

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 19 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

Lesley Finn	Chair
Marcus Sainsbury	Environmental Expert
Robert Hussey	Town Planner
John Simmonds	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 19 February 2020
in the Council Chambers, Civic Centre, Dee Why
Commencing at 1.00pm**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
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2.0 MINUTES OF PREVIOUS MEETING

2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 5 FEBRUARY 2020

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 5 February 2020 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1	DA2019/1273 - 46C WHITE STREET, BALGOWLAH - ALTERATIONS AND ADDITIONS TO A MULTI-UNIT HOUSING DEVELOPMENT
AUTHORISING MANAGER	ANNA WILLIAMS
TRIM FILE REF	2020/078608
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site, Elevations and Floor Plans 3 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 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. DA2019/1273 for alterations and additions to a multi-unit housing development at Lot 4 SP 97119, 46C White Street, Balgowlah subject to the conditions and for the reasons set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1273
Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot 4 SP 97119, 46 C White Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to an multi unit housing development
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:	Shane Marie Donohoe
Applicant:	Woodhouse & Danks Pty Ltd
Application Lodged:	14/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	28/11/2019 to 12/12/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.4 Floor space ratio: 17.0%
Recommendation:	Approval
Estimated Cost of Works:	\$ 29,700.00

The application seeks consent for the alterations and additions to an existing townhouse development.

The subject townhouse development has an existing FSR of 0.56:1 (511.3sqm) for the three (3) townhouses and therefore breaches the permissible FSR development standard by 12% . The development proposes to increase the floor area by an additional 24sqm creating an overall floor space ratio of 0.59:1 (535.3sqm) which will equate to an overall breach of 17%.

Notification of the application resulted in no submissions to the proposed development.

The application has been referred to the Northern Beaches Local Planning Panel (NBLPP) as the development has a non-compliance with the floor space ratio in excess of 10%.

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

PROPOSED DEVELOPMENT IN DETAIL

The subject development application proposes the following works:

- Provide additional floor space to Townhouse 3 (Unit 46C) to provide an artist studio accessed from the internal lobby stair;
- Increase the floor area by approximately 24sqm.
- Excavation within the existing void required;
- The walls along the eastern and southern elevations are existing as part of the existing approved building; and
- A door and window are proposed along the eastern wall and a window is proposed along the southern elevation to provide light and ventilation to the proposed studio.

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

Mainly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Mainly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 4 SP 97119 , 46 C White Street BALGOWLAH NSW 2093
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of White Street.

The site is regular in shape with a frontage of 15.24m along White Street and an average depth of 60m. The site has a surveyed area of 914.9m².

The site is located within the R1 General Residential zone from MLEP 2013 and accommodates a three (3) unit townhouse development. The proposed development is related to Townhouse 3, number 46C White Street which is located at the rear of the site. The site provides vehicle access along the eastern boundary of the site by way of a driveway which provides access to the garages provided for each townhouse.

The site slopes down from the rear to White Street with the subject townhouse located at the rear of the site.

The adjacent property to the east, at 42 White Street, is developed with a two-storey detached dwelling. The adjacent property to the west, at 48 White Street, is developed with a two-storey detached dwelling. Development in this area of White Street consists of one- and two-storey detached dwellings and multi-dwelling housing.

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:

- DA21/2012: Demolition of existing, construction of three (3) storey, three (3) bedroom townhouse dwellings including garages, courtyards, balconies and landscaping. Refused by MIAP 21 June 2016. Appeal upheld by NSW Land and Environment Court 21 August 2013.

- S82A 21/2012/2: Section 82A Review of Determination of refused Demolition of a dwelling house and swimming pool, and the construction of 3 x 2 storey dwellings over a part basement garage, courtyards, balconies and landscaping works - Part 2. Refused by MIAP 21 February 2013. Appeal upheld by the NSW Land and Environment Court on 20 October 2014.
- DA21/2012/3 - Section 96 to modify approved Demolition of a dwelling house and swimming pool and construction of 3 x 2 storey dwellings over a basement garage, courtyards, balconies and landscape works. Approved 19 June 2017.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration'	Comments
	Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	No objection to the proposal for the addition of an artists studio to the existing townhouse.
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following condition of consent.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Approved	Proposed	% Variation	Complies
Floor Space Ratio	FSR: 0.5:1 (457.45m ²)	FSR: 0.56:1 (511.3m ²)	FSR: 0.59:1 (535.3m ²)	17.0%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

The development proposes to increase the floor area by 24sqm to Lot 4 SP 97119. The development standard for the whole site is 0.5:1. The approved three (3) townhouses create a non-compliant FSR of 0.56:1 (11.7% variation) to the FSR development standard. The proposed increase of 24sqm to the floor area of Unit 4 is included in the overall floor area calculation of the three (3) townhouses creating a further non-compliant FSR of 0.59:1 which is a 17.0% variation to the FSR development standard.

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra*

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

Comment:

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

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The proposed increase in floor area does not result in any unreasonable impacts on the amenity of adjoining residential properties in regard to overshadowing, privacy and view loss;
- The proposed increase in floor area will maintain the contextual relationship with other buildings in the locality;
- The proposal will facilitate the enhancement of the existing building form to create a building that is consistent with the desired future strategic vision for this locality;

•

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, 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 Floor Space Ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The proposed works utilise an existing void area along the eastern side of the development and therefore do not propose to alter the existing building footprint. The bulk and scale of the building is not compromised.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The development proposes to utilise an existing void along the eastern side of the

development to the most northern townhouse. Excavation to the subfloor of the void will allow for the usability of the space as a studio for the occupants and therefore will not obscure any important landscape and townhouse features.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

The proposed development will not be visible from the public domain as the development will not alter the existing footprint of the building with the only external works being to the eastern facade of the building. The new door and window along the eastern elevation will not be visible from White Street and due to the 3.0m separation of the access handle between the subject building and the adjoining property at 44 White Street, the proposed works will maintain an appropriate visual relationship between the new works and the existing character and landscape of the area.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

The proposed development will not encroach outside the existing building envelope of the building. Whilst the development will maintain the existing setback to the eastern boundary (2.3m), a window and a door is proposed along the eastern elevation. A visit to the site revealed that there will be limited opportunities for overlooking towards the private open space of 42 White Street due to the 3.0m wide access handle located along the eastern side of the property. The access handle serves the multi residential development to the north (62 - 64 West Street, Balgowlah). The location of the artist studio will be located at a lower level to the neighbouring property to the east and will not allow for any overlooking. Existing fences are located along the eastern and western boundary of the access handle which also creates additional privacy for the occupants of the subject site and the property to the east at 44 White Street.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The subject site is not located within a business zone or within close proximity to a business zone and therefore will have a negligible impact on the economic growth and employment opportunities within local centres.

Conclusion:

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

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

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 Floor space ratio Development Standard is assumed by the Local Planning Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 914.9sqm	Requirement	Approved	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling / 300sqm	3 dwellings / 914.9sqm	No change	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	6.0m	No change	N/A	Yes
4.1.4.2 Side Setbacks	E: 1.0 (based on 1/3 wall height)	1.0m 2.5m (as measured in previous assessment report)	No change	N/A	Yes
	Windows: 3m (eastern elevation)	2.3m (first and second floor)	2.3m (proposed works - ground floor)	23.4%	No
4.1.4.4 Rear Setbacks	8m	8.0	No change	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

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

Description of non-compliance

Requirement: All new windows from habitable dwellings that face the side boundary are to be setback at least 3.0m.

Proposed: 2.3m to the eastern boundary creating a 700mm non - compliance (23.4% variation) to the control.

Merit consideration:

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

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

Comment:

The proposed window and door to the eastern elevation will not be visible from White Street. Townhouse 3 is located at the rear of the site with the location of the proposed door measuring approximately 48.0m from the front boundary of the site. The subject site is sufficiently landscaped which assists in the visual impact of the proposed door and window from both White Street and the neighbouring property at 44 White Street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between*

- *buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed window and door along the eastern elevation of the building do not impact on the amenity of adjoining properties. The proposed window and door are located 2.3m from the eastern boundary which adjoins a 3.0m wide access handle. A boundary fence runs along both the eastern and western sides of the access handle creating more than adequate privacy for the occupants of the proposed studio and of adjoining properties (44 White Street). The development also proposes a window along the southern elevation of townhouse 3 fronting the driveway at ground level creating additional access to light for the studio. The proposal will not be visible from White Street and therefore will have a negligible impact on traffic conditions.

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

Comment:

The proposal maintains the existing footprint of the building.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed works do not alter the existing landscaped area for the site as the proposed studio is located within the existing footprint of the subject townhouse. No trees are proposed for removal.

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

Comment:

The subject site is not located on bushfire prone land.

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

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 EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio 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.

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

- Manly LEP - Clause 4.4 Floor Space Ratio.

The proposal includes a non-compliance with the floor space ratio development standard of 12.6%. The non-compliance has been considered in the context of the site and surrounding properties and on

balance, the non-compliance with the floor space ratio control has been assessed as reasonable given the development will not alter the existing bulk and scale of the development.

The proposed excavation of an existing void within the development to be used as habitable space for the occupants will have minimal impacts on the amenity of surrounding developments and will not be overly visible from White Street. The materials and finishes of the two (2) windows and door are compatible with the existing development and will be compatible with the surrounding development within the R1 Zone.

In conclusion, the application is acceptable in relation to the relevant policies and is recommended for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/1273 for Alterations and additions to an multi unit housing development on land at Lot 4 SP 97119, 46 C White Street, BALGOWLAH, 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
X.1	February 2019	Woodhouse and Danks Architects
X.2	February 2019	Woodhouse and Danks Architects
X.3	February 2019	Woodhouse and Danks Architects
X.4	February 2019	Woodhouse and Danks Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment Update	5 March 2019	D. Katauskas

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
Waste Management Plan	10 January 2019	Woodhouse and Danks Architects

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

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

2. Approved Land Use

Nothing in this consent shall authorise the use of the proposed studio as detailed on the approved plans for any land use of the site beyond the definition of a *dwelling house*.

A *dwelling house* is defined as:

"means a building containing only one dwelling"

(development is defined by the Manly Local Environment Plan 2013 (as amended) 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.

3. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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

5. Security Bond

A bond (determined from cost of works) of \$1,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION
CERTIFICATE****6. 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.

7. Compliance with Standards

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**8. Traffic Control During Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE****9. Strata Plan**

The Strata Plan is to be updated to include the works approved as part of this consent within Unit 4 SP97119

Reason: To ensure consistency with the approved plans.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**10. Internal access**

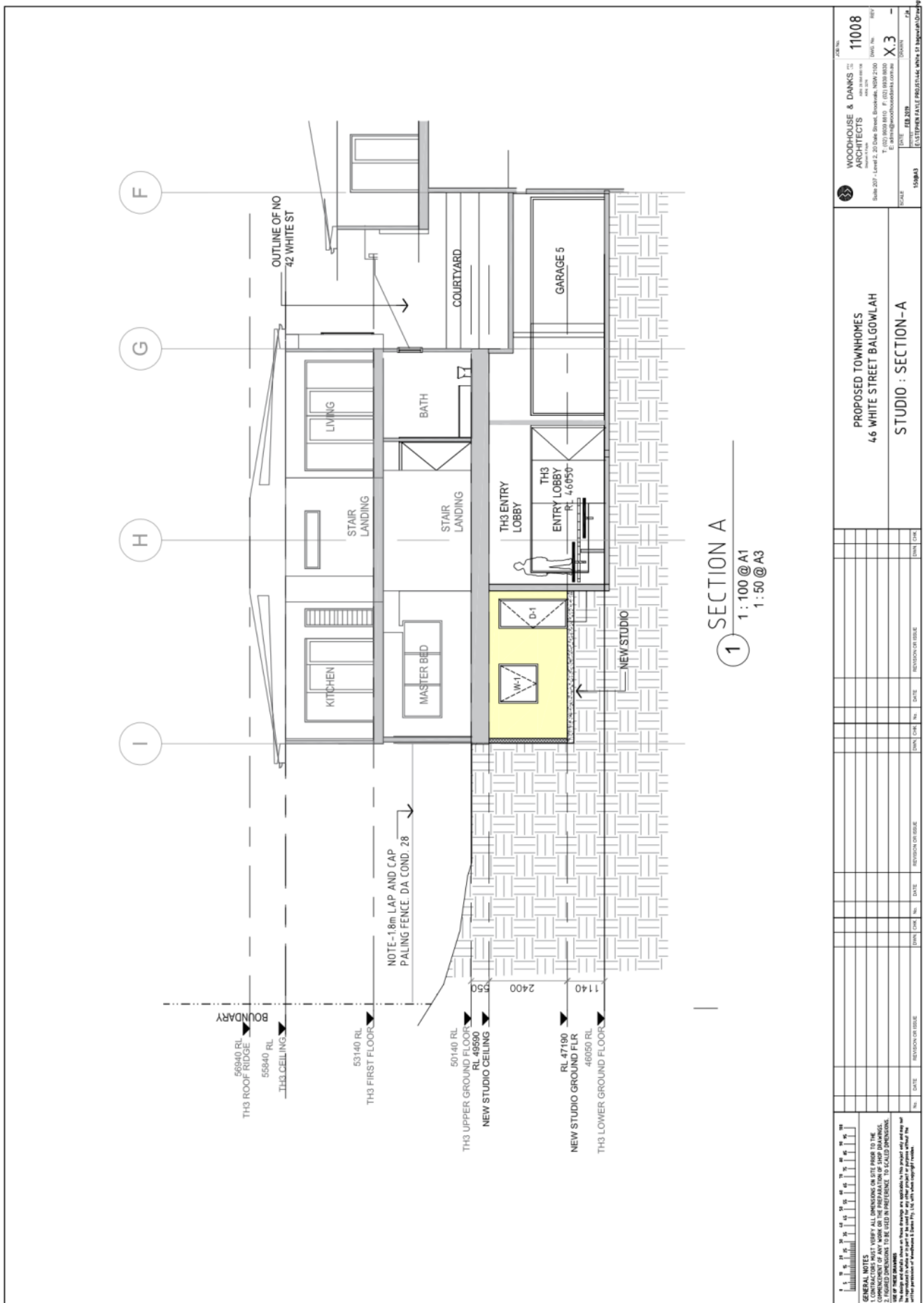
Internal access to the studio is to be maintained at all times

