assessment and ease of reference, the unit numbers shown on the view analysis will be used, but the actual street numbers will be used.

Further, it should be noted that the view analysis compares the impact to the alterations and additions approved under DA2015/1079, not to the building as it currently exists on site, though the existing building is partially visible at some points.

Merit consideration

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

- *To allow for the reasonable sharing of views.*

Comment:

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

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly

than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

The views affected include highly valuable views of Manly Beach, the land/water interface, North Head and the general surrounding built up area surrounding including the St Patrick's Estate. Given the features encompassed, the views from some of the neighbouring units may be considered to be almost iconic in some cases, although the views of the headland and northern end of the beach are broken up to an extent by existing buildings in the foreground.

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 from the unit blocks at numbers 53 and 55 Queenscliff Road are all obtained from the primary living areas of the units across the road, including kitchens, dining/living areas, and balconies off these areas. These units are all orientated to take advantage of the southern views, generally in a direction across the front boundaries, or diagonally across the front/side boundaries. The view from the upper level of number 59, further to the west, is obtained more across the side boundary, but is also from the primary living area.

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 analysis indicates that the extent of the impact of the proposal will range from negligible to severe.

53 Queenscliff Road (shown as number 55 in the view analysis)

Unit 1 (Unit numbers as shown in the view analysis) - This unit is on the lower level. Compared to the alterations and additions approved by Council in 2016 (DA2015/1079), it will lose a small amount of additional headland to the east of the building, and some district views to the west of the building. The view impact is considered to be negligible.

Unit 2 - This unit is on the lower level. The impact compared to DA2015/1079 will include the loss of most of the remaining headland and waterview, including the water/headland interface to the east of the building. A small amount of water view will be maintained. The impact from this

unit is considered to be minor compared to DA2015/1079, or moderate compared to the existing building on site.

Unit 3 - This unit is on the next level up, and will have a view corridor to the headland/water interface blocked, and much of the headland and St Patrick's blocked by the balustrade, privacy screening and lift elements on the proposed roof top terrace. The impact is considered to be moderate to severe.

Unit 4 - This unit is on the same level as unit 3, and will have a similar impact, though more of the headland and St Patrick's may remain slightly less obscured by a transparent balustrade (as opposed to the privacy screens and lift). The view available will still be largely broken up and obscured however. The impact is considered to be moderate to severe.

Unit 5 - This unit will have almost the entire beach/water interface blocked by the proposed lift, as well as further water and headland views blocked by the lift and privacy screen. It will still retain a large part of the headland and water/headland interface, but the 'wholeness' of the view will be highly impacted. The impact is considered to be severe.

Unit 6 - Similar to unit 5, the proposed lift will block a large part of the beach and beach/water interface, and the western end of the headland. The impact is not quite as severe as for unit 5, but given that the highly valuable beach view will be heavily impacted, the impact is still considered to be severe.

Unit 7 - This unit is on the upper level. The view impact will be limited to the northern end of the beach, where the proposed lift will block a portion of the beach and lagoon entrance. The views will otherwise be largely retained. The impact from here is considered to be moderate, given the proposal will further impinge on the 'wholeness' of the view (along with other existing development in the foreground).

Unit 8 - This unit will be the least affected, with the proposed lift and other roof elements blocking out the Queenscliff SLSC Clubhouse, and boardwalk and lagoon entrance in front, but the wider beach/ocean/headland views will remain. The impact is considered to be minor to moderate.

Number 55 (shown as number 53 in the view analysis)

Unit 10 (Unit numbers as shown in the view analysis) - This unit is on the lower level of the residential flat building. The view analysis indicates that it may gain a very small amount of headland view compared to the previously approved alterations and additions, though it may lose some headland view compared to the existing building. The impact is considered to be negligible to minor.

Unit 11 - Similar to unit 10, in that it may gain a very small amount of headland view compared to the previously approved alterations and additions, though it may lose some headland view compared to the existing building. The impact is considered to be negligible to minor.

Unit 12 - The development will partially block some ocean/headland interface, caused mainly by the balustrade and privacy screening on the roof top. The impact is considered to be minor.

Unit 13 - Similar to the unit 12, the proposal will block some ocean/headland, but will block substantially more of the existing view than for number 12. The impact is considered to be moderate given around 50% of the beach/ocean/headland view will be obscured.

Unit 14 - The proposal will block some ocean views (caused by the privacy screening on the roof). The lift will also block the eastern end of the headland that currently is visible to the east of another tall building in the foreground. The impact is considered to be only moderate given the end of the headland is already broken to an extent by the other building.

Unit 15 - Similar impacts to number 14, but will have substantially more water view blocked by the privacy screening and balustrade. The impact is considered to be still in the moderate range.

Number 59 (shown on the view analysis as 9)

The proposed lift will block a small amount of water view to the east, but the wider headland/beach/ocean views to the west of the subject site will remain unaffected. The impact is considered to be negligible in this regard.

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 application proposes substantial non-compliance with the height limit of 8.5m, with the highest element (the lift) being 12.7m high (a 49.4% variation). Further, the privacy screening and balustrades on and around the roof top terrace are all well above the height limit, and contribute directly to significant view loss. The floor level of the roof top terrace, what could be made the roof if the terrace and access was removed, is a minimum of 8.66m above the height limit, and would still contribute to significant view impacts for some of the units across the road even at this height.

Further to this, the general bulk of the building raises concern, particularly with regard to the elements that overhang the front boundary at the north eastern corner of the site, and cut into the small water views from the lower level units across the road to the north through the north eastern corner of the subject site.

The bulk and particularly the height of the proposal is the main factor contributing to the view impacts. As discussed above, these view impacts range up into the severe range, and apply to highly valuable, almost iconic views. Given the level of non-compliance with the applicable built form controls, and the impacts caused, the proposal is not considered to maintain a reasonable sharing of views.

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

Comment:

As discussed above, the proposal results in unreasonable impacts to the views from neighbouring residences, and as such, the design is not considered to improve the urban environment.

- *To ensure existing canopy trees have priority over views.*

Comment:

No trees are to be impacted by the proposal.

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

D8 Privacy

The proposal is not generally considered to result in unreasonable visual privacy impacts, given the zoning of the site and generally higher density nature of the neighbourhood. The roof terrace balustrade is setback from the edge of the roof, and privacy screening has been provided to the western edge of the second floor western deck. Council's Urban Designer has suggested that setbacks to the balconies should be increased to the southern side boundary and the planter box along the southern edge of the commercial terrace should be returned along the western edge of the deck.

However, the proposed roof terrace is not considered to maintain a reasonable level of acoustic privacy, which is also a requirement of this control.

Merit consideration

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:

The roof terrace will enable large gatherings, and the acoustic report provided with the application has suggested that in order to limit unreasonable impacts, gatherings such as these would need to be limited to 10pm. Given there would be no building manager on site, enforcement of such a condition is unlikely to be effective, being left to Council or the Police to ensure compliance when complaints are received. There are no other roof terraces in the vicinity, and the site is located in the midst of an almost entirely residential neighbourhood, with no other obvious noise sources in close proximity. The application has not adequately demonstrated that unreasonable noise impacts will be contained, and the proposal is not supported in this regard.

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

Comment:

As discussed above, the roof top terrace is not considered to improve the urban environment.

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

Comment:

No concerns are raised in this regard.

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

D9 Building Bulk

The proposal is inconsistent with various requirements in this clause, including:

1. *Side and rear setbacks are to be progressively increased as wall height increases.*
2. *Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*
4. *Building height and scale needs to relate to topography and site conditions.*
6. *Use colour, materials and surface treatment to reduce building bulk.*
7. *Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
8. *Articulate walls to reduce building mass.*

Merit consideration

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

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

Comment:

Council's Urban Designer has raised concerns with various aspects of the design. Further, a significant number of the design elements meant to provide visual interest and articulation overhang the front boundaries, and are not supported for this reason. The building facades to the front boundaries do not provide adequate articulation to break up the bulk of the building, and the proposal is not considered to achieve this objective.

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

Comment:

As discussed in this report, the proposal is well above the applicable height limit for the site, and this will directly result in significant and unreasonable view loss to neighbours. The visual impact is not considered to be minimised in accordance with this objective.