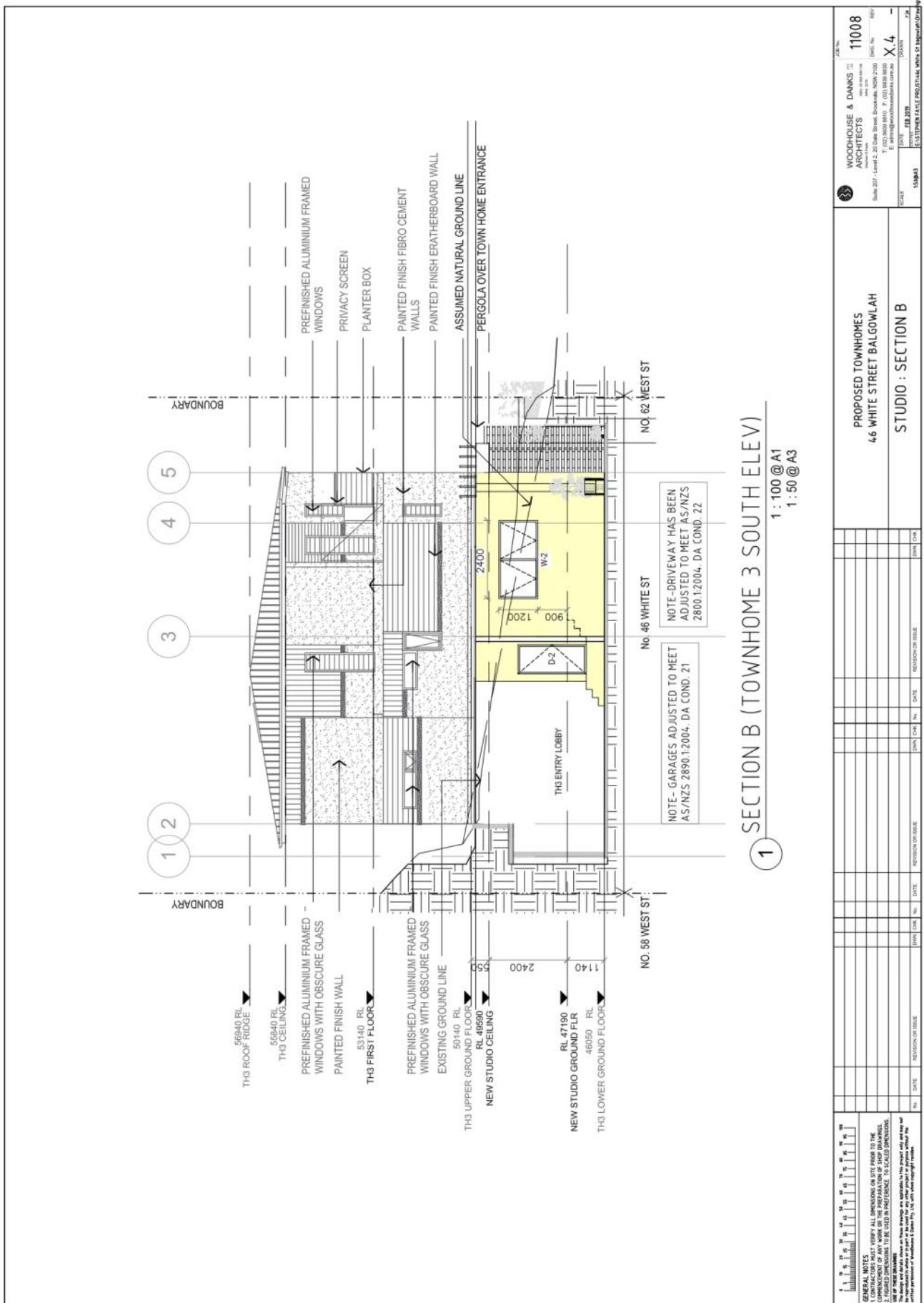
Reason: To ensure the studio cannot be used as a separate occupancy.











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APPENDIX A

FLOOR SPACE RATIO VARIATION

Introduction

Clause 4.6 of MLEP 2013 provides Council with the flexibility to vary development standards contained within gazetted environmental planning instruments, when it can be demonstrated that compliance with the development standard, in the particular circumstances of an individual development application, is unreasonable or unnecessary.

Although there are minor differences in the approach applied by State Environmental Planning Policy (SEPP1) and that of Clause 4.6, the tests to be applied to a variation under Clause 4.6, are similar to those articulated in relation to SEPP 1. However Clause 4.6 has the added requirement which is detailed in Clause 4.6(3), which states as follows:

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.*

Having regard to the above, and dealing first with issue of whether the standard is *unreasonable and unnecessary*, it is noted that the tests applied to a SEPP 1 objection were set out by Lloyd J in *Winton Property Group Limited v North Sydney Council* [2001] NSWLEC 46, where his Honour set out five questions that need to be addressed.

The first is, "*Is the planning control a development standard?*"

The second raises the underlying objectives or purposes of the standard.

The third and fourth deal with the questions of consistency with the aims of the policy and the objects in 5(a)(i) and (ii) of the Act and whether or not compliance is unreasonable or unnecessary.

According to Lloyd it conventionally being the fact that if application of the standard is held to be unreasonable or unnecessary in the

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circumstances of the case, that the objection is likely to be well-founded (thus satisfying the fifth Winten test).

The following assessment has been undertaken having regard to this judgement, and identifies the applicable planning instruments, zoning and applicable standard applying to the subject land, and considers the implications of the variation to the floor space ratio sought, having regard to the objectives of the zoning and standard, as well as the relevant objectives of the Environmental Planning and Assessment Act.

This assessment concludes that compliance with the applicable standard, having regard to the particular circumstances of this application, would in this instance, be unreasonable and unnecessary, and therefore should be approved.

Applicable environmental planning instrument

Manly Local Environmental Plan 2013

Identification of the development standard to which the SEPP 1 objection applies

Clause 4. of MLEP 2013 refers to the floor space ratio control, and the Floor Space Ratio Control Map, which provides detailed floor space ratio controls for the locality.

In accordance with the Floor Space Ratio control Map, the maximum floor space ratio of building permitted on the subject site is 0.5:1.

Variation sought

The maximum permitted floor area is 457.5 square metres, whereas the proposed development has a total existing approved floor area of 494 square metres plus the proposed addition of 21 sq metres for this application, to give a total gross floor area of 515 sq metres.

That is an increase of 57.5 square metres over the control being a total of approximately 0.063 increase in FSR for the site.

Notwithstanding the above the additional floor area sought under this application only amounts to 21 sq metres which is the equivalent of an FSR Control increase of 0.023:1.

A variation in accordance with Clause 4.6 of MLEP is therefore sought to permit the subject development proposal.

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Objectives of the applicable zone

The subject site is zoned **R2 Low Density Residential** in accordance with MLEP 2013. The relevant **Objectives** of this zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

COMMENT

It is considered that the proposed development is consistent with these objectives as it is providing an increase in variety and choice of housing to meet the community needs within a low density residential environment.

Objectives of applicable standard

- (1) *The objectives of this clause are as follows:*
 - (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
 - (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
 - (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
 - (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
 - (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*
- (2A) *Despite subclause (2), the floor space ratio for a building on land in Zone B2 Local Centre may exceed the maximum floor space ratio allowed under that subclause by up to 0.5:1 if the consent authority is satisfied that at least 50% of the gross floor area of the building will be used for the purpose of commercial premises.*

COMMENT

It is considered that the variations to the applicable standard in relation to the proposed development satisfies the objectives of this Clause, as the bulk and scale of the new development is similar, if not the same as, other developments in this locality, ensuring maintenance of the contextual, visual and landscaping relationships with adjoining development, and the streetscape in which the building is to be sited.

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As discussed previously in this report, there will be no adverse environmental impacts in relation to the use or enjoyment of adjoining land and the public domain.

Further to the above, and as also indicated previously in the report, the character of the locality will not be adversely impacted by the proposed increase in the floor space ratio, and subsequent erection of the proposed addition on this lot, and there are no existing vegetation, topography, public views and natural features of land, including the foreshore, which would limit the floor space, as proposed in this application

Similarly the compatibility of the building form to the size of the land will continue to be maintained.

The potential impacts on solar access, privacy, and overshadowing have all been addressed previously in this report, and it can be concluded that the variation of the floor space ratio in this instance will have no adverse impacts on adjoining properties.

It can therefore be concluded that the variation in the floor space ratio, continues to acknowledge the environmental constraints of the site, and will not inhibit the contextual relationship between the subject land and that of adjoining residential development.

In terms of the relevant objectives of the Environmental Planning and Assessment Act, it is considered that the variation to the floor space ratio, will not have any adverse impact on the environmental constraints of the site, as addressed in this planning report, and in fact will contribute towards maintaining and enhancing the residential character of the locality.

It can therefore be concluded that the variation to the floor space ratio, is consistent with the relevant objects of the Act, which are as follows;

(c) to promote the orderly and economic use and development of land,

(g) to promote good design and amenity of the built environment,

Further to the above, Preston J has expressed the view that there are five different ways in which an objection may be well founded. These are addressed as follows:

1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;

Comment

As indicated above, it is considered that the objectives of the standard are achieved notwithstanding the variation to the floor space ratio sought.

2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Comment

Not applicable. Objectives of the standard have been identified in MLEP 2013, and have been addressed above.

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3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Comment

Not applicable

4. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

Comment

Not applicable

5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

Comment

Strict application of the standard is considered to be unreasonable and unnecessary in the current circumstance for the following reasons:

- The proposed technical variation to the floor space ratio, does not result in any unreasonable impacts on the amenity of adjoining residential properties in terms of overshadowing, privacy, loss of views or loss of daylight;
- The proposed variation continues to recognise the existing environmental constraints of the site and retain the contextual relationship with other buildings in this locality;
- The proposed variation does not result in any material impacts in terms of privacy, views, solar access, separation distances, light and ventilation on any adjoining development in the immediate vicinity of the proposal or surrounds;
- The proposal will facilitate the enhancement of the existing building form to create a building of enhanced architectural merit, consistent with the desired future strategic vision for this locality.

For these reasons it is considered that strict application of this standard is unreasonable and unnecessary having regard for the particular circumstances of this case.

Further to the above it is considered that the proposed variation does not raise any matter of significance in relation to State or Regional planning, and it is not anticipated that the variation will

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undermine the standard itself and lead to any potential adverse precedent.

The reason for this conclusion is that the proposed variation is very site specific and related to a specialised use of the subject site, which is a very low intensity use.

In addition, the technical variation to the floor space ratio, will not change the contextual relationship currently experienced in relation to the existing dwelling on the site.

Finally, it is considered that there does not appear to be any public benefit in maintaining the existing floor space control, adopted by the planning instrument in this instance.

The public benefit is to be found in the provision of the development of the site for the proposed addition, designed to enhance the general amenity of the locality, as well as the future residents who will inhabit the dwelling.

For the reasons referred to above it is considered that the variation to the maximum floor space control as sought in this application, is reasonable and necessary, having regard to the circumstances of the case, and as such should be approved.

In relation to Clause 4.6(3)(b) of Clause 4.6 however, it is noted, that the proposed development is consistent with the objectives of the standard, particularly those related to the bulk and scale of development, the density control, and the visual relationship between the new development and the existing character and landscape of the area.

Whilst the degree of the variation is small to say the least, any reduction in the size of the dwelling, will obviously impact adversely on the amenity of the future residents of the proposed townhouses, which have been designed to ensure that:

- the spatial arrangement of the dwelling is functional;
- the layouts provide high standard of residential amenity; and

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- the dwelling is capable of accommodating a variety of household activities and occupants needs.

Accordingly it can also be concluded that the proposed development satisfies the requirements of Clause 4.6 of Manly Local Environmental Plan.

ITEM 3.2	DA2019/1393 - 1/17 FRANCIS STREET, FAIRLIGHT - ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING
AUTHORISING MANAGER	MATTHEW EDMONDS
TRIM FILE REF	2020/079456
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site Plan and Elevations 3 ↓ Clause 4.6 - Height of Buildings 4 ↓ Clause 4.6 - Floor Space Ratio

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 and Floor Space Ratio Development Standards of Clause 4.3 and 4.4 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 standards 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. DA2019/1393 for Alterations and additions to an existing dwelling at Lot 1 SP 67726, 1/17 Francis Street, Fairlight subject to the conditions and for the reasons set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1393
Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 1 SP 67726, 1 / 17 Francis Street FAIRLIGHT NSW 2094
Proposed Development:	Alterations and additions to an existing 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:	Iain Stuart Liddel Emma-Jane Marie Haselden
Applicant:	Emma-Jane Marie Haselden
Application Lodged:	06/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	20/12/2019 to 28/01/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 16.82% 4.4 Floor space ratio: 10%
Recommendation:	Approval
Estimated Cost of Works:	\$ 260,000.00

EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Local Planning Panel for the consideration of Development Application DA2019/1393 for alterations and additions to an existing townhouse within a multi dwelling housing development.

The proposed development is non-complaint with Clause 4.3 Height of buildings and Clause 4.4 Floor space ratio of the Manly Local Environmental Plan 2013 (MLEP 2013).

The subject site is located within 'Area I' on the Height of Buildings Map, which is subject to an 8.5m maximum building height development standard. The application proposes a maximum building height

of 9.93m, which represents a variation of 16.82% from the development standard. As a consequence of the variation to the prescribed maximum building height, the application is referred to the Northern Beaches Local Planning Panel for determination.

The subject site is located within 'Area F' on the Floor Space Ratio Map, which is subject to a 0.6:1 (469.2sqm of gross floor area) floor space ratio development standard. The proposed floor space ratio is 0.66:1 (515.34sqm of gross floor area), which represents a variation of 10% (46.14sqm) from the development standard.

The application has been assessed against the Manly Development Control Plan 2013 (MDCP 2013). In relation to the MDCP 2013, the proposed development does not comply with the numerical requirements stipulated within Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height), Clause 4.1.3 Floor Space Ratio (FSR), Clause 4.1.4 Setbacks (front, side and rear) and Building Separation and Clause 4.1.5 Open Space and Landscaping.

The proposed development was notified and received zero (0) submissions.

It is recommended that the Northern Beaches Local Planning Panel approve the application, subject to the conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to an existing townhouse within a multi dwelling housing development. Specifically, the application proposes the following works:

Garage and Basement Level (FFL - RL 43.375)

- Excavation works to the sub-floor to create a new storage area;
- Demolish existing walls and doors on the western and southern elevations;
- The construction of a new masonry wall and piers on the southern elevation;
- To construction of a new internal staircase and doors to provide new access points to the proposed storage area.

Ground Floor (FFL - RL 46.400)

- Demolish the existing roof over the external bin area and enclose the area to create a mud room and new entryway;
- Internal alterations to the existing kitchen;
- The construction of a new fence along the eastern front boundary and southern edge of the driveway to enclose the existing front garden. The proposed fence contains masonry pillars with timber infills; and
- The construction of new external glazed doors on the eastern elevation of the existing lounge room.

First Floor (FFL - RL 49.350)

- Internal alterations to the existing floor plan to reconfigure the existing ensuite, bathroom, bedroom 2 and bedroom 3; and
- An extension on the southern elevation to create a new bedroom (bedroom 4).

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 Development Control Plan - 3.2 Heritage Considerations
 Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
 Manly Development Control Plan - 3.7 Stormwater Management
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping

SITE DESCRIPTION

Property Description:	Lot 1 SP 67726 , 1 / 17 Francis Street FAIRLIGHT NSW 2094
Detailed Site Description:	The subject site is legally known as Lot 1, 2 and 3 of SP 67726. The site is located on the western side of Francis Street, Fairlight. The site is regular in shape with a frontage of 24.32m along Francis Street and a depth of 32.155m. The site has a surveyed area of 782sqm. The site is located within the R1 General Residential zone and accommodates three (3) townhouses separated into three (3) strata lots. Vehicle access is maintained via an existing driveway from Francis Street to basement car

parking.

A large paved terrace is located within the centre of the site, which is directly accessible from the existing dining area within the subject townhouse.

The site contains a large Norfolk Island Pine tree that is located centrally towards the southern side boundary and is well landscaped within the rear yard.

The site experiences a fall of approximately 9m that slopes from the eastern front boundary towards the western rear boundary.

Lots 1 and 2 are burdened by an easement for stormwater detention and drainage.

The site is mapped as containing 'Acid Sulfate Soils Class 5' under the provisions of the Manly Local Environmental Plan 2013 (MLEP 2013).

Detailed Description of Adjoining and Surrounding Development

Adjoining and surrounding development comprises one (1) and two (2) storey detached dwellings and semi-attached dwellings. The site is adjacent to Heritage Item No. I52 "Group of 6 houses" located on properties 12-22 Francis Street, Fairlight (opposite the subject site).

Map:



SITE HISTORY

The site has been used for residential purposes for an extended period of time. Development Consent was granted for Three (3) townhouses with strata subdivision on lots 11 and 12, Section A, DP 978391, known as Nos. 17 and 19 Francis Street, Fairlight by Court Order on 19 January 2000.

The following is a list of other approvals on site:

- DA306/2002 - Alterations and additions to existing;
- DA90/2004 - Addition of an External Stairwell to a RFB and change construction of stairwell from Timber to Painted Galvanised Street;
- DA05/12 - Alterations and additions to an existing Residential Flat Building including a privacy screen and roof over the existing deck - Unit 3;
- DA176/13 - Alterations and additions to an existing building including side foyer and roof addition over the existing deck; and
- DA72/1999 S96(AA) - Section 96(AA) application to modify approved construction of three (3) townhouses and strata subdivision - Part 2.

Site Visits

A site visit was undertaken at the subject site on 08 January 2020.

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.

Section 4.15 Matters for Consideration'	Comments
	Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent. Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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	No submissions were received during the Notification Period.
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
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. 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.
Landscape Officer	The development application proposes alterations and additions to an existing townhouse. The first floor addition will require removal of lower branches of the existing Norfolk Island Pine within close proximity to the works in the order of no more than 10%, which is permitted under Manly DCP clause 3.3.2.3, part c), item ii). The landscape component of the proposal is acceptable subject to the submission of a Tree Protection Plan at Construction Certificate application stage addressing the protection of the existing Norfolk Island Pine. Council's Landscape section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following conditions of consent.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with the application (see Certificate No. A361090 dated 15 October 2019). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007Ausgrid

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

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

Comment:

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

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	9.93m (RL 53.676)	16.82%	No
Floor Space Ratio	FSR: 0.6:1 (469.2sqm of gross floor area)	FSR: 0.66:1 (515.34sqm of gross floor area)	10%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Height of Buildings

Description of non-compliance:

The maximum building height of the proposed development is 9.93m, which results in a 1.43m (16.82%) variation to the 8.5m height standard. The variation is sought for a first floor bedroom addition to the rear of the building. The maximum building height proposed equates to RL 53.676 which falls below the existing roof ridge height RL 53.750 which faces Francis Street. The proposed building height breach will therefore not be visible when viewed from Francis Street. It should also be noted that the existing building height currently exceeds the 8.5m height standard.

Note: The submitted Clause 4.6 Variation Request submitted by the Applicant measures the proposed

maximum building height as being 10.171m. However, the assessment considered that Ground Level (existing) should be taken as a reference to the ground level in an undisturbed state (i.e. not taken from within an excavation or from on top of filled land). Therefore, the assessment has observed that the actual Ground Level (existing) would be 241mm higher than the excavated Finished Floor Level of the storage area within the Garage Level.

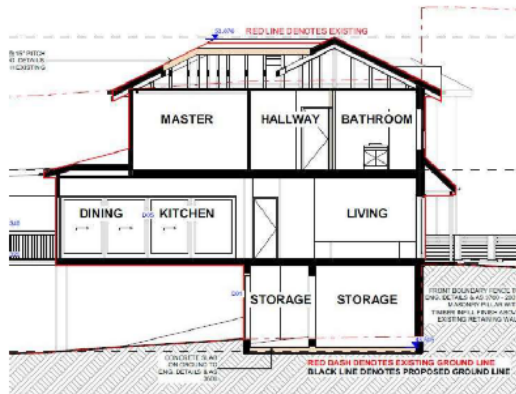


Figure 1. Long Section. Source: Action Plans.

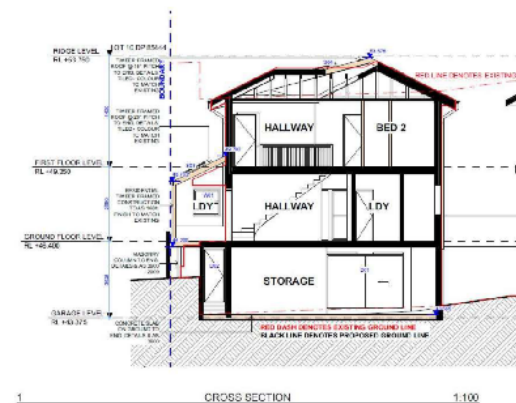


Figure 2. Cross Section. Source: Action Plans.

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 Environmental Planning and Assessment Act 1979 (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 variation between the existing and proposed building height is minor.
- The proposed development satisfies the objectives specified within Clause 4.3 of the Manly Local Environmental Plan 2013 (MLEP 2013).
- Strict numerical compliance with the 8.5m maximum building height development standard would not result in a materially better urban design outcome and would thwart the underlying objectives of Clause 4.3 of the MLEP 2013.
- The proposed development will not present with excessive bulk from the public domain due the sloping topography of the site.
- The proposed built form is consistent to that of the existing dwelling on the subject site.

- The proposed development is considered to be in the public interest as it satisfies the objectives of the R1 General Residential zone as specified in the MLEP 2013.
- The proposal will not result in any unacceptable built, natural, social or economic impacts for consideration under the EP&A Act.

Comment:

It is accepted that despite the contravention of the 8.5m Height of building development standard, the variation between the existing and proposed building height is minor, with the proposed building height being technically 35mm lower than the current maximum building height when measured from the existing ground level. It is also agreed that the proposed breach is exacerbated by the sloping topography towards the rear of the site. The additional building height resulting from the proposal will have negligible impacts on the streetscape and will not detract from the amenity of adjoining dwellings. This argument is validated, due to the application proposing a building height of RL 53.676, which is below the highest ridge level of the existing building (RL 53.750).

Furthermore, it is agreed that the proposed development satisfies the objectives specified within Clause 4.3 of the MLEP 2013 and the objectives of the R1 General Residential zone as stipulated within the MLEP 2013. A detailed discussion of the proposal against the above-mentioned objectives is provided later within this report.

Moreover, it is agreed that the proposal will not present with excessive bulk from the public domain, given the additional gross floor area is confined to the existing building footprint and the rear of the dwelling.

In conjunction with the above-mentioned factors, it is accepted that the proposed built form is consistent with the existing dwelling on site, due to the proposed development providing a roof form that is consistent to the existing dwelling, whilst also conforming to the established side boundary setbacks.

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 EP&A 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 R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

(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:

As discussed earlier within this report, the proposed building height of RL 53.676, which is below the highest ridge level of the existing building (RL 53.750). Despite the contravention of the Height of building development standard, the variation between the existing and proposed building height is minor, with the proposed building height being technically 35mm lower than the current maximum building height when measured from the existing ground level. It is therefore considered that the resultant development will still be consistent with the sloping topography of the site. Furthermore, the proposed hipped roof form on the first floor rear addition is compatible with the existing dwelling. Having regard to the above, it is considered that the proposed development is consistent with the desired future character of the locality.

b) to control the bulk and scale of buildings,

Comment:

Whilst the proposal departs from the floor space ratio development standard, the additional floor space resulting from the proposed development is predominantly confined to the existing building footprint within the garage and basement level, with the remaining floor space being located at the rear of the dwelling. As a result, the proposal will not alter the bulk and scale of the existing dwelling when viewed from Francis Street. Having regard to the above, it is considered that the bulk and scale of the proposal is suitable for the subject site and consistent with the desired future character of the locality, given no unreasonable amenity impacts will arise as a result of the proposal.

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 subject site is not located within the vicinity of the foreshore and no views of the foreshore are obtained from the subject site and adjoining properties. It is noted that the dwellings on the subject site and adjoining properties obtain views of the Fairlight residencies through the western rear boundaries. The proposed first floor addition only encroaches 1.07m beyond the established rear building line. Therefore, it is not anticipated that the proposal will obscure existing views of the Fairlight residencies obtained from adjoining dwellings on the subject site and adjacent properties.

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 shadow diagrams submitted with this application demonstrate that private open space areas and habitable rooms on the subject site and adjoining properties will maintain sufficient access to sunlight during the winter solstice.

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

Comment:

The subject site is not located within a recreation or environmental protection zone, nor does the site adjoin a recreation or environmental protection zone. Furthermore, the proposal will not result in the removal of trees or significant landscape features. Suitable conditions have been included with this consent to ensure the preservation of the existing Norfolk Island Pine. Therefore, the proposed development will not be detrimental to existing flora and fauna within the locality.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed development retains the residential use of the site.

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

Comment:

The application proposes alterations and additions to an existing townhouse within a multi dwelling housing development, which is a permissible use within the R1 General Residential zone.