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

D11 Roofs

The proposal is not considered to achieve the following requirements of the control:

1. *Lift overruns, plant and other mechanical equipment are not to detract from the appearance of roofs.*
2. *Roofs should complement the roof pitch and forms of the existing buildings in the streetscape.*

6. *Service equipment, lift overruns, plant and other mechanical equipment on the roof shall be minimised by integrating as many services, etc as possible into the building.*

Merit consideration

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

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

Comment:

The proposed roof terrace is generally well above the 8.5m height limit, and will be responsible for significant and unreasonable view loss for neighbours. The application has also failed to adequately demonstrate that the roof terrace will not result in unreasonable noise impacts to neighbours. The proposal is not considered to improve the urban environment in this regard.

- *Roofs are to be designed to complement the local skyline.*

Comment:

The proposed roof terrace would be the only one in the vicinity, and is considered to cause unreasonable impacts as discussed within this report with regard to view sharing and noise. As such, it is not considered to complement the local skyline.

- *Roofs are to be designed to conceal plant and equipment.*

Comment:

The proposed lift forms the highest point of the building, and creates the most significant non-compliant element with the overall height control. It also has a major impact on views from some of the units across the road to the north. The proposal is not supported in this regard.

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

F1 Local and Neighbourhood Centres

The application has not demonstrated it will achieve the following requirements of this control:

2. *The minimum floor to ceiling height for buildings is to be 3.0 metres for ground floor levels and 2.7 metres for upper storeys.*

4. *Development that adjoins residential land is not to reduce amenity enjoyed by adjoining residents.*

6. *Buildings greater than 2 storeys are to be designed so that the massing is substantially reduced on the top floors and stepped back from the street front to reduce bulk and ensure that new development does not dominate existing buildings and public spaces.*

7. *Applicants are to demonstrate how the following significant considerations meet the objectives of this control:*

- *Scale and proportion of the façade;*
- *Pattern of openings;*

- *Ratio of solid walls to voids and windows;*
- *Parapet and/or building heights and alignments;*
- *Height of individual floors in relation to adjoining buildings;*
- *Materials, textures and colours; and*
- *Architectural style and façade detailing including window and balcony details*

Merit consideration:

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

- *To encourage good design and innovative architecture.*

Comment:

Given the significant non-compliance with the overall height control under the WLEP, the proposed, albeit relatively minor, non-compliance with the floor to ceiling heights is difficult to support. Concerns have been raised with the overall design by Council's Urban Designer, and a significant amount of articulation and visual interest is provided by elements which overhang the front boundaries (juliet balconies and window treatments) and are not supported by Council.

Without these elements the building lacks articulation and depth to break up the bulk and scale of the development. The proposal results in significant impacts to highly valuable views, caused primarily by the overall height of the building, where the upper level (named Second Floor Plan in the plans) has not been stepped back to reduce massing.

The control has not been addressed in the Statement of Environmental Effects provided with the application, and given Council's Urban Designer's comments, has not demonstrated it achieves requirement 7 above.

The proposal is not considered to achieve this objective.

- *To provide a safe and comfortable environment for pedestrians*

Comment:

No concerns are raised in this regard. The proposal will provide casual overlooking of the surrounding public areas.

- *To provide a range of small-scale shops and business uses at street level with offices or low-rise shop-top housing to create places with a village-like atmosphere.*

Comment:

The proposal will provide two commercial units, with apartments above. However, the proposed height and bulk of the development is not supported, as discussed within this report. The bulk of the upper levels detracts from the ability of the development to create a village like atmosphere.

- *To enhance the established scale and pattern of development and the continuity of existing streetscapes.*

Comment:

The proposal is not necessarily inconsistent with the scale and pattern of existing development in the area. However, the proposal is for a demolition and rebuild, and the proposed breach of the height control in particular will result in significant and unreasonable impacts to neighbours, as discussed throughout this report. That being the case, the proposal is not necessarily inconsistent with this objective of this control, but is not supported in relation to scale for other reasons as discussed in this report.

- *To enhance the public domain.*

Comment:

The proposed design is considered to be inadequate to enhance the public domain, given the reliance of elements which are overhanging the boundary (and are thus not supported) to provide articulation and visual interest to the building.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

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

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

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

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP

- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

Council is not satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

Accordingly

In summary, the application has failed to demonstrate an adequate level of compliance with following specific issues:

- SEPP 65
- Building height
- Parking and driveway design
- View sharing
- Noise
- Stormwater
- Waste facility design
- Privacy
- Building bulk
- Roof
- Local and Neighbourhood Centres

The proposal presents as an overly high, overly bulky development, and the issues identified are generally symptomatic of an over-development of the site. As such, refusal of the application is recommended, for the reasons discussed within the report.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0845 for the Demolition works and construction and strata subdivision of a shop top housing comprising 2 commercial units and 5 residential units on land at Lot A DP 961049,68 A Queenscliff Road, QUEENSCLIFF, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Flat Development.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
4. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of Zone B1 Neighbourhood Centre of the Warringah Local Environmental Plan 2011.
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 4.3 Height of Buildings of the Warringah Local Environmental Plan 2011.
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 4.6 Exceptions to Development Standards of the Warringah Local Environmental Plan 2011.
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 the following clauses of the Warringah Development Control Plan:
 - o Clause C2 Traffic, Access and Safety
 - o Clause C3 Parking Facilities
 - o Clause C4 Stormwater
 - o Clause C9 Waste Management
 - o Clause D3 Noise
 - o Clause D7 Views
 - o Clause D8 Privacy
 - o Clause D9 Building Bulk
 - o Clause D11 Roofs
 - o Clause F1 local and Neighbourhood Centres
8. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

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Appendix 1 – Request for Contravention of Development Standard

WARRINGAH LOCAL ENVIRONMENTAL PLAN 2014 (WLEP)
CLAUSE 4.6
EXCEPTION TO DEVELOPMENT STANDARDS

APPLICANT: Classic Plans

ADDRESS: 68A Queenscliff Road, Queenscliff

PROPOSAL: Demolition of existing structures and construction of a shop top housing development and strata subdivision into 7 lots

DEVELOPMENT STANDARD: Maximum Height of Buildings under Clause 4.3 of the WLEP.

Introduction

This submission is a request for contravention of the abovementioned development standard in relation to the proposed demolition of existing structures and construction of a shop top housing development and strata subdivision into 7 lots at 68A Queenscliff Road, Queenscliff on the basis that:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and;
2. There are sufficient environmental planning grounds to justify contravening the development standard and;
3. 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 as such is well founded.
4. Contravention of the standard in this instance will not raise any matters of State or Regional significance.
5. There is no public benefit in maintaining the standard on this occasion.
6. The proposal achieves the objectives of Clause 4.6 of the SLEP of providing an appropriate degree of flexibility in applying certain development standards to particular development and achieves better outcomes for and from development by allowing flexibility in this particular circumstance.

The development Standard to which the request relates

Clause 4.3 (2) of the WLEP states:

(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.

The respective map identifies the maximum height of buildings as 8.5m in relation to the subject site.

The Objectives of the Development Standard

The objectives of the development standard are:

- (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,*

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

The Nature of the Departure from the Development Standard

Part of the proposed development does not comply with the maximum height as indicated on the plans. The respective areas include portions of the uppermost floor and new roof elements, which have a maximum height of 12.7m, representing a departure of 49% from the standard. The extent of departure is shown in the following image:



Figure A: Section AA of proposed development showing maximum building height of 12.7m

Why Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

Compliance with the maximum allowable height of buildings is unreasonable or unnecessary in the circumstances of the case for the following reasons:

- The bulk of the non-compliant additional areas will for the most part, remain under the relative height of the existing building on the site and the maximum height of 12.7m relates to the lift installation only.
- Significant portions of non-compliant portions of the building are largely due to the slope of the site, which falls away to the south.
- The proposed development provides for a modest floor plan layout only of the residential units and strict numerical compliance would unreasonably limit the redevelopment of the site.
- The resultant height of the proposed development is commensurate with and or well under the height of nearby development in the immediate locality, including that immediately opposite the site in Queenscliff Road.
- The proposed roof form will improve the articulation of the building when viewed from surrounding properties and the streetscape without adversely impacting privacy or solar access from surrounding properties.