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

Comment:

The proposal continues to maintain a residential use.

Conclusion:

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

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

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.

Floor Space Ratio

Description of non-compliance:

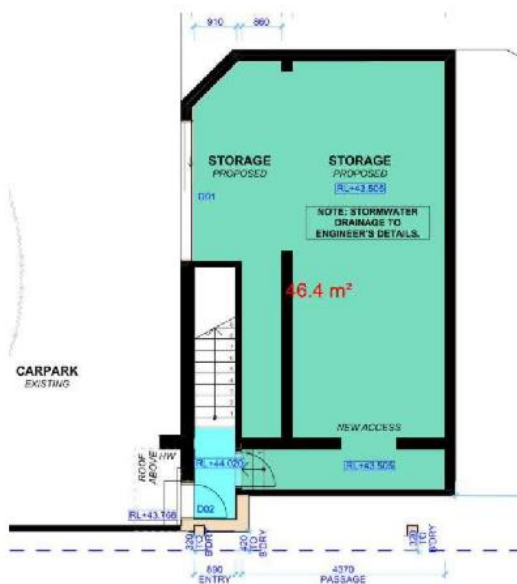


Figure 3. Proposed Garage Level amended to demonstrate increase in floor area (shaded blue).
Source: Action Plans.



Figure 4. Proposed Ground Floor Plan amended to demonstrate increase in floor area (shaded blue).
Source: Action Plans.



Figure 5. Proposed First Floor Plan amended to demonstrate increase in floor area (shaded in blue).
Source: Action Plans.

The proposed floor space ratio of the site is measures at 0.66:1 (515.34sqm of gross floor area), which results in a 10% variation to the applicable floor space ratio standard of 0.6:1 (469.2sqm of gross floor area). The additional gross floor area on the subject site resulting from the proposal equates to 66.62sqm.

The additional floor space includes the proposed storage area at the garage level (Figure 3), the proposed entry at the ground floor (Figure 4) and the proposed bedroom on the first floor (Figure 5). The resultant floor area of Unit 17 is measured at 196.02sqm. It should be noted that the storage area on the garage level does not appear to have been included as part of the existing approved floor space ratio calculation, despite this area is not meeting the definition of a 'basement' under the Manly LEP 2013, which would have the effect of excluding the area from being calculated as part of the overall gross floor area.

The existing approved floor space ratio (Consent No. DA72/1999 S96AA) of the site was measured as the following:

Unit 17 Floor Area: 129.40sqm
Unit 17A Floor Area: 157.40sqm
Unit 19 Floor Area: 166.90sqm

Total Floor Area: 453.70sqm
Floor Space Ratio: 0.58 to 1.0

As demonstrated above, and following a review of the land area allocated on the strata title, Unit 17 has

a comparatively reduced floor area. It has also been noted that part of the ground floor entry falls within Common Property. In this regard, owners consent has been provided from the each property owner within the strata plan. A condition of consent is recommended for the Strata Plan for the subject site to be amended prior to the issue of any Occupation Certificate, to reflect the works in accordance with the approved stamped plans. This would be to ensure that the Strata Plan accurately depicts the built works on site.

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 4.4 – Floor Space Ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, 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 Environmental Planning and Assessment Act 1979 (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 additional floor area resulting from the proposal is minor.
- The proposed variation satisfies the objectives specified within Clause 4.4 of the MLEP 2013.
- Strict numerical compliance with the floor space ratio development standard would not result in a materially better urban design outcome and would thwart the underlying objectives of Clause 4.4 of the MLEP 2013.
- The proposed development will not present with excessive bulk and the built form will remain consistent with both the existing dwelling on the site and development within the locality.
- The proposed development is considered to be in the public interest as it satisfies the objectives of the R2 Low Residential zone as specified in the MLEP 2013.
- The proposal will not result in any unacceptable built, natural, social or economic impacts for consideration under the EP&A Act.

Comment:

The additional gross floor area on the subject site resulting from the proposal equates to 66.62sqm. Whilst the additional gross floor area is not particularly minor, it is agreed that the proposed development will not present with excessive bulk when viewed from Francis Street, given the additional gross floor area will be confined to the existing building footprint within the garage and basement level and at the rear of the dwelling. In this regard, the proposal will not detract from the streetscape.

It is accepted that despite the variation to the floor space ratio development standard, the proposed development satisfies the objectives specified within Clause 4.4 of the MLEP 2013 and the objectives of the R1 General Residential zone as stipulated within the MLEP 2013. A detailed discussion of the proposal against the above-mentioned objective is provided later within this report.

Furthermore, it is agreed that the proposed built form will remain consistent with the existing dwelling on site, due to the proposed addition providing a roof form that is consistent to that of the existing dwelling, in conjunction to conforming to the established side boundary setbacks. Moreover, the bulk and scale of the proposal is considered suitable in the context of a townhouse within a multi dwelling housing development on this particular site.

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 EP&A 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 Floor Space Ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Floor space ratio' of the MLEP 2013 are:

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

a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

Comment:

The additional gross floor area resulting from the proposal is largely confined to the existing building footprint within the garage and basement level, with the remaining floor area being located at the rear of the dwelling. Consequently, the proposal will not alter the bulk and scale and of existing dwelling when viewed from Francis Street. In turn, the proposed development will have negligible impacts on the streetscape, thereby ensuring development that is consistent with the desired character of the locality.

b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

Comment:

The proposed development will not result in the removal of trees or significant landscape features, nor will the proposal obscure important landscape features.

c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

Comment:

The proposed development will not significantly alter the appearance of the existing dwelling when viewed from Francis Street. In this regard, the proposal will not detract from the established character of the locality.

d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

Comment:

The proposed development will not result in the removal of trees or significant landscape features. Suitable conditions have been included with this consent to ensure the preservation of the existing Norfolk Island Pine. Moreover, the proposed development will not unreasonably impact the amenity of adjoining dwellings on the subject site and adjacent allotments, specifically having regard to privacy, solar access and views.

e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The proposed development maintains a residential use within the R1 General Residential zone.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

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

Comment:

The proposed development retains the residential use of the site.

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

Comment:

The application proposes alterations and additions to an existing townhouse within a multi dwelling housing development, which is a permissible use within the R1 General Residential zone.

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

Comment:

The proposal continues to maintain a residential use.

Conclusion:

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

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

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 Floor space ratio Development Standard is assumed by the Local Planning Panel.

6.4 Stormwater management

Council's Development Engineer has assessed the application against the requirements of this control and raised no objections, subject to conditions. Subject to compliance with the conditions of consent, the application will satisfy the requirements of this control.

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 782sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 3 dwellings maximum	3 dwellings - unchanged	-	Yes
	Dwelling Size: 107sqm minimum gross floor area	216.44sqm gross floor area	-	Yes
4.1.2.1 Wall Height	North: N/A	No new works confined to this area	N/A	N/A
	South: 6.9m (based on gradient 1:17)	8.4m (bedroom 4)	21.74%	No
4.1.2.2 Number of Storeys	2	3 - existing 3 storey structure	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.62m	-	Yes
	Pitch: maximum 35 degrees	Between 15 and 26 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line (2.76m)	3.74m (glazed doors on eastern elevation) - existing front building line equates to 2.5m	-	Yes
4.1.4.2 Side Setbacks and Secondary Street	North: N/A	No change to existing	N/A	N/A
	South (Garage and	0.32m (piers) and 0.42m	27.59% (piers)	No

Frontages	Basement Level): 0.58m (wall height 1.73m)	(wall)	and 44.83% (wall)	
	South (Ground Floor): 1.45m (wall height of mudroom is 4.336m)	0m - 0.1m (mudroom) - existing setback of bin storage area is 0m	93.10% - 100%	No
	South (First Floor): 2.8m (wall height of bedroom 4 is 8.4m)	2.185m (bedroom 4) - maintains existing setback of first floor)	21.96%	No
	Windows: at least 3m from side boundaries	One (1) new window on southern elevation located 2.18m from southern side boundary	27.33%	No
4.1.4.4 Rear Setbacks	8m	17.82m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS1/2/3/4	Open space 55% (430.1sqm) of site area	61.55% (481.3sqm) - no change	-	Yes
	Open space above ground 25% (120.33sqm) of total open space	15.75% of total open space (75.8sqm) - no change	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (165.73sqm) of open space	43.15% (207.7sqm) - no change	-	Yes
	3 native trees	no native trees	100%	No
4.1.5.3 Private Open Space	12sqm per dwelling (36sqm)	171sqm - no change	-	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.2 Heritage Considerations	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	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
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.2 Heritage Considerations

The subject site is within the vicinity of Item I52 – Group of 6 houses – 12-22 Francis Street, listed in Schedule 5 of Manly Local Environmental Plan 2013. Clause 3.2 Heritage Considerations of the Manly DCP specifies a number of requirements that must be considered for a proposed development in the vicinity of a heritage item. In this regard, Council's Heritage Planner has provided the following comments concerning the application on the 3rd February 2020:

DA2019/1393 proposes alterations and additions to part of a residential flat building at 17 Francis Street, Fairlight. This property is within the vicinity of Item I52 – Group of 6 houses – 12-22 Francis Street, listed in Schedule 5 of Manly Local Environmental Plan 2013. This group of houses is listed as a group of modest, single storey cottages spanning the period 1890's-1915. This heritage group of houses is located on the opposite, higher side of Francis Street, which look back across to the subject site.

The application is largely for internal alterations or additions at the rear, with the exception of a new front fence; new doors and glazing facing the street and an extension on the southern side to create a new entrance (visible from the street). Given the separation of this site from the heritage item (20 metres across the road), it is considered that there will be no impact upon the significance of this heritage item. No heritage fabric will be affected and there will be no impact upon views of the heritage item from the public domain.

Therefore, no objections are raised on heritage grounds and no conditions required.

3.3.2 Preservation of Trees or Bushland Vegetation

Council's Landscape Officer has assessed the application against the requirements of this control and raised no objections, subject to conditions. Subject to compliance with the conditions of consent, the application will satisfy the requirements of this control.

3.7 Stormwater Management

Council's Development Engineer has assessed the application against the requirements of this control and raised no objections, subject to conditions. Subject to compliance with the conditions of consent, the application will satisfy the requirements of this control.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Wall Height

Description of non-compliance

Clause 4.1.2.1 of the MDCP 2013 relies on the slope of the land to determine the maximum external wall height. In calculating the slope of the land, the maximum wall height is as follows:

- Northern elevation - N/A (works not confined to this area); and
- Southern elevation - 6.9m (based on gradient 1:17).

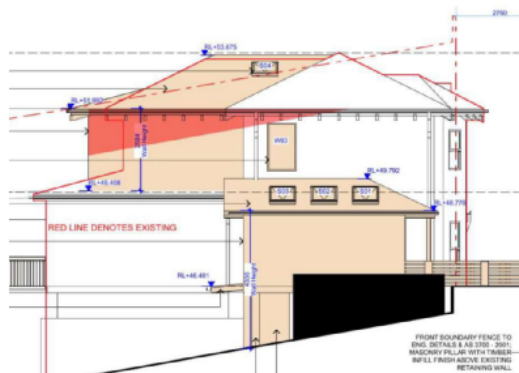


Figure 6. South Elevation amended to demonstrate the extent of the wall height breach (shaded red).
Source: Action Plans.

The proposed first floor additions result in a non-complaint wall height of 8.4m to the southern elevation, resulting in a maximum breach of 1.5m to the portion of the additions nearest to the rear boundary (Figure 6). The noncompliance reduces to a 400mm breach where it attaches to the existing building.

As a consequence, the proposed development fails to comply with the numeral requirement of this control.

Merit Assessment

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of the control. This control relies upon the objectives specified within Clause 4.3 of the MLEP 2013. Accordingly, the proposal is considered against the following objectives:

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

Comment:

The application proposes a ridge height of RL 53.676, which is sited below the ridge level of the existing structure (RL 53.750). The additional building height resulting from the proposed development equates to 0.05m above the existing ground level, which is a consequence of the sloping site. The additional building height resulting from the proposed development will have negligible impacts on the streetscape and will not adversely affect adjoining dwellings located on the subject site and adjacent allotments.

(1) (b) To control the bulk and scale of buildings.

Comment:

Whilst the proposal departs from the prescribed floor space ratio development standard, the additional gross floor area resulting from the proposed development is predominantly confined to the existing building footprint within the garage and basement level, with the remaining floor area being located at the rear of the dwelling. As a result, the proposed development will not alter the bulk and scale of the existing dwelling when viewed from Francis Street. Having regard to the above, it is considered that the bulk and scale of the proposal suitable for the subject site and consistent with the desired future character of the locality.

(1) (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 harbour and foreshores).*

Comment:

The subject site is not located within the vicinity of the foreshore and no views of the foreshore are obtained from the subject site and adjoining properties. It is noted that the dwellings on the subject site and adjoining properties obtain views of the Fairlight residencies through the western rear boundaries. The proposed first floor extension only encroaches 1.07m beyond the established rear building line. Therefore, it is not anticipated that the proposal will obscure existing views of the Fairlight residencies obtained from adjoining dwellings on the subject site and adjacent properties.

(1) (d) To provide solar access to public and private open space and maintain adequate sunlight access to private open spaces and to habitable rooms of adjoining dwellings.

Comment:

The shadow diagrams submitted with this application demonstrate that private open space areas and habitable rooms on the subject site and adjoining properties will maintain sufficient access to sunlight during the winter solstice.

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

Comment:

The subject site is not located within a recreation or environmental protection zone, nor does the site adjoin a recreation or environmental protection zone. Furthermore, the proposal will not result in the removal of trees or significant landscape features. Suitable conditions have been included with this consent to ensure the preservation of the existing Norfolk Island Pine. Therefore, the proposed development will not be detrimental to existing flora and fauna within the locality.

Number of Storeys

Clause 4.1.2.2 of the MDCP 2013 stipulates that buildings on the subject site are not to exceed two (2) storeys. The application proposes alterations and additions to an existing three (3) storey structure. It is noted that the existing townhouse maintains a two (2) storey appearance from Francis Street. Given the three (3) storey structure is existing, the proposed alterations and additions are considered acceptable in this regard.

Having regard to the above assessment, it is considered that the relevant objectives of the control have been achieved. Therefore, the application is supported on merit.

4.1.3 Floor Space Ratio (FSR)

Description of non-compliance

Clause 4.1.3 of the MDCP 2013 stipulates that development on the subject site shall not result in a floor space ratio (FSR) that exceeds 0.6:1 (469.2sqm of gross floor area). The proposed development will result in an FSR of 0.66:1 (515.34sqm of gross floor area), which fails to comply with this control. It is noted that the existing FSR on the site is 0.57:1 (448.72sqm of gross floor area).

Merit Assessment

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

Objective 1) To ensure the scale of the development does not obscure important landscape features.

Comment:

The proposed development will not result in the removal of trees or significant landscape features, nor will the proposal obscure important landscape features.

Objective 2) To minimise disruption to views to adjacent and nearby development.

Comment:

It is noted that the subject site and adjoining properties on the western side of Francis Street obtain views of the Fairlight residencies through the western rear boundaries. The proposed first floor extension only encroaches 1.07m beyond the existing rear building line. Therefore, it is not anticipated that the proposal will obscure existing views of the Fairlight residences obtained from adjoining dwellings on the subject site and adjacent properties.

Objective 3) To allow adequate sunlight to penetrate both the private open spaces within the development site and private open spaces and windows to the living spaces of adjacent residential development.

Comment

The shadow diagrams submitted with this application indicate that the subject site and adjoining properties will maintain sufficient access to sunlight during the winter solstice.

Having regard to the above assessment, it is considered that the relevant objectives of the control have been achieved.

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

Description of non-compliance

Clause 4.1.4 of the MDCP 2013 requires buildings to be setback:

- One third of the proposed wall height from side boundaries; and
- Windows to be setback at least 3m from side boundaries.

The application proposes the following non-compliant setbacks on the southern elevation:

- Garage and Basement Level - 0.32m for piers and 0.42m for external wall, which fails to comply with the 0.58m requirement (one third wall height);
- Ground Floor Level - 0m - 0.1m for mudroom and entryway, which fails to comply with the 1.45m requirement (one third wall height); and
- First Floor Level - 2.185m for external wall of bedroom 4, which fails to comply with the 2.8m requirement (one third wall height).

The application also proposes one (1) window on the southern elevation of the first floor located 2.18m from the southern side boundary, which fails to comply with the 3m requirement.

Merit Assessment

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

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

Comment:

The reduced setbacks at the garage and basement level are not visible from Francis Street, therefore will have negligible impacts on the streetscape. In assessing the impacts of the proposed entryway and mudroom, it is noted that the works largely comprise the enclosure of the existing bin storage area, which currently maintains a nil setback from the southern side boundary. In this regard, a reduced setback is considered to be acceptable, given the proposal will not significantly alter the appearance of the existing dwelling when viewed from Francis Street, nor will the reduced setback detract from the amenity of the southern adjoining property (15 Francis Street). Whilst the proposed first floor extension departs from the prescribed numerical requirement, it is noted that the proposal maintains the existing side boundary setback for the upper floor on the southern elevation. In this regard, the reduced setback is considered appropriate, given the addition will not be visually imposing on the streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The reduced side building line along portions of the southern elevation will not give rise to unreasonable privacy impacts, given the new structures will be devoid of windows on the southern elevation. Whilst the proposed window W03 within the existing footprint encroaches into the 3m setback requirement, it is noted that the window is located in a hallway where the occupants will spend little waking time. Therefore, no unreasonable privacy impacts will arise as a result of the window's location. As noted earlier within this report, the proposed development will not give rise to unreasonable view loss, nor will it result in excessive overshadowing impacts. The proposed development generally conforms to the established side building line on the southern elevation. As a result, the proposal will not present with excessive bulk when viewed from the street, thereby preserving the character of the streetscape. Furthermore, the proposal will not impact road visibility or traffic conditions within the locality.

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

Comment:

As noted above, whilst the proposal departs of the prescribed numerical requirements for side setbacks, the application conforms to the established side building line along the southern elevation. In this regard, a variation to the prescribed control is considered appropriate.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed development will not result in the removal of trees or significant landscape features, nor does it alter the existing landscaped open space within the site.

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

Comment:

The site is not located within a bushfire prone area.

Having regard to the above assessment, it is considered that the relevant objectives of the control have

been achieved. Therefore, the application is supported on merit.

4.1.5 Open Space and Landscaping

Description of non-compliance:

Clause 4.1.5.2 of the MDCP 2013 requires at least three (3) native trees present on the subject site. The site does not currently contain any native trees, nor does the application propose any tree planting. As a consequence, the proposed development fails to comply with the requirements of this control.

Merit Assessment

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

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

Comment:

As discussed previously within this report, the proposal will not result in the removal of trees or significant landscape features. Suitable conditions have been included with this consent to ensure the retention of the existing Norfolk Island Pine.

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

Comment:

No changes are proposed to the existing landscape area and total open space on the subject site. Whilst the site is currently devoid of native trees, the existing Norfolk Island Pine and additional trees, shrubs and landscape features are sufficient to ensure the site is not dominated by the built form.

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

Comment:

As noted earlier within this report, the proposed development will not detract from the amenity of adjoining properties, specifically having regard to view loss, privacy and solar access.

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

Comment:

The proposed development does not alter the existing compliant dimensions for landscape area. All new stormwater collected from the proposed development will be connected to the existing drainage infrastructure present on site. In this regard, it is considered that the proposal will effectively minimise stormwater runoff.

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

Comment:

There are no additional landscaping works entailed within the proposal. Therefore, the proposal will limit the opportunity for invasive weeds to access the site.

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

Comment:

As noted above, the proposal will retain the existing landscape features on site. The existing trees, shrubs and soft landscaping will maximise the opportunity for potential wildlife corridors.

Having regard to the above assessment, it is considered that the relevant objectives of the control have been achieved. Therefore, the application is supported on merit.

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 \$2,600 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$260,000.

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;
- 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

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 and Clause 4.4 Floor Space Ratio 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.

The report provides a detailed assessment of the Development Application for alterations and additions to 1/17 Francis Street, Fairlight.

The assessment of the proposal against the provisions of the MLEP 2013 found that the proposal does not comply with Clause 4.3 Height of buildings. Despite the variation to the 8.5m maximum building height development standard, the proposal is sited below the existing ridge level (RL 53.750). The additional building height resulting from the proposed development equates to 0.05m above the existing ground level, which is a consequence of the sloping topography. It is considered that the applicant has provided sufficient justification for the departure of the development standard.

The assessment of the proposal against the provisions of the MLEP 2013 found that the proposal does not comply with Clause 4.4 Floor space ratio. Despite the variation to the 0.6:1 floor space ratio development standard, the additional floor area resulting from the proposed development is predominately confined to the existing building footprint within the garage and basement level, with the exception of the bedroom 4, which is sited at the rear of the dwelling. In this regard, the proposal will not present with excessive bulk when viewed from Francis Street. It is considered that the application has provided sufficient justification for the departure of the development standard.

In addition, the assessment of the proposed development against the provisions of the MDCP 2013 found that the proposal does not comply with a number of the numerical controls, specifically for wall heights and the southern side boundary setbacks. Despite this, this assessment concludes that the variations are acceptable, given the new works conform to existing side setbacks and that the proposal will not detract from the streetscape and the amenity of adjoining properties.

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 and 4.4 Floor Space Ratio 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 DA2019/1393 for Alterations and additions to an existing dwelling. on land at Lot 1 SP 67726, 1 / 17 Francis Street, 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
DA01	03 December 2019	Action Plans
DA02	03 December 2019	Action Plans
DA07	03 December 2019	Action Plans
DA08	03 December 2019	Action Plans
DA09	03 December 2019	Action Plans
DA10	03 December 2019	Action Plans
DA11	03 December 2019	Action Plans
DA12	03 December 2019	Action Plans
DA13	03 December 2019	Action Plans
DA14	03 December 2019	Action Plans
DA15	03 December 2019	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A361090	15 October 2019	Action Plans

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
Waste Management Plan	04 December 2019	Emma Haselden

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 skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$2,600.00 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 \$260,000.00.

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. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003.

Details demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

7. Tree Protection Plan

A Tree Protection Plan shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures to protect the following tree in close proximity to the works:

a) Norfolk Island Pine

The Tree Protection Plan shall be prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture/horticulture, showing the following:

- i) layout of the development, including existing and proposed underground services,
- ii) location of all trees identified for retention, including extent of canopy,
- iii) access routes throughout the site for construction activity,
- iv) location of tree protection fencing / barriers,
- v) root protection in the form of mulching within the tree protection zone,
- vi) trunk and branch protection within the tree protection zone, and specifically for this development, any aerial trunk and/or branch protection,
- vii) location of stockpile areas and materials storage,
- viii) other general tree protection measures.

Tree protection fencing to the extent and alignment as determined by an AQF minimum Level 5 Arborist, shall comply to Australian Standard 4687-2007 Temporary Fencing and Hoardings, including 2.4m wide x 2.1m high fence panels, and weighted foot blocks. Alternatives to fencing shall be used only for sloping sites unsuited to fencing, including the use of tree trunk and branch protection battens in accordance with Figure 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

Tree protection measures identified on the plan are to be in place prior to commencement of works. An AQF minimum Level 5 Arborist shall provide certification to the Certifying Authority that the tree protection measures are satisfactory prior to the commencement of works.

Reason: to ensure compliance with the requirement to retain and protect the existing Norfolk Island Pine.

8. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

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

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

9. **Road Reserve**

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

Reason: Public safety.

10. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

11. **Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- i) A general decline in health and vigour,
- ii) Damaged, crushed or dying roots due to poor pruning techniques,
- iii) More than 10% loss or dieback of roots, branches and foliage,
- iv) Mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) Yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) An increase in the amount of deadwood not associated with normal growth,
- vii) An increase in kino or gum exudation,
- viii) Inappropriate increases in epicormic growth that may indicate that the plants are in a

stressed condition,
ix) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees.

12. **Tree and vegetation protection - General**

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

- i) all trees and vegetation within the site, excluding exempt vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

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, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 minimum qualification Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 minimum qualification 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 minimum qualification 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 minimum qualification Project Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 minimum qualification 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 minimum qualification 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 minimum qualification 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**

13. Condition of retained vegetation

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

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

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

14. 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.

15. 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 Certifying Authority prior to the issue of the Final Occupation Certificate.

Reason: To ensure bushland management.

16. Amended Strata Plan

The Strata Plan for the subject site is to be amended prior to the issue of any Occupation Certificate, to reflect the works in accordance with the approved stamped plans.

Reason: To ensure the Strata Plan accurately depicts the built works on site.

17. Waste Management Confirmation

Prior to the issue of the Final Occupation Certificate, evidence / documentation must be submitted to the Certifying Authority confirming that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.