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- The proposed development, inclusive of the strict numerical non-compliance, generate in a minor to negligible view loss from surrounding properties and facilitate a reasonable sharing of views, consistent with the objectives of the DCP and the planning principle established in *Tenacity Consulting versus Warringah Council (2004) NSWLEC 240*.
- The proposal is generally compliant with the other planning controls under the WLEP and DCP applicable to the proposed development.
- The proposed development will have a positive impact on the scenic quality of Warringah's coastal and bush environments.
- The visual impact of the proposed development when viewed from public places including the surrounding road reserves and at a distance, from Queenscliff and Manly Beaches, will be enhanced.
- The proposed development will replace an existing building on the site which has served its life cycle with a new development and superior outcome to that endorsed under DA 2019/1079. The end development will contribute positively to corner location of the subject site and the desired future character of the area.

As established by Chief Justice Preston of the NSW Land and Environment Court in the case of in *Wehbe v Pittwater Council [2007] NSWLEC 827*, the most commonly invoked means of justifying a departure from a development standard is the achievement of the end objectives, despite the strict non-compliance. For the reasons outlined above, the objectives of the maximum building height standard, in this instance, are achieved and the request for departure is entirely justified and worthy of support on this occasion.

The Environmental Planning Grounds which Justify Contravening the Development Standard

Sufficient environmental planning grounds exist to justify departure from the development standard on this occasion in that:

- The proposed development is of high-quality residential design and is accompanied by a BASIX certificate conforming to the requirements of the SEPP in relation to potable water consumption, energy efficiency and thermal comfort.
- Shadow diagrams which accompany the application demonstrate solar access and overshadowing impacts which, inclusive of the strict numerical non-compliance, conform to the requirements of the relevant SEPP and Council controls for this type of development.
- Safeguards included into the proposed development in accordance with expert recommendations will ensure acceptable impacts on visual and acoustic privacy, which will not be adversely exacerbated by the strict numerical no-compliant components of the proposed development.
- The comprehensive view loss analysis which accompanies the application demonstrates that the proposed development, inclusive of the non-compliant components, achieves a level of view sharing that is reasonable, comparable to that associated with the approved development under DA 2015/1079 and entirely consistent with the planning principle established in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*.
- The proposed development will have demonstrated sustainable environmental impacts on surrounding development and the public domain in respect of solar access and overshadowing, visual and acoustic privacy and view loss.

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- The end development will maximise the constraints and opportunities of the site beyond the approved development under DA 2015/1079 and result in a superior urban outcome in this important corner location. This is demonstrated in the following images:



Figures B and C: 3D perspectives of the approved development under DA 2015/1079

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Figures D and E: Photomontages of the proposed development demonstrating the superior urban outcome compared to that endorsed (and physically commenced) under DA 2015/1079 (see Figures A and B above)

Having due regard to the *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, the above environmental planning grounds which justify contravention of the standard in this instance are not general propositions. They are unique circumstances of the proposed development in the context of the subject site.

The Public Interest/Consistency with the Objectives of the Standard and the objectives for development within the zone

Statement of Environmental Effects - Demolition of Existing Structures and Construction of Shop top Housing Development and Strata Subdivision into 7 Lots - 68A Queenscliff Road, Queenscliff
May 2019

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The proposed development is manifestly consistent with the relevant objectives of the standard in that it will integrate satisfactorily with the bulk, scale and height of surrounding developments and will preserve the environmental amenity of neighbouring properties and the public domain.

Consistency of the proposed development with the zone objectives is also demonstrated in the present proposal in that:

- The ground floor component will provide commercial spaces which will include a food and drink premises and other small-scale retail or business use that will continue to serve the needs of people who live or work in the surrounding neighbourhood.
- It will ensure that this neighbourhood centre corner location will provide a village like atmosphere by enhancing the active street frontages to both Queenscliff and Bridge Roads, in a manner that will allow for safety and comfort for pedestrians.
- Ongoing operational conditions of consent, limiting hours of operation of the commercial component of the development in accordance with standard conditions will ensure minimal conflict between the commercial use in the B1 zone and adjoining residential zones to ensure the amenity of any adjoining or nearby residential land uses will not be adversely affected.

As such, the proposed development is in the public interest in that consistency with the objectives of the development standard and the objectives for development within the zone have been achieved.

Significance for State and Regional Planning

The proposed development is consistent with State and Regional Planning Policies in that, inclusive of the strict departure from the maximum building height standard, it will result in an orderly and economic use of the land, in accordance with the objects of the Environmental Planning and Assessment Act, 1979.

Despite the non-compliance with the strict numerical requirement under clause 4.3 (2) of the WLEP, the proposed development will achieve the stated objectives of the standard. Furthermore, the proposed development will achieve sustainable environmental impacts and an built form, superior to that which would be achieved by a compliant form of development.

The end development will contribute to the existing and desired future character of this residential area, which is well located in relation to, schools and community infrastructure. It is well connected to public transport providing access to beaches, local and regional centres and the Sydney CBD.

As such the proposed development does not raise any matters of significance for State or Regional planning.

The justification for the departure from the development standard is worthy of support.

Consistency with Clause 4.6 of the SSLEP

The objectives of Clause 4.6 are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

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(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The justification for the provision of an appropriate degree of flexibility in the present circumstances has been demonstrated in this request. The wider planning intentions for the locality will not be compromised by the departure in the circumstances.

Having regard to the contents of this submission, this request for contravention is well founded and worthy of support.

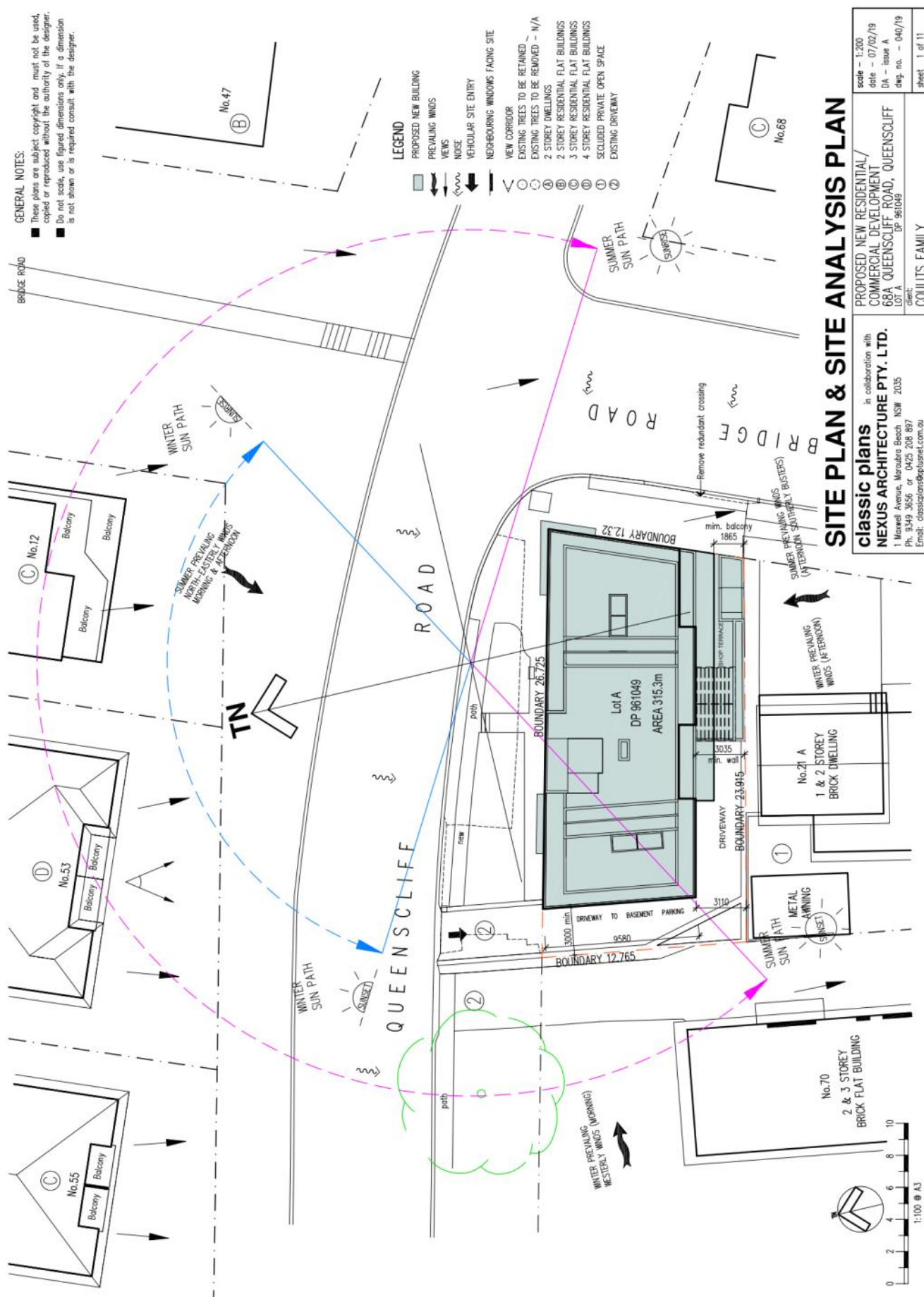
Departure from the standard on this occasion (whilst not required to), will achieve a better outcome for and from the proposed development by way of consistency with the objectives of the maximum building height standard and those of the B1 Local Centre zone, will not raise any matter of significance for State or Regional Environmental Planning and no public benefit will be served by maintaining the standard in the circumstances.