DRAWING NAME
SITE / ROOF / SEDIMENT
EROSION / WASTE
MANAGEMENT / STORMWATER
CONCEPT PLAN

SCALE
1:200 @A3

DRAWING NO.
DA02

DATE 03 December 2019

CLIENT
EMMA HASELDEN &
AIN LIDDE

PROJECT ADDRESS
17 FRANCIS STREET
FAIRLIGHT, NSW, 2094

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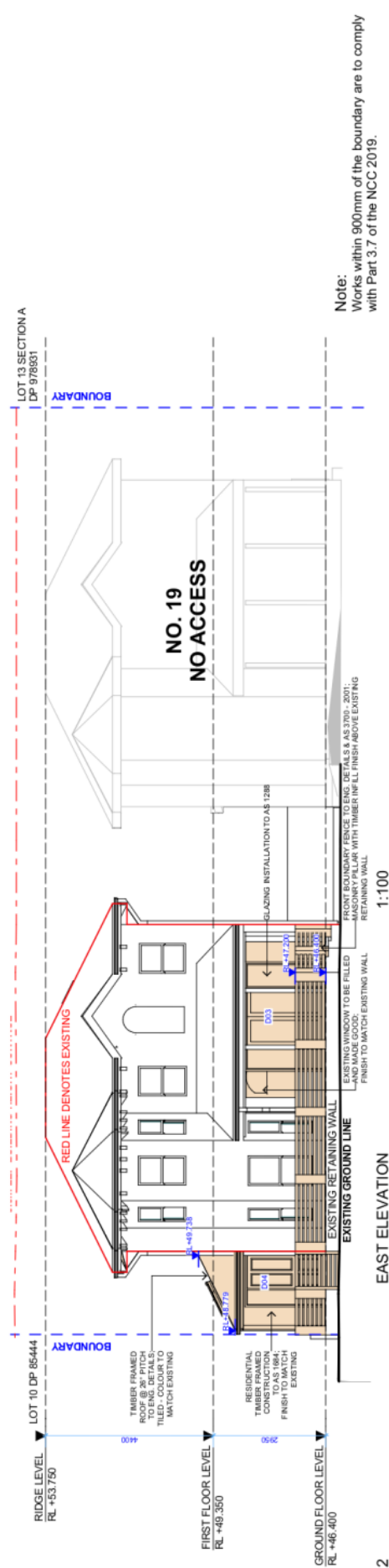
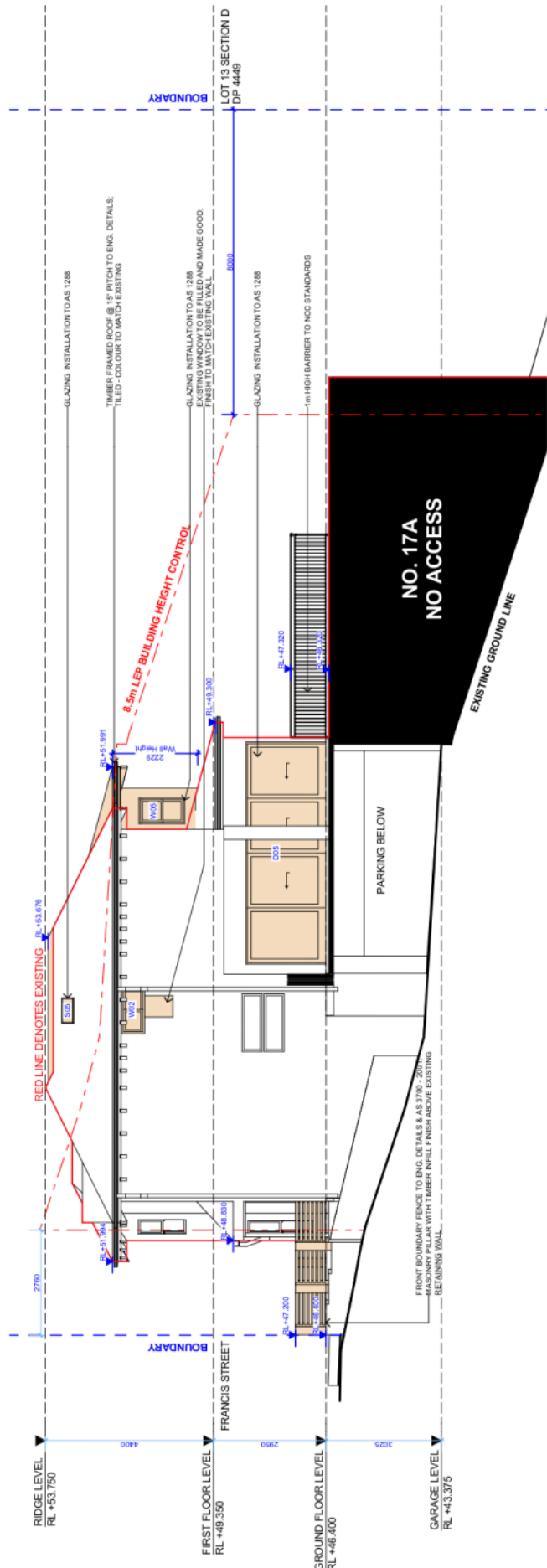
LEGEND

	SOFT LANDSCAPE
	HARD LANDSCAPE
	PROPOSED
	EXISTING
	DEMOLISHED

REV	DATE	COMMENTS	DRWN	NOTES
A	13/11/19	DEVELOPMENT APPROVAL SET	SM	The drawing is the copyright of Action Plans and not be reproduced in any form without the written permission of Action Plans. The measure from drawings. Engined dimensions are to be used only. The Bladder Contractor to check and verify all details and dimensions of the drawing and confirm the creation of a top drawings, or fabrication of components. The Bladder Contractor to confirm the design prior to the Bladder Contractor and related to the design prior to the Bladder Contractor.
B	13/11/19	DEVELOPMENT APPROVAL SET	SM	

ACTION PLANS
n: 0426 957 518
operations@actionplans.com.au
www.actionplans.com.au

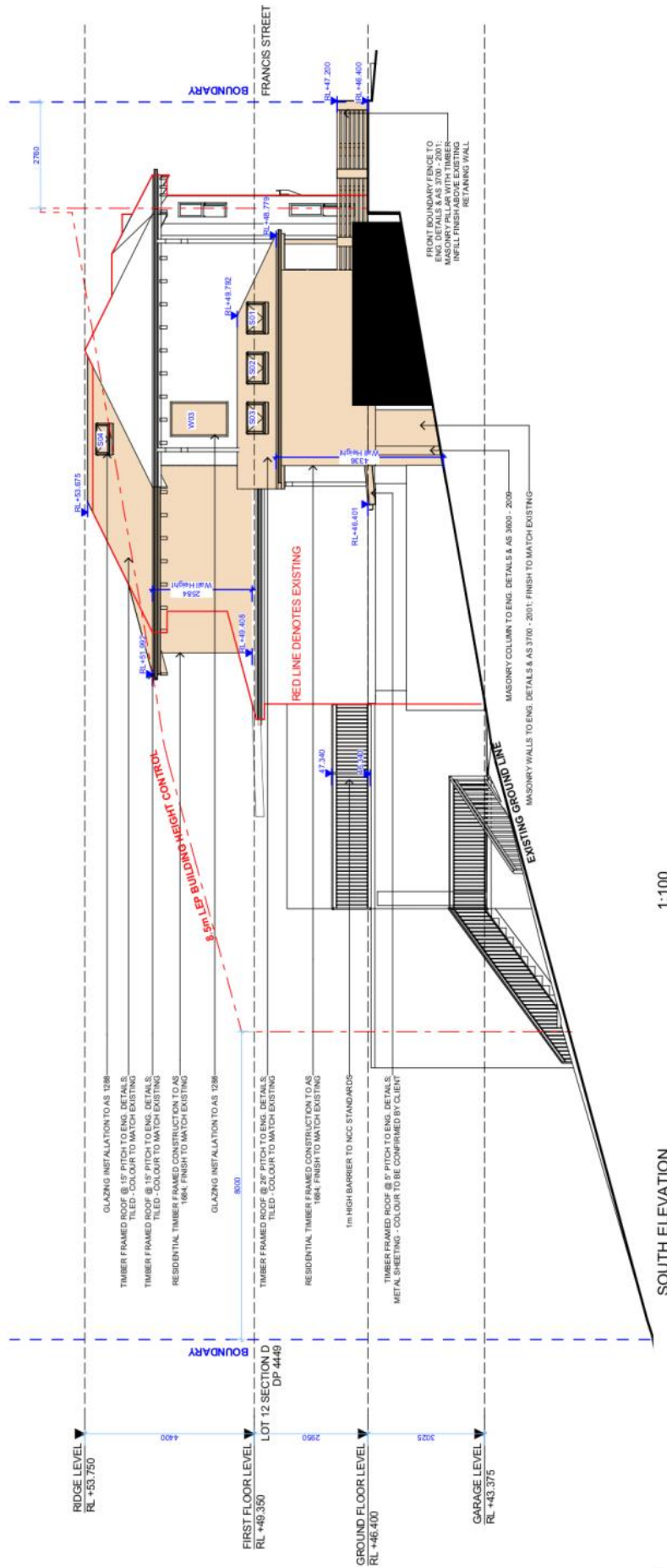




Note:
Works within 900mm of the boundary are to comply with Part 3.7 of the NCC 2019.

REV.	DATE	COMMENTS	DRWN NOTES	LEGEND	CUSTOMER	DRAWING NO.	DRAWING NAME
A	19/11/19	DEVELOPMENT APPROVAL SET	BM	EXISTING PROPOSED	EMMA HASELDEN & IAN LIDDEL	DA11	NORTH / EAST ELEVATION
				PROJECT ADDRESS 17 FRANCIS STREET FAIRLIGHT, NSW, 2094			
				DATE 03 December 2019			
				SCALE 1:100 @A3			





Note:
Works within 900mm of the boundary are to comply with Part 3.7 of the NCC 2019.



REV.	DATE	COMMENTS	DRWN	NOTES
A	19/11/19	DEVELOPMENT APPROVAL SET	SM	

LEGEND

EXISTING
PROPOSED

CLIENT
EMMA HASELDEN &
JAIN LIDDEL

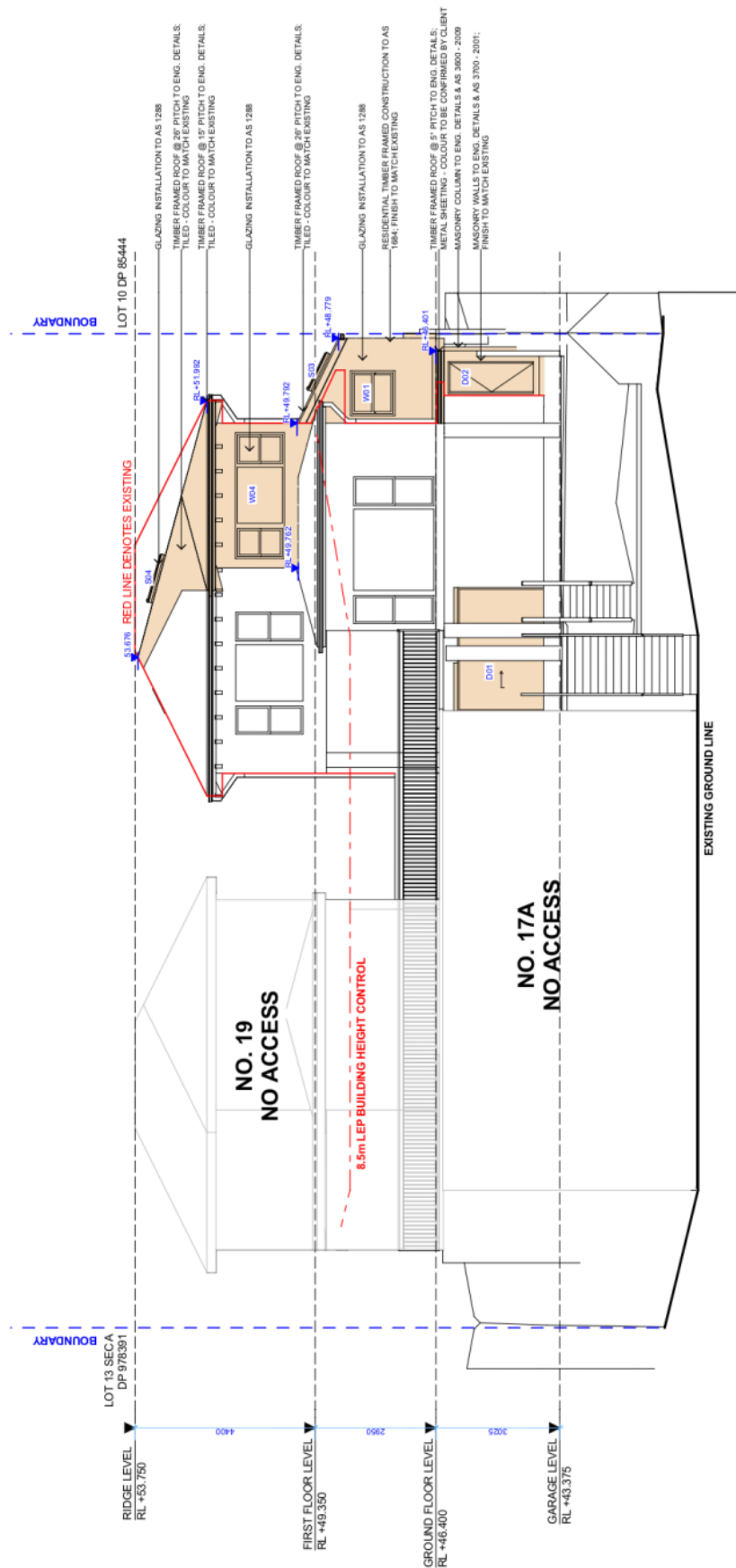
PROJECT ADDRESS
17 FRANCIS STREET
FAIRLIGHT, NSW, 2094

DRAWING NO.
DA12

DATE
03 December 2019

DRAWING NAME
SOUTH ELEVATION

SCALE
1:100 @A3



Note:
Works within 900mm of the boundary are to comply
with Part 3.7 of the NCC 2019.