The justification for the departure from the development standard is worthy of support.



Mark Swain MPIA
Principal

24 July 2019



BASIX INCLUSIONS

WATER OPTIONS

Landscape vegetation	Common: 0m ² lawn + 0m ² gardens. Units 4 & 5: 5m ² gardens each with 5m ² low water species use each.
Rainwater tank	Not required by BASIX
Pool	NA
Dishwashers / Clothes washers	NA / NA
Toilets, Showerheads, Taps	Showerheads: 3 star (4.5-6.0 L/min). Toilets: 4 star, Kitchen taps: 4 star, Bathroom taps: 4 star

THERMAL COMFORT (AccuRate) OPTIONS

Roof	Concrete, Light color
Ceilings	Minimum R2.5 insulation within roof terrace above. Non-ventilated covered carports and awnings will have approved insulation with no gaps.
External walls	Cavity brick. Unit 2: R1.5 insulation to all external walls. Dark colour.
Internal walls	Brick within units. Masonry party walls
Floors	Concrete throughout with timber and tile coverings
Glazing	Uw=5.6, SHGC= 0.41 to all glazing, e.g. aluminium framed single glazed Low-e glass Uw=4.2, SHGC= 0.72 to skylight glazing, e.g. metal framed double glazed glass Units 1: Operable louvre screens to all Dining glazing Units 3, 4 & 5: Operable louvre screens to all Living glazing

ENERGY OPTIONS - Project Common Areas

Common Areas Identified	Car-park: garbage room; plant room; switch room; Ground floor lobby hallways; Lift, common WC's.
Lighting	Fluorescents to car-park with motion sensors. Compact fluorescents to plant & garbage rooms with manual switches. Compact fluorescents to ground floor lobby, hallways & WC's
Lift systems	Gearless traction with VVVF motor.
Alternative Energy Supply	N/A
Ventilation	Exhaust only to car-park, with CO motor and VSD motor. Exhaust only to WC's, operated by time-clock. No mechanical ventilation to other common areas.

ENERGY OPTIONS - Dwellings

Ventilation	Car-park: garbage room; plant room; switch room; Ground floor lobby hallways; Lift, common WC's.
Cooling	Air-conditioners, single phase, 4.0 Stars to Living & Bed areas. Day/night zoned between Living & Bed areas
Heating	Air-conditioners, single phase, 4.0 Stars to Living & Bed areas. Day/night zoned between Living & Bed areas
Water Heating	Individual gas instantaneous, 5.5 Stars.
Energy Efficient Lighting	Compact fluorescents or LED, with dedicated fittings, to: ALL rooms.
Cooking	Gas cooktop, electric oven.
Refrigerator space	Well ventilated.
Dishwashers / Clothes dryers	4 Stars / N/A
Clothes washers / Drying lines	N/A / Indoor lines to be installed.

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NORTH ELEVATION

Legend

- Denotes footprint of existing structure
- Denotes footprint of previous approval DA2015/1079

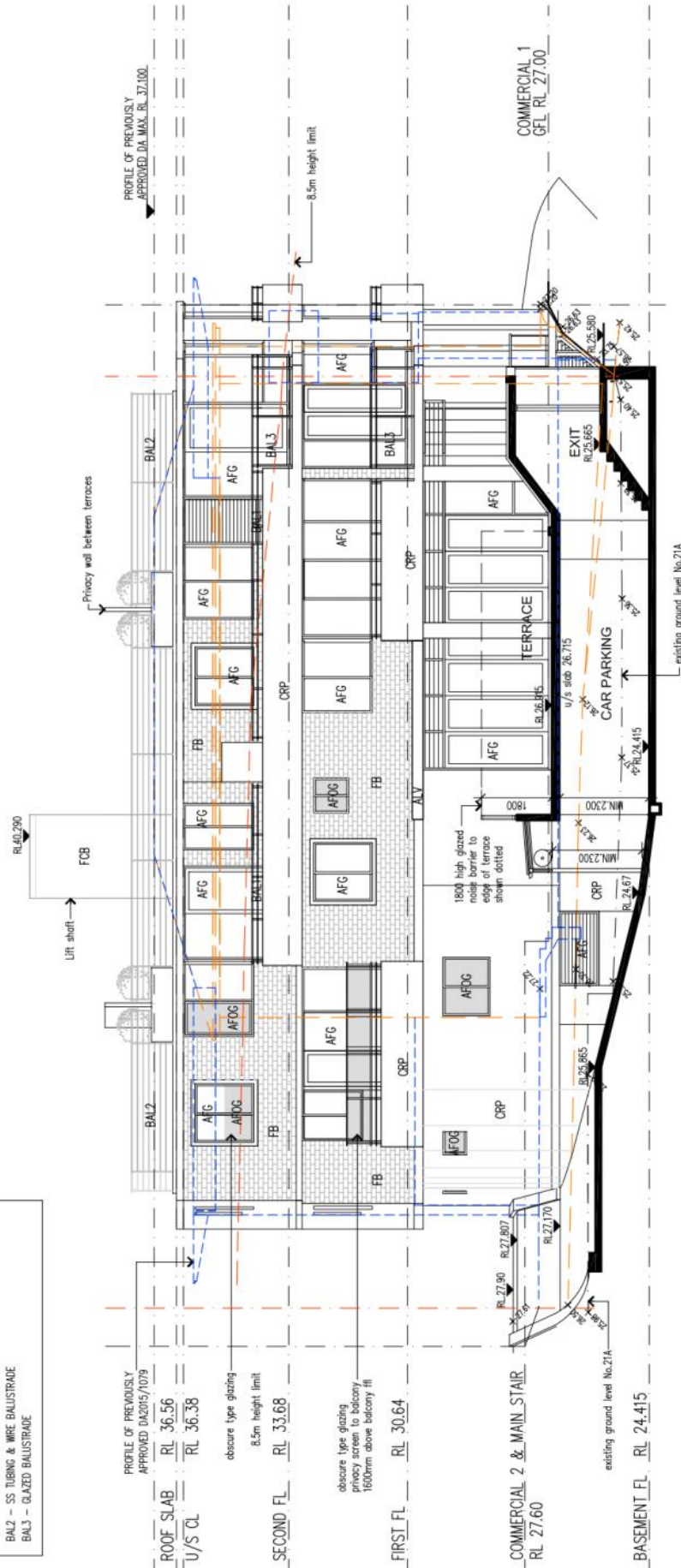
classic plans in collaboration with NEXUS ARCHITECTURE PTY. LTD. 1 Maxwell Avenue, Maroubra Beach NSW 2035 Ph: 9349 3636 or 0425 208 897 Email: classicplans@nexusme.com.au	project: PROPOSED NEW RESIDENTIAL / COMMERCIAL DEVELOPMENT 68A QUEENSCLOFF ROAD, QUEENSCLOFF LOT 1A DP 961049 client: COULLITS FAMILY	scale - 1:100 @ A3 date - 07/02/19 DA - Issue A Eng. no. - 040/19 sheet 7 of 11
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SCHEDULE OF MATERIALS AND FINISHES

- FB - SELECTED FACE BRICK WALLS
- FCB - FACE CONCRETE BLOCK WALLS
- CB - EXTERNAL CAVITY BRICK WALLS
- RB - INTERNAL RENDERS BRICK WALLS (STC & FIRE ratings to BCA req.)
- CRP - RENDERS & PAINTED MASONRY OR CONCRETE
- RC - REINFORCED CONCRETE SLABS, STAIRS & FOOTINGS
- ALV - TEXTURED WOODGRAIN FINISH ALUMINUM LOUVERES TO STRUCTURAL ENG DETAILS (STC & FIRE ratings to BCA req.) ON METAL SUPPORT FRAME
- AFG - POWDERCOATED ALUMINUM FRAMED GLAZING
- AFDG - POWDERCOATED ALUMINUM FRAMED DOUBLE GLAZING
- WS - POLYSTYRENE WINDOW SURROUND TEXTURE COAT PAINT FINISH
- ALG - POWDERCOATED ALUMINUM LOUVER VENTILATION GRILL
- GD - AUTOMATIC GARAGE DOOR IN SELECTED COLORBAND FINISH
- BAL1 - SS BALUSTRADE ABOVE UPTURN
- BAL2 - SS TURNING & WIRE BALUSTRADE
- BAL3 - GLAZED BALUSTRADE



SOUTH ELEVATION

Legend

- Denotes footprint of existing structure
- Denotes footprint of previous approved DA2015/1079

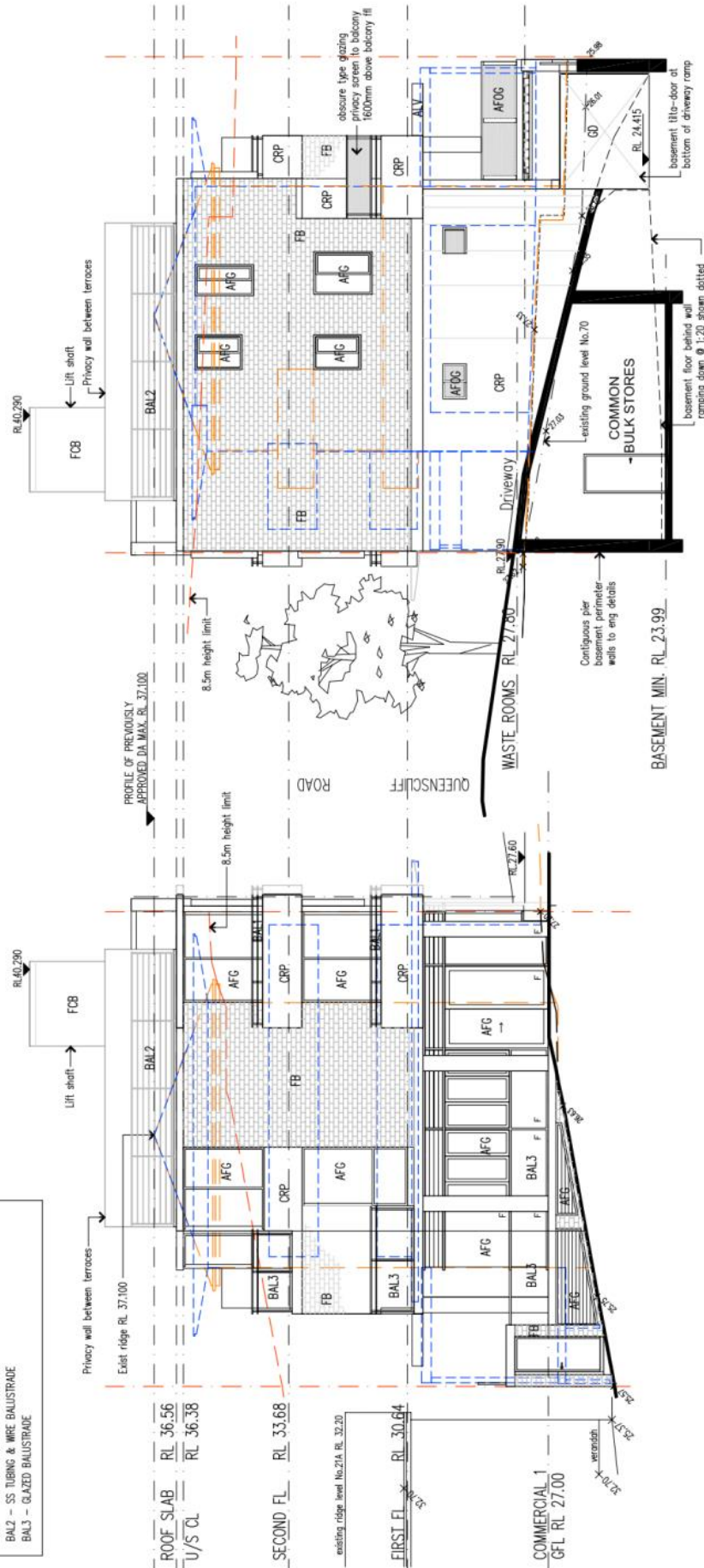
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client: COULLITS FAMILY			

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- RC - REINFORCED CONCRETE SLABS, STAIRS & FOOTINGS
- TO - STRUCTURAL ENG DETAILS (STC & FIRE RATINGS TO BCA req.)
- ALV - TEXTURED WOODGRAIN FINISH ALUMINUM LOUVERES ON METAL SUPPORT FRAME
- AFG - POWDERCOATED ALUMINUM FRAMED GLAZING
- AFOG - POWDERCOATED ALUMINUM FRAMED OBSCURE GLAZING
- WS - POLYSTYRENE WINDOW SURROUND TEXTURE COAT PAINT FINISH
- ALG - POWDERCOATED ALUMINUM LOUVER VENTILATION GRILL
- GD - AUTOMATIC GARAGE DOOR IN SELECTED COLORBAND FINISH
- BAL1 - SS BALUSTRADE ABOVE UPTURN
- BAL2 - SS TURNING & WIRE BALUSTRADE
- BAL3 - GLAZED BALUSTRADE



EAST ELEVATION

Legend

- Denotes footprint of existing structure
- Denotes footprint of previous approved DA2015/1079

WEST ELEVATION

classic plans in collaboration with NEXUS ARCHITECTURE PTY. LTD. 1 Maxwell Avenue, Manly Beach NSW 2035 Ph: 9449 3636 or 0452 208 897 Email: classicplans@nexusme.com.au		project: PROPOSED NEW RESIDENTIAL/COMMERCIAL DEVELOPMENT 68A QUEENSCLIFF ROAD, QUEENSCLIFF LOT A DP 961049 client: COULLITS FAMILY	scale - 1:100 @ A3 date - 07/02/19 DA - Issue A Eng. no. - 040/19 sheet 9 of 11
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ITEM 3.6

MOD2019/0547 - 80-84 MONA VALE ROAD & 22 JUBILEE AVENUE, MONA VALE - MODIFICATION OF DEVELOPMENT CONSENT DA2019/0123 GRANTED FOR USE OF PART OF THE CARPARKING AREA ASSOCIATED WITH THE PITTWATER RSL CLUB FOR THE PURPOSES OF AN ORGANIC FOOD MARKET

AUTHORISING MANAGER **RODNEY PIGGOTT**

TRIM FILE REF **2020/046135**

ATTACHMENTS **1 [↓](#) Assessment Report**

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. Mod2019/0547 for Modification of Development Consent DA2019/0123 granted for use of part of the car parking area associated with the Pittwater RSL Club for the purposes of an organic food market at Lot 26 DP 654262 & Lot 27 DP 5055 & Lot 120 DP 135512, 80-84 Mona Vale Road & 22 Jubilee Avenue, Mona for the reasons set out in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0547
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 27 DP 5055, 22 Jubilee Avenue WARRIEWOOD NSW 2102 Lot 120 DP 135512, 84 Mona Vale Road MONA VALE NSW 2103 Lot 26 DP 654262, 80 - 82 Mona Vale Road MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent DA2019/0123 granted for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market
Zoning:	B7 Business Park
Development Permissible:	Yes, under Clause 2.8 Temporary Use of Land of the PLEP 2014
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Pittwater RSL Club Ltd
Applicant:	Organic Food Markets
Application Lodged:	07/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Commercial/Retail/Office
Notified:	26/11/2019 to 10/12/2019
Advertised:	Not Advertised
Submissions Received:	87
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

EXECUTIVE SUMMARY

The Modification of Development Consent DA2019/0123 granted for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market seeks an extension to the approved operating hours. DA2019/0123 was determined by the Northern Beaches Local Planning Panel (NBLPP). As such, MOD2019/0547 is also referred to the NBLPP for determination.