 ACTION PLANS m: 0426 957 518 e: operations@actionplans.com.au w: www.actionplans.com.au	REV. DATE COMMENTS	DRWN NOTES	LEGEND	CLIENT EMMA HASELDEN & IAN LIDDEL	DRAWING NO. DA13	DRAWING NAME WEST ELEVATION
DATE 19/11/19	COMMENTS DEVELOPMENT APPROVAL SET	DRWN NOTES BM	LEGEND EXISTING PROPOSED	PROJECT ADDRESS 17 FRANCIS STREET FAIRLIGHT, NSW, 2094	DATE 03 December 2019	SCALE 1:100 @A3

**Appendix One - Clause 4.6 Exceptions to Development Standards – Height of Buildings**

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

- (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 aims and objectives of Manly LEP 2013 Clause 4.6 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.*



Under Clause 4.6(3) and (4) of the MLEP 2013, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

(4)(a)(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,

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

1. Environmental Planning Instrument Details (Manly LEP 2013)

1.1 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013

1.2 What is the zoning of the land?

R1 – General Residential

1.3 What are the objectives of the zone?

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

1.4 What is the development standard being varied?

CI 4.3 - Height of Buildings

1.5 Under what clause is the development standard listed in the environmental planning instrument?

CI 4.3 of the Manly Local Environmental Plan 2013

1.6 What are the objectives of the development standard?

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

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

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



(c) to minimise disruption to the following—

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

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

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

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

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

1.7 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

1.8 What is proposed numeric value of the development standard in your development application?

The existing building has a non-compliant maximum height of 9.88 metres and the development proposes a maximum height of 10.171 metres.

1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation between the proposal and the environmental planning instrument is 19.66% or 1.671 metres.

It is noted that the variation between the proposal and the existing building height is just 2.95% or 0.291metres.

2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

2.1 Wehbe v Pittwater [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827*, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was



not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

2.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater* [2007] NSW LEC 827 and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

3 *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has



a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four²five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

5. Action Pty Ltd v Woollahra Municipal Council [2018]

In *Action Pty Ltd v Woollahra Municipal Council*, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.



3. Consideration

The following section addresses the provisions of clause 4.6 of the MLEP 2013 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

3.1 Five (5) Part Test - *Wehbe v Pittwater*

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*

The objectives of the standard are:

- (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 development will not alter the bulk and scale of the existing dwelling when viewed from Francis Street, where it presents with a compliant height. The variation is largely the result of retaining the existing roof form for the extension and the steep topography of the site, with some sub floor excavation included. The proposed height and built form is considered to be consistent with other approved dwelling houses with the locality on sloping sites which breach the height limit.

The proposed variation between the proposal and the existing building height is just 2.95% or 0.297metres. The resulting dwelling is considered to be compatible with the prevailing height of buildings and streetscape character within the locality, despite the non-compliance, with the variation largely attributed to the sloping topography of the site and proposed basement excavation. It is considered this objective is met, despite the numerical variation.

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

Comment



The proposed built form for the most part is consistent with the existing built form on the site. The proposed height exceedance of an additional 297mm is considered to be negligible in relation to bulk and scale given the existing character of generally large multi dwelling housing.

The proposed development will not present with excessive bulk from the public domain due to the sloping topography of the site and surrounding area. It is considered this objective is met, despite the numerical variation.

(c) to minimise disruption to the following:

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

Comment

The proposed variation in height is considered not to result any unreasonable material view loss. No harbour or foreshore views will be impacted or views between public spaces.

It is therefore considered this objective is met, despite the numerical variation.

(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 variation to height does not result in any unreasonable solar access impacts to adjoining dwellings. Given that compliant solar access is achieved, , it is considered the underlying objective of this clause has been satisfied.

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

Comment:

The proposed variation does not result in the requirement of removal or pruning of trees on the subject site or on adjoining properties. In this regard, the underlying intent of this objective has been satisfied despite the numerical departure.

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*

This exception to development standards request does not rely on this reason.



3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*

This exception to development standards request does not rely on this reason

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*

This exception to development standards request does not rely on this reason.

5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. In particular:

- The proposed variation between the proposal and the existing building height is just 2.95% or 0.297metres.
- The proposed variation satisfies the objectives of the underlying intent of Clause 4.3, and therefore the merits of the proposal are considered to be worthy of approval. It has been demonstrated within Council and the Courts to apply a reasonable approach in supporting variations to development standards.
- Strict numerical compliance would not necessarily result in a materially better urban design outcome and would thwart the underlying objectives of the controls
- The proposed development will not present with excessive bulk from the public domain due to the sloping topography of the site. It is considered this objective is met, despite the numerical variation created by excavation for the basement storage area.
- By supporting this variation to building height in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with the existing dwelling on the site.
- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone.
- The proposed variation adequately satisfies the underlying objectives of the controls and will not result in any unacceptable built, natural, social or economic impacts for consideration under the Act.



3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R1 General Residential

Objectives of zone

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

Consistent. The proposal is for alterations and additions to an existing dwelling, within an approved multi-dwelling development.

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

Consistent. The proposed development retains the existing multi-dwelling strata development, providing variety within a neighbourhood of predominantly detached and semi-detached dwellings.

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

Not relevant. The proposal is for alterations and additions to a residential dwelling.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effects as it represents a minor exceedance and is consistent with surrounding development.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence



How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

- (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.*

Strict compliance with the 8.5 metres height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

Conclusion

The proposed development is for alterations and additions to an existing multi-dwelling residence on land zoned R1 – General Residential.

As stated above the non-compliance between the proposal and the environmental planning instrument is 19.66% or 1.671 metres. However the variation between the proposal and the



existing building height is very minor at just 2.95% or 0.297metres and is primarily increased through the excavation at a subfloor level.

The variation does not result in any unreasonable impacts and is largely the result of retaining the existing roof form for the extension and the steep topography of the site. The proposed development presents with a compliant height to Francis Street and does not present with excessive bulk in comparison to surrounding properties. There will not be unreasonable view loss for surrounding properties.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.3, and therefore the merits of the proposed variation are considered to be worthy of approval.



Appendix Two - Clause 4.6 *Exceptions to Development Standards*

Clause 4.6 of the Manly Local Environmental Plan 2013 (MLEP 2013) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

- (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 aims and objectives of Manly LEP 2013 Clause 4.6 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.

Under Clause 4.6(3) and (4) of the LCLEP 2009, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

(4)(a)(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,

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

3. Environmental Planning Instrument Details (Manly LEP 2013)

1.10 What is the name of the environmental planning instrument that applies to the land?

Manly Local Environmental Plan 2013

1.11 What is the zoning of the land?

R1 – General Residential

1.12 What are the objectives of the zone?

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

1.13 What is the development standard being varied?

CI 4.4 – Floor Space Ratio

1.14 Under what clause is the development standard listed in the environmental planning instrument?

CI 4.4 of the Manly Local Environmental Plan 2013



1.15 What are the objectives of the development standard?

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

(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

1.16 What is the numeric value of the development standard in the environmental planning instrument?

The numeric value of the FSR development standard applicable to the subject site is 0.6:1, which equates to a maximum gross floor area of 469.2m² for the site area of 782m².

1.17 What is proposed numeric value of the development standard in your development application?

The numeric value of the development standard in this development application is 0.66:1 or a gross floor area of 515.34m².

1.18 What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation sought is 9.83%



4. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

4.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

4.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater* [2007] NSW LEC 827 and demonstrate the following:

6. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;



7. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
8. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
9. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

5 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

6 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to *four2five*, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.



10. Action Pty Ltd v Woollahra Municipal Council [2018]

In Action Pty Ltd v Woollahra Municipal Council, the court demonstrated the correct approach to the consideration of clause 4.6 requests, including that the clause does not require that a development that contravenes a development standard, must have a neutral or better environmental planning outcome than one that does not.



4. Consideration

The following section addresses the provisions of clause 4.6 of the LCLEP 2009 together with principles established in the NSW Land and Environment Court Case Law outlined above.

Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered: b

The five ways outlined in *Wehbe* include:

3.2 Five (5) Part Test - *Wehbe v Pittwater*

6. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*

The objectives of the standard are:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,

The development will not alter the bulk and scale of the existing dwelling when viewed from Francis Street. The proposed development adopts a built form which is consistent with the existing dwelling on the site and other recent infill development within the locality. The development will not alter the bulk and scale of the existing dwelling when viewed from the public domain and remains consistent with the streetscape in the locality.

- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,

The proposed built form, setbacks and massing, for the most part, remain consistent with the existing built form on the site. The proposed first floor addition is consistent with both the existing dwelling and other dwellings in the locality. The proposal is appropriately massed and articulated to be compatible with the prevailing streetscape character within the locality.

The proposed FSR of 0.66:1 does not result in adverse view loss impacts or result in a dominant built form. It is considered this objective is met, despite the numerical variation.

- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,



As described above the proposed development will not significantly alter the street façade of the existing dwelling. The existing character of the building will be maintained with the materials and finishes of the additions to match the existing building.

The proposed variation does not result in the requirement of removal or pruning of trees on the subject site or on adjoining properties. The proposal results in adequate spatial separation to adjoining dwellings and does not result in any adverse material privacy impacts. It is therefore considered this objective is met, despite the numerical variation.

(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,

The proposed variation to floor space ratio does not result in any adverse environmental impacts on adjoining land or the public domain. The additional floor space sought will result in negligible additional shadowing allowing the underlying objective of this clause to be satisfied, despite the variation.

(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Not relevant. The subject site is not located in a business zone.

7. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*

This exception to development standards request does not rely on this reason.

8. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*

This exception to development standards request does not rely on this reason

9. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*

This exception to development standards request does not rely on this reason.

10. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.



Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.

3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient grounds to permit the variation of the development standard. In particular:

- The proposed variation is considered minor with an additional 46m² or 9.83% variation proposed.
- The proposed variation satisfies the objectives of the underlying intent of Clause 4.4, and therefore the merits of the proposal are considered to be worthy of approval. It has been demonstrated within Council and the Courts to apply a reasonable approach in supporting variations to development standards.
- Strict numerical compliance would not necessarily result in a materially better urban design outcome and would thwart the underlying objectives of the controls.
- The proposed development will not present with excessive bulk and the built form will remain consistent with both the existing dwelling on the site and development within the locality.
- By supporting this variation to the FSR, it is considered that an appropriate degree of flexibility will be applied, which will result in a reasonable built form, consistent with the existing dwelling on the site.
- The extent of the variation is considered to be in the public interest as the proposal remains consistent with the objectives of the zone.
- The proposed variation adequately satisfies the underlying objectives of the controls and will not result in any unacceptable built, natural, social or economic impacts for consideration under the Act.

3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

Zone – R1 General Residential

Objectives of zone

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

Consistent. The proposal is for alterations and additions to an existing dwelling, within an approved multi-dwelling development. The additional floor space sought provides for an additional bedroom in an existing dwelling. The design is considered low impact and consistent with the residential area.

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



Consistent. The proposed development retains the existing multi-dwelling strata development, providing variety within a neighbourhood of predominantly detached and semi-detached dwellings.

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

Not relevant. The proposal is for alterations and additions to a residential dwelling.

Despite the proposal seeking an exception to the FSR control, the bulk and scale of the building will have minimal effects as it represents a minor exceedance and is consistent with surrounding development.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6(5)(b) the public benefit of maintaining the development standard,

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence

How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

- (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.*

Strict compliance with the 0.6:1 FSR development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

Conclusion

The proposed development is for alterations and additions to an existing multi-dwelling residence on land zoned R1 – General Residential. This 4.6 report seeks a variation to the floor space ratio control.

As stated above the proposed variation is considered minor with an additional 46m² or 9.83% variation proposed.

The variation does not result in any unreasonable impacts and will not alter the bulk and scale of the existing dwelling when viewed from Francis Street. The dwelling will remain consistent with the streetscape in the locality.

Strict numerical compliance is considered to be unnecessary and unreasonable given that the proposed variation sought is consistent with the underlying objectives of the control despite the numerical variation, of which have been reasonably satisfied under the provisions of Clause 4.6.

The proposed variation satisfies the objectives of the zone, underlying intent of Clause 4.6 and Clause 4.4, and therefore the merits of the proposed variation are considered to be worthy of approval.

ITEM 3.3	DA2019/1017 - THE STRAND, DEE WHY - REGULARISATION OF THE USE OF AN APPROVED KIOSK AS A CAFE
AUTHORISING MANAGER	STEVE FINDLAY
TRIM FILE REF	2020/081175
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site and Floor Plans

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/1017 for regularisation of the use of an approved kiosk as a cafe at Lot 1 DP 947971, The Strand, Dee Why subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1017
Responsible officer:	Geoff Goodyer, Symons Goodyer Pty Ltd (independent external planning consultant)
Land to be developed (address):	Lot 1, DP 947971, The Strand, Dee Why
Proposed development:	Change of use of an approved Kiosk to a Cafe
Zoning:	Warringah LEP 2011 – Land zoned RE1 Public Recreation
Development permissible:	Yes
Existing use rights:	No
Consent authority:	Northern Beaches Local Planning Panel
Land and Environment Court action:	No
Owner:	Northern Beaches Council
Applicant:	Tumbull Planning International Pty Ltd
Application lodged:	13 September 2019
Integrated development:	No
Designated development:	No
State reporting category:	Commercial/Retail/Office
Notified:	28 November 2019 -11 October 2019
Advertised:	Not Advertised
Submissions received:	Six (6)
Recommendation:	Approval
Estimated cost of works:	Nil

EXECUTIVE SUMMARY

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is a suitable and appropriate development for the subject site.