There are no built form controls to consider in relation to this application. The proposed development has received 86 submissions, comprising of approximately 17% against (15), and 83% in support (71). The issues raised in the objecting submissions included noise impacts, traffic impacts, inconsistency with the previous recommendations and trial period approval, and other market precedents. These matters are addressed throughout this report.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent DA2019/0123 to amend hours of operation of the approved market events as follows:

Approved:

Sundays:

- Set Up: 7:00am-8:30am
- Trading: 8:30am to 12:30pm
- Pack Down: 12:30pm-2:00pm

Proposed:

Sundays:

- Set Up: 6:00am-7:30am
- Trading: 7:30am to 12:30pm
- Pack Down: 12:30pm-2:00pm

Therefore, the proposal involves extending the hours to commence set up one hour earlier, and subsequently commence trading one hour earlier.

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 - 2.8 Temporary use of land

SITE DESCRIPTION

Property Description:	Lot 27 DP 5055 , 22 Jubilee Avenue WARRIEWOOD NSW 2102 Lot 120 DP 135512 , 84 Mona Vale Road MONA VALE NSW 2103 Lot 26 DP 654262 , 80 - 82 Mona Vale Road MONA VALE NSW 2103
Detailed Site Description:	The subject site consists of three (3) allotments located to the south-west of Mona Vale Road, north-west of Foley Street, and north of Jubilee Avenue. The site is irregular in shape with frontages of 267m along Mona Vale Road, 200m along Foley Street, and 100m along Jubilee Avenue. The site has an area of approximately 39,319m². The site is zoned part R2 Low Density Residential and part B7 Business Park and accommodates the Pittwater RSL Club development, comprised of the club, sportsfields, bowling club and associated parking. The site slopes approximately 20m from east to south-west, and contains significant vegetation around the existing buildings, facilities and parking areas. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by industrial, commercial and low-density residential development.

Map:



SITE HISTORY

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

DA2019/0123 for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market was approved on 19 June 2019 by the Northern Beaches Local Planning Panel.

The market comprises up to 100 stalls, and operates on up to 42 days per year and has the following operating hours:

- Sundays:
 - Set Up: 7:00am-8:30am
 - Trading: 8:30am to 12:30pm
 - Pack Down: 12:30pm-2:00pm

The markets were granted approval to commence on a trial period basis for up to 18 months from commencement, with the option to extend to 5 years with prior approval of Council. The markets commenced operation on 1 September 2019.

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 DA2019/0123, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	No The proposed modification is not of minimal environmental impact in relation to acoustic amenity. This is included as a recommended reason for refusal.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0123.
(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 <i>Environmental Planning and Assessment Act 1979</i> , <i>Environmental Planning and Assessment Regulation 2000</i> , <i>Pittwater Local Environment Plan 2014</i> and <i>Pittwater 21 Development Control Plan</i> .
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and*

Assessment Act, 1979, are:

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

Section 4.15 'Matters for Consideration'	Comments
impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed modification in relation to impacts on acoustic amenity.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to result in unreasonable impacts on acoustic amenity and may result in a development that creates an undesirable precedent, such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest. This is included as a reason for refusal.

Section 1.3 Objects of the Act

Section 1.3 of the *Environmental Planning and Assessment Act 1979* stipulates the Objects (or intentions) of the Act. Subclause 1.3(c) details that one of the Objects of the Act is '*to promote the orderly and economic use and development of land*'. The following matters are relevant in establishing whether the proposed modification is 'orderly' development.

DA2019/0123 (to be modified by this application) sought consent for use of the subject site for the purpose of markets. DA2019/0123 proposed to operate the markets for the following hours on Sundays:

- Set Up: 6:00am-7:30am
- Trading: 7:30am to 12:30pm
- Pack Down: 12:30pm-2:00pm

DA2019/0123 was granted conditional approval by the Northern Beaches Local Planning Panel (NBLPP), on the basis that reduced hours of operation and a trial period of 18 months applied. The relevant conditions state:

- **7. Hours of Operation**
The hours of operation are to be restricted to:
 - *Sundays:*
 - *Set Up: 7:00am-8:30am*
 - *Trading: 8:30am to 12:30pm*
 - *Pack Down: 12:30pm-2:00pm**Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no*

patrons shall be permitted entry and all customers on the premises for the purpose of the markets shall be required to leave. Stallholders and site managers may commence set up from 7:00am and must vacate the site by 2:00pm. No access to the site for the purpose of market stall set up is permitted before 7:00am.

Reason: Information to ensure that amenity of the surrounding locality is maintained. At the public meeting, the applicant indicated that approval was only being sought to operate the market on Sundays.

- **10. Trial Period**

This consent expires in 18 months from the date of commencement of operation of the market on site unless, by no later than 13 months after the date of commencement, the applicant lodges a modification application to extend the expiry date to 5 years and Council thereafter approves the modification.

Reason: To monitor the operation of the consent to ensure no adverse impact on any adjoining land or the amenity of the neighbourhood and the temporary use of the land in accordance with the consent.

It can be established (given the inclusion of Condition 7) that the NBLPP were concerned with the potential impact on nearby residential properties with the proposed hours of set up commencing at 6.00am and the hours of operation commencing at 7:30am every Sunday morning. The Assessment Report for DA2019/0123 recommended set up from 7:00am and trading from 8:30am, in order to provide greater consistency with the NSW Environmental Protection Authority's Noise Policy for Industry 2017 "Daytime Trading Hours for Sundays", and in consideration of the fact that no acoustic assessment was provided by the Applicant to demonstrate that operation outside of the hours deemed 'daytime' by the NSW EPA is acceptable. This recommendation was acceptable to the NBLPP.

No further acoustic assessment has been provided for this modification application, other than written comment by the Applicant. Inadequate justification has been provided in this regard to demonstrate that the extended hours are suitable.

The intention of Condition 10 is to monitor the impacts of the operation of the site for the purpose of markets in its approved state for an extended period of time. To modify the consent to include increased hours of operation after a relatively short period months is contrary to the intention of Condition 10. Given an insufficient period of operation has elapsed, and that sufficient justification for the extended hours has not been provided, the proposed modification is not demonstrated to be 'orderly' development as required by the Act.

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 87 submission/s from:

Name:	Address:
Bambi Coleman	Address Unknown
Grant Jackson	Address Unknown
Mrs Jessica Drummond Wardlaw	15 Bergonia Street MONA VALE NSW 2103
Gwenda Miles	Address Unknown
Hilik Mirankar	Address Unknown
Michele Lyons	Address Unknown
Ann Margaret Burleigh Mr Neil Burleigh	5 Kay Close MONA VALE NSW 2103
Susannah Malyon	Address Unknown
Igor Kovacevic	Address Unknown
Sally Joann Woerndl	6 Kay Close MONA VALE NSW 2103
Naoko Konishi	Address Unknown
Mr Stephen Choularton	10 Chiltern Road INGLESIDE NSW 2101
Mrs Anne Marie McInnes	35 A Alameda Way WARRIEWOOD NSW 2102
Pod Cuisine	Attn: Clara Mason Po Box 1250 ROZELLE NSW 2039
Ms Rachel Crane	48 Prince Alfred Parade NEWPORT NSW 2106
Mr Geoffrey Russell Walsh	188 Warriewood Road WARRIEWOOD NSW 2102
Ms Ronda Lea Schweinsberg	5 / 6 Foley Street MONA VALE NSW 2103
Becci Watson	Address Unknown
Mr Mark William Gilbertson	73 Vineyard Street MONA VALE NSW 2103
Kate Berridge	Address Unknown
Mrs Janice Lynette Bilton	8 / 6 Foley Street MONA VALE NSW 2103
State Transit Authority Mona Vale Depot	58 Darley Street MONA VALE NSW 2103
Mrs Barbara Anna Hermann Laura Baiertl	1 / 12 - 14 Angophora Circuit WARRIEWOOD NSW 2102
Ron Bode	19 Jubilee Avenue WARRIEWOOD NSW 2102
Mr Anthony Hilliger	11 Buena Vista Avenue MONA VALE NSW 2103
Mr Kevin John Lee	89 Mona Vale Road MONA VALE NSW 2103
Mrs Emily Jane Aquino	20 / 46 The Crescent DEE WHY NSW 2099
Michelle Phipps	Address Unknown
Karmen Sindermann	53 Elimatta Road MONA VALE NSW 2103
Elsa Jeppesen	Address Unknown
Mr Trevor Lindsay Ings Ms Courtney Mae Ings	88 Warriewood Road WARRIEWOOD NSW 2102
NICOLE GRUEL	Address Unknown
Mrs Linda Geraldine McWhirter	55 Mona Vale Road MONA VALE NSW 2103
Mr Robert Leeson	Address Unknown
Tony Batchelor	Address Unknown

Name:	Address:
Margit Batchelor	
Mr Norbert Blick Veronique Lydie Blick	42 Londonderry Drive KILLARNEY HEIGHTS NSW 2087
Paul Touma	Address Unknown
Mrs Clare Luchetti	28 Inglebar Avenue ALLAMBIE HEIGHTS NSW 2100
Sherree Lisa Maniks	9 Spring Road NORTH CURL CURL NSW 2099
Georgia Fletcher	77 Rednal Street MONA VALE NSW 2103
Mrs Lynda May Hensley	118 Plateau Road BILGOLA PLATEAU NSW 2107
Storme Elizabeth Paige Mirika Poutama	6 Marcus Place FRENCHS FOREST NSW 2086
Mrs Brenda Singleton	Address Unknown
Ms Kathleen Chapman	6 Yuruga Place ALLAMBIE HEIGHTS NSW 2100
Janene Taylor	Address Unknown
Dolfi Benesh	10 Windsor Place ST IVES CHASE NSW 2075
Golden Gozleme	7 Lawrence Street SEVEN HILLS NSW 2147
Jesmin Patel	Address Unknown
Naresh Patel	Address Unknown
Lyn Kirk	Address Unknown
Jeff Delaney	Address Unknown
Tania Elder T/A Newport Yoga Centre	93 A Myola Road NEWPORT NSW 2106
Mr Milan Debelak	67 Bungan Head Road NEWPORT NSW 2106
MS SHELLEY FARRISS	Address Unknown
Karen Elizabeth Oakley	19 Collaroy Street COLLAROY NSW 2097
Amanda Choularton	Address Unknown
Paul Christie	4 Sunrise Road PALM BEACH NSW 2108
Common Ground Bakery	1580 Remembrance Drive PICTON NSW 2571
Ms Belinda Brodie	Address Unknown
Mrs Louise Berkeley Edgley	30 / 5 Ponderosa Parade WARRIEWOOD NSW 2102
Martin Vella	16/117-119 Homer Street EARLWOOD NSW 2206
Mrs Linda Bennett	134 Pringle Avenue BELROSE NSW 2085
Angelique Tomkins	Address Unknown
Bobby Saini	Address Unknown
Julie Taylor	Address Unknown
Caitlin Haigh	Address Unknown
Eurolink Proprietary Ltd	2/78 Brighton Boulevard BONDI NSW 2026
Ms Anne Elizabeth Ohlback	125 Wyadra Avenue NORTH MANLY NSW 2100
Mr Daniel Glen Giles	80 Vineyard Street MONA VALE NSW 2103
Mrs Jane Elizabeth King	118 Cabarita Road AVALON BEACH NSW 2107
Ms Halyna Van Ewyk	16 Elphinstone Place DAVIDSON NSW 2085
Joshua Beck	Address Unknown

Name:	Address:
Miss Jessica Marie Carrier	12 / 31 Seaview Avenue NEWPORT NSW 2106
Michael Min	Address Unknown
Mr Ian Ivor Littleton	PO Box 418 STUBBO NSW 2852
Anonymous	N/A
Mr John Michael O'Neill	10 C Ponderosa Parade WARRIEWOOD NSW 2102
Mr Grant Tomkins	22 B Heath Street MONA VALE NSW 2103
Vicky Pantelas	1 Rosella Street PRESTONS NSW 2170
Alison Clinch	3 Orlando Road CROMER NSW 2099
Mr Timothy Charles Clarke	63 Powderworks Road NORTH NARRABEEN NSW 2101
Peter McDonald Mr Peter William McDonald	6 Foley Street MONA VALE NSW 2103
Lauren Sharma	Address Unknown
Durga Devi	Address Unknown
Ms Valerie Jensen Ms Mary Phillips	185 Warriewood Road WARRIEWOOD NSW 2102
Cheese On Wheels	6 Macmahon Street NORTH WILLOUGHBY NSW 2068
Hannah Clark	Address Unknown

The application received 87 submissions, comprised of 15 against and 72 in support. The issues raised in the submissions are addressed as follows:

ISSUES RAISED AGAINST EXTENSION OF HOURS

Previous Application Recommendations

One submission raised concern that the recommendations from the previous Assessment Report and Memorandum in relation to formalisation of the footpath along Foley Street and have not been enforced.

Comment:

The previous Assessment Report and Memorandum in relation to the original development application made recommendations for the consideration of the Northern Beaches Local Planning Panel (NBLPP). Recommendations in an Assessment Report and/or Memorandum may or may not be accepted by the NBLPP. The NBLPP considered a trial period of 18 months to be suitable for the proposal, so that the operation of the markets could be monitored in relation to its impacts, with the intention of the consent being extended to a maximum period of five years, if proven to be acceptable. Given a trial period was issued, the NBLPP considered the recommendation for upgraded footpath works to be onerous, and that this matter could be reconsidered at such time an extension of the trial period to five years was sought.

Traffic, Parking, and Safety

Submissions raised concern that the current use of the markets makes parking for RSL patrons difficult, and leads to several traffic impacts, including increased cars on the road, increased noise, illegal parking, and increased risk to pedestrian safety. The submission from the State Transit Authority raised concern that the bus stop on Foley Street is impacted by illegal parking and that issuance of infringements has not resolved this matter.

Comment:

The Applicant provided a suitable Parking & Traffic Impact Assessment Report and traffic modelling with the original development application to the satisfaction of Council's Traffic Engineer. If the modification were to be approved, the increased hour of trading is not anticipated to alter traffic generation in an unreasonable manner. However, the modification to hours of operation is not supported in relation to acoustic amenity, and are recommended to remain trading between 8:30am and 12:30pm. Concerns regarding traffic issues will need to be addressed in any future modification application to extend the trial period with the submission of a traffic report based on actual observations, rather than traffic modelling.

Amenity - Noise

Many submissions raised concern that earlier trading hours would impact on amenity of nearby residential properties in relation to noise from traffic and set up.

Comment:

The proposed modification application is not supported in relation to noise, as the extended hours are not consistent with the NSW Environmental Protection Authority's Noise Policy for Industry 2017 "Daytime Trading Hours for Sundays", whereas the current hours are, and the new proposed hours present an unreasonable impact on the acoustic amenity of nearby residential properties. Furthermore, the application is not supported by an acoustic assessment to justify the change of hours.

Precedent

Submissions raised that other markets have been approved with later trading hours.

Comment:

Other market uses/operations cannot be considered a precedent in relation to hours of operation for the subject market, as the hours applied are most suitable to the relevant site, and the context of other sites may differ to that under this application.

Trial Period

Several submissions objected to the 'overturning' of the trial period. Concern was also raised that the trial period was specifically for 18 months, so no change to the consent should occur earlier than 18 months.

Comment:

As detailed earlier in this report, the proposed extension of hours at this early stage of the trial period is not considered orderly development, as the intention of the trial period (being to operate as approved for an extended period of time) has not yet been met. However, the relevant condition regarding the trial period indicates that to extend the consent period from 18 months to five years, an application shall be submitted by 13 months from the date of consent, so modification may occur prior to 18 months.