Six (6) submissions were received as a result of the notification of the proposal, including two (2) from the owner of a single property. Four (4) submissions raised concerns whilst two (2) submissions were in support of the proposal. The issues raised in the submissions have been addressed in the "Submissions" section of this report. The submissions raised concerns including historical behaviour of the operator of the premises, traffic congestion, waste disposal, pedestrian safety, noise, odours, and business competition. The assessment of these submissions concludes that none are of determining weight.

The applicant submitted a response to the submissions received during the notification period.

The application was referred to Council's technical officers who have raised no objections to the proposal. Any conditions recommended by those officers are included in the recommendation of 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. 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.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is to change the use of the building from a kiosk to a café. No building works are proposed.

The proposed hours of operation are 6.30am – 5.00pm Monday to Saturday and 7.00am – 5.00pm Sunday. The café will employ 3-4 staff at any one time.

The proposal includes both indoor and outdoor seating. Seating for 20 patrons is provided, partly within the premises and partly on the adjacent footpath.

The use of toilets at the Dee Why Swimming Club for employees is proposed.

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 (i.e.: this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- An inspection of the subject site and neighbouring sites 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 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 in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination); 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

- Historical use of the premises as a café rather than a kiosk
- Coastal Lands Plan of Management – Action 23 (Use of “IRB” building)
- Pedestrian safety
- Traffic congestion
- Waste disposal
- Noise

SITE DESCRIPTION

Property description:	Lot 1 DP 947974, The Strand, Dee Why
Detailed site description:	The subject site is comprised of one (1) allotment being Lot 1 in DP947971, The Strand, Dee Why. The large irregularly shaped site extends along the Dee Why Beach Reserve encompassing the pathways, open space and parks area. The existing kiosk is located within a previously disused IRB storage building, located at the eastern end of Oaks Avenue on the ocean front path. The lot also houses a playground, pathways, public seating and tables within a stepped landscaped beach setting. Public parking spaces run along both Oaks Avenue and The Strand. The lands immediately surrounding the site are open space, retail including many food premises, with a combination of detached dwellings and unit blocks located in the immediate surrounds.

LOCALITY PLAN (not to scale)



Figure 1 – Location of Site

SITE HISTORY

Development Consent No. DA2013/0613

The building was approved for use as a kiosk on 29 July 2013 (DA2013/0613).

The consent contained no specific conditions limiting the hours of operation or the maximum seating permitted in association with the use as a kiosk. However, the Statement of Environmental Effects accompanying the development application proposed hours of operation of 7.00am to 7.00pm, 7 days per week, but the Statement of Environmental Effects was not specifically incorporated into the development consent by condition.

The approved plans, which were incorporated into the consent by condition, showed seating for a total of eighteen (18) patrons, fourteen (14) internally and four (4) externally. Condition 20 specified that waste and recycling were not to be collected between 9pm and 8am daily.

Prior to 2013, the building was used for the purposes of Inflatable Rescue Boat (IRB) storage.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 4.15 of the EPAA 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	See discussion on "Warringah Development Control Plan 2011" in this report.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. There are no prescribed conditions relevant to the proposed change of use of the premises. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, enable Council to request additional information in relation to a development application. Additional information was submitted by the applicant and has been included in the assessment of the proposal. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. No demolition is proposed. <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 by a condition of consent. <u>Clause 98(1)(a)</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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality

Section 4.15 'Matters for Consideration'	Comments
	considering the nature of the proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered to be suitable for the proposed development and has been identified in the Coastal Lands Plan of Management as being potentially suitable for a café.
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.

Section 4.17(5) authorises the consent authority to impose a condition requiring the surrender of a consent. In the current circumstances, it is recommended that such a condition be imposed, requiring that the existing consent for the kiosk (DA 2013/0613) be surrendered to ensure that all conditions under a new consent in relation to the operation, management and intensity of the use of the site apply to the premises.

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

The subject application was notified to surrounding and nearby properties in accordance with the EPA Regulation 2000 and Warringah Development Control Plan 2011.

In response, Council received six (6) submissions from five (5) separate submitters, two (2) of which supported the proposal. The name of persons making submissions and the issues raised in the submissions are summarised as follows:

Name:	Address:
Mr Wolfgang Kraft	44 Carson Street DUNDAS VALLEY NSW 2117
Name and address withheld	Withheld
Mr Gavin Magee	33 Linksview Avenue LEONAY NSW 2750
Mr Robert Giles	5/26 The Strand DEE WHY NSW 2099
Ms Maria Psillakis and Ms Mercuria Books	No address provided

1. Facilities

A preference was expressed that they would like to see the kiosk continue to operate and that cafes and restaurants should have a grease trap, exhaust and toilet facility.

Comment: Facilities such as a grease trap, exhaust and toilet facilities have been considered by Council's technical officers, who have raised no objections to the proposal. The café offers a limited menu involving minimal cooking / re-heating of food on site, with the main storage and preparation located off site at another approved food premises. Toilets are provided within the public facilities nearby.

2. Existing operation not approved by Council

Concern is raised that the operator of the site originally proposed a "kiosk" but has operated it as a café.

Comment: The proposal is to change the use of the premises from a kiosk to a café. Historical acts by the operator of the premises are not a matter for consideration. As Preston CJ stated in *Jonah Pty Limited v Pittwater Council* [2006] NSWLEC 99:

35 Hence, in undertaking the merit determination of whether to grant or modify a development consent, it is irrelevant to enquire as to who is the current owner/operator, or who might be the future owner/operator, or whether the present owner/operator has in the past acted or used the land unlawfully, or whether the future owner/operator is likely in the future to act or carry out any approved use unlawfully.

However, the historical performance of the use of the premises (as opposed to its operator) is relevant, as Preston CJ goes on to say:

37 The above conclusion that mere unlawfulness of past use is not a relevant factor does not mean, however, that past use – without any consideration of its unlawfulness – cannot ever be relevant.

38 For instance, past conduct (regardless of whether it is unlawful) may have given rise to unacceptable impacts, such as unacceptable acoustic impacts on adjoining properties. The experience of impacts of the past use could be relevant in evaluating, first, the likely impacts of a prospective use for which consent is sought of the same or similar character, extent, intensity and other features as the past use, secondly, the acceptability of the likely impacts and thirdly, if likely impacts are considered to be unacceptable, the appropriate measures that ought to be adopted to mitigate the likely impacts to an acceptable level. Past use would, therefore, be of relevance but it is for proper planning reasons, not because the past use happened to be unlawful. The unlawfulness of the past use is not relevant.

3. Impact on other local businesses

Concern is raised that the use of the premises as a café will have a negative impact on other local businesses offering similar products.

Comment: It is acknowledged that the proposal will provide competition to other local businesses, but business competition is not a reason to refuse the application.

4. Traffic congestion

Concern is raised that the use of the premises as a kiosk has led to, and will continue to lead to, traffic congestion.

Comment: The current approval for a kiosk was assessed as not giving rise to a significant increase in traffic. The proposed change of use will not result in additional traffic to that which was originally envisaged, noting that the original development consent does not include a limit on seating, nor was any limit stated in the original Statement of Environmental Effects. It is recommended that seating be limited to 20 patrons. Council's Traffic Engineer has reviewed the proposal and has raised no objections to the proposal.

5. Waste and rubbish disposal

Concern is raised that waste and rubbish disposal is inadequate.

Comment: The proposal has been reviewed by Council's Waste Officer who has raised no objections subject to conditions which have been included in the recommendation of this report.

6. Pedestrian safety

Concern is raised that the use of the premises as a café will result in an unacceptable loss of pedestrian safety. Furthermore, the premises provide services to cyclists and their bicycles create a hazard.

Comment: The beachfront promenade is considered to be of sufficient width to accommodate tables and chairs (as proposed) whilst providing sufficient area for pedestrians to use the area safely.

7. Truck movements

Concern is raised that the existing use of the premises generates truck movements associated with 5-6 deliveries per day, starting from 3am-4am in the morning. Concern is raised that the proposal will increase the truck movements.

Comment: Council's Traffic Officer has reviewed the proposal and raised no objections with regards to traffic safety related to the proposal. To maintain the amenity of the area, it is recommended that deliveries commence no earlier than 6.30am on any morning.

8. Odours

Concern is raised that changing the use of the premises to a café will generate additional odours.

Comment: It is considered that odours generated by the use of the site will be similar to the use as a kiosk and will not be objectionable. In this regard, consideration has been given to the nature of the proposed café with limited cooking / re-heating of food on site.

9. Retail uses should be restricted to land zoned for retail purposes

Concern is raised that the site is in a "residential" area and the use of the premises for a café is inappropriate.

Comment: The land is zoned RE1 Public Recreation and the proposed café is a permissible use in the zone.

10. Support for the continued operation of the café

Two submissions supported the continued operation of the café.

Comment: Noted.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal referrals

Referral officer	Comments	Consent recommended
Building Assessment	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 subject to inclusion of the attached conditions of approval and consideration of the notes below.	Yes (subject to condition)
Environmental Health	Environmental Health previously commented and raised a number of issues that needed to be addressed by the applicant. Responses have since been received from the applicant, and therefore the proposal is acceptable subject to conditions.	Yes (subject to conditions)
Natural Environment	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. As assessed in the submitted Statement of Environmental Effects (SEE) report, the DA satisfies the requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018 and is supported without condition.	Yes
Parks, Reserves and Foreshores	The Development Application to amend the change of use for the kiosk to a café, in the interest of making the conditions consistent with the existing lease, is supported. Parks recommend that if not already in effect, conditions be established to: Restrict food preparation to re-heating of pre-prepared food only	Yes (subject to conditions)

Referral officer	Comments	Consent recommended
	Prevent outdoor dining extending outside its current approved footprint	
Property and Commercial Development	The proposal is for the change of use of the subject premises from a kiosk to a cafe. Property has no objection to the proposal as submitted, however any proposed outdoor dining will need to be the subject of a separate Outdoor Dining Approval Application.	Yes (subject to conditions)
Traffic Engineer	Reviewing the information provided in the Plan of Management, section 5.3 Access Parking and Traffic and section 5.6 Management of Deliveries, the deliveries will be undertaken within the Loading Zone during the signposted hours and is not expected to have a negative impact on the road network. The information provided indicates that the premises does not provide any allocated parking spaces, however given the location of the cafe in the Dee Why Beach area, this could be acceptable subject to the planning consideration. In view of the above, the proposal can be supported on traffic grounds.	Yes
Waste	No objections subject to conditions [Assessing Officer's note: the wording of the conditions have been amended in the recommendation of this report to ensure their enforceability and improve their legibility but the intent of the conditions is retained.]	Yes (subject to conditions)

External referrals

Referral External	Body	Comments	Consent Recommended
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.	N/A

ENVIRONMENTAL PLANNING INSTRUMENTS

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

SEPP (Infrastructure) 2007

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.

The proposal was referred to Ausgrid but no comments were received during the statutory 21-day period so it can be assumed that no objections are raised.

SEPP (Coastal Management) 2018

The site is identified as being located within the Coastal Environment area and the Coastal Use area. SEPP (Coastal Management) 2018 prescribes a number of matters for consideration for development within those areas under clauses 13 and 14, 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,*

Comment: The proposal is for a change of use only and will have no impact on those environments.

- (b) *coastal environmental values and natural coastal processes,*

Comment: The proposal is for a change of use only and will have no impact on those environments.

- (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,*

Comment: The proposal is for a change of use only and will have no impact on water quality of the marine estate.

- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*

Comment: The proposal is for a change of use only and will have no impact on vegetation or fauna, headlands or 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,*

Comment: The proposal is for a change of use only. Access to public open space and along the foreshore is maintained.

- (f) *Aboriginal cultural heritage, practices and places,*

Comment: The proposal is for a change of use only and will have no impact on aboriginal heritage, practices or places.

(g) *the use of the surf zone.*

Comment: The proposal is for a change of use only and will have no impact on the surf zone.

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

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

Comment: The proposal will have no impacts referred to in subclause (1).

14 Development on land within the coastal use area

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

- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

Comment: The proposal retains all existing access to and along the foreshore, beach, headland and rock platforms, including existing access for persons with a disability.

- (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*

Comment: The proposal is for a change of use and has not impact with regards to wind funnelling or loss of views.

- (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*

Comment: The proposal is for a change of use only and maintains existing visual amenity and the scenic qualities of the coast.

- (iv) *Aboriginal cultural heritage, practices and places,*

Comment: The proposal is for a change of use only and will have no impact on aboriginal cultural heritage, practices or places.

(v) *cultural and built environment heritage, and*

Comment: The proposal is for a change of use only and will have no impact on cultural and built environmental heritage.

(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*

Comment: The proposal will not have any impacts referred to in paragraph (a).

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

Comment: The proposal is for a change of use only and will not increase the bulk, scale and size of the building.

Local Environment Plans (LEP's)

Warringah Local Environmental Plan 2011 (WLEP 2011)

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

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 5 Miscellaneous provisions	Yes
5.5 Development within the coastal zone	Yes
5.10 Heritage conservation	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

Zone RE1 Public Recreation

The building is currently used as a "kiosk", which is defined in WLEP 2011 as follows:

kiosk means premises that are used for the purposes of selling food, light refreshments and other small convenience items such as newspapers, films and the like.

The proposal is to change the use of the building to a café which falls within the definition of a "restaurant or cafe":

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

Both uses are permissible