ISSUES RAISED SUPPORTING EXTENSION OF HOURS**Impact on Stallholders**

Many submissions raised concern that the current hours of operation negatively impacted upon (reduced) income for stallholders, and that the current hours of operation do not allow stallholders to cover expenses. Submissions also raised that the current hours of operation stifled the markets' atmosphere. A number of submissions noted that extended hours of operation would lead to a more effective set up process for stallholders. One submission raised that extended hours would reduce food wastage.

Comment:

Financial impact for stallholders or other persons, atmosphere of the markets, convenience of market set up, and excess stall stock/food wastage are not relevant planning matters for consideration under

the *Environmental Planning and Assessment Act 1979*.

Amenity - Noise

A number of submissions raised that there have been no complaints or unreasonable noise issues from the current operation of the markets, other than those created by objecting parties.

Comment:

A number of submissions raised that the development results in unreasonable noise impacts. The proposed modification application is not supported in relation to noise, as the extended hours are not consistent with the NSW Environmental Protection Authority's Noise Policy for Industry 2017 "Daytime Trading Hours for Sundays", whereas the current hours are, and the new proposed hours present an unreasonable impact on the acoustic amenity of nearby residential properties. Furthermore, the application is not supported by an acoustic assessment to justify the change of hours.

Health

Several submissions raised that earlier hours would assist in reducing health impacts resulting from trading later in hour summer months.

Comment:

Council's Environmental Health Officer has reviewed this application and has not raised concern about the current hours in relation to health.

Precedent

Submissions raised that other markets on the Northern Beaches have been approved with earlier trading hours.

Comment:

Other market operations cannot be considered a precedent in relation to hours of operation, as the hours applied are most suitable to the relevant site, and the context of other sites may differ to that under this application.

Regulation

Submissions raised that the markets are well-regulated and consistently patrolled by Council's Rangers to ensure adherence to requirements.

Comment:

It is noted that Rangers do patrol the markets. However, this is insufficient in justifying extended hours of operation.

Traffic and Parking

One submission raised that the bus stop is only impacted by illegal market-goer parking because it is not effectively marked.

Comment:

This has been reported to Council's Traffic Engineer for consideration.

OBJECTION UNRELATED TO PROPOSAL

Site Location / Suitability

A small number of submissions raised concern with the location of the markets, indicating that more suitable sites exist elsewhere.

Comment:

This modification application does not propose a new location for the markets. Hypothetical consideration of other land for suitability is not a relevant planning matter for consideration under the *Environmental Planning and Assessment Act 1979*.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	Original Comments: Changes proposed by the Mona Vale Organic Markets are for time extensions to bump-in (from 6 am) and trading (from 7:30 am). This moves the current operational times forward by one hour. Environmental Health is cautious in recommending approval due to lengthy noise investigations that have occurred in this particular area (albeit relating to other commercial activities). However, in the absence of any noise-related complaints about the market operations thus far, we recommend approval and request consideration of a trial period of one year. Updated Comments: Environmental Health has been asked to review the previous recommendation provided for this modification with regard to noise. Since the recommendation was made on 21 November 2019, more concerns have been raised about noise issues associated with the current operations (bump-in from 07:00 and trading from 08:30). The most relevant guidelines, <i>Noise Policy for Industry and Protection of Environmental Operations (Noise Control) Regulation 2017</i> do not permit vehicle noise: (i) before 8 am or after 8 pm on any Saturday, Sunday or public holiday, or (ii) before 7 am or after 8 pm on any other day. Further investigation into noise found that, in fact, the current 'bump-in' from 07:00 has allegedly interfered with the repose and comfort of nearby residents. In considering absolute noise reduction conditions on operations, that both reflect guidelines and are practical, we find a conflict between the actions of vehicles and workers arriving, unloading materials and setting up and the associated noise being audible from habitable rooms before 08:00. Therefore, Environmental Health is recommending refusal.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Police – Crime Prevention Office (Local Command matters)	The proposal was referred to NSW Police. No response has been received 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 commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone R2 : No Zone B7 : No Zone SP2: No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone R2 : Yes Zone B7 : Yes Zone SP2: Yes

Principal Development Standards

There are no principal development standards under Part 4 of the PLEP 2014 to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements
2.8 Temporary use of land	No

Detailed Assessment

2.8 Temporary use of land

The subject site is zoned R2 Low Density Residential, B7 Business Park and SP2 Infrastructure (Classified Road). The proposal is wholly contained within the R2 and B7 zoned land, and does not impact upon the SP2 zoned portion of land. The proposed development is not permissible in the R2 or B7 zones. The proposal relies on Clause 2.8 Temporary Use of Land of the PLEP 2014 for permissibility. Clause 2.8 requires that development consent must not be granted unless the consent authority is satisfied that:

(a) the temporary use will not prejudice the subsequent carrying out of development on the land in accordance with this Plan and any other applicable environmental planning instrument, and

Comment:

The proposed modification does not alter the approved development's compliance with this clause.

(b) the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and

Comment:

As per the previous assessment, the proposed temporary use is acceptable in relation to neighbourhood amenity, subject to adherence to conditions of consent and the Plan of Management. The proposed increase in hours of operation presents an inconsistency with the NSW Environmental Protection Authority's Noise Policy for Industry 2017 daytime trading hours for Sundays. As such, the proposal is not considered to adequately retain amenity for the neighbourhood in terms of noise impacts, particularly in consideration that no acoustic assessment has been provided to indicate that operation outside daytime hours is acceptable. The temporary use remains acceptable as approved under DA2019/0123, but not as modified under this application.

(c) the temporary use and location of any structures related to the use will not adversely impact on environmental attributes or features of the land, or increase the risk of natural hazards that may affect the land, and

Comment:

The proposed modification does not alter the approved development's compliance with this clause.

(d) at the end of the temporary use period the land will, as far as is practicable, be restored to the condition in which it was before the commencement of the use.

Comment:

The proposed modification does not alter the approved development's compliance with this clause.

Given the above in relation to (b) above, the consent authority cannot be satisfied that the temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, and consent to the modification application cannot be granted.

Pittwater 21 Development Control Plan

Built Form Controls

There are no built form controls under Part D14 Warriewood Locality of the P21 DCP to consider as part of this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

- Inconsistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP

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

In summary, a detailed assessment has been undertaken in relation to following:

Orderly Development of Land

The proposed modification is inconsistent with the approved trial period, which intends for the markets to operate in an unchanged manner for an extended period of time (18 months). The reduced trial period does not provide for orderly development in accordance with the objects of the *Environmental Planning and Assessment Act 1979*.

Acoustic Amenity

The proposed modification includes works outside the NSW Environmental Protection Authority's Noise Policy for Industry 2017 "Daytime Trading Hours for Sundays", presenting unreasonable acoustic impact on nearby residential properties.

Temporary Use of Land

The proposed modification does not provide the consent authority with sufficient satisfaction that the extended hours of operation will not result in adverse impact on the amenity of the neighbourhood.

Based on the above assessment, the proposed extension of the operating hours and effective elimination of the 18-month trial period is not supported.

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 Modification Application No. Mod2019/0547 for Modification of Development Consent DA2019/0123 granted for use of part of the carparking area associated with the Pittwater RSL Club for the purposes of an organic food market on land at Lot 27 DP 5055,22 Jubilee Avenue, WARRIEWOOD, Lot 120 DP 135512,84 Mona Vale Road, MONA VALE, Lot 26 DP 654262,80 - 82 Mona Vale Road, MONA VALE, subject to the reasons outlined as follows:

1. Pursuant to Section 1.3(c) of the *Environmental Planning and Assessment Act 1979*, the proposed extension of operating hours does not represent an orderly development of land.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed modification does not demonstrate that the proposed temporary use will not adversely impact on any adjoining land or the amenity of the neighbourhood, as required by Clause 2.8 Temporary Use of Land of the *Pittwater Local Environmental Plan 2014*, particularly in relation to noise impacts.
3. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not in the public interest in relation to acoustic amenity.
4. Pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*, the proposed development is not of minimal environmental impact in relation to acoustic amenity.
5. Insufficient information was submitted with the application in relation to the acoustic impact of the proposed extended operating hours on the adjoining residential area. In this regard, no acoustic report was lodged that addresses the proposal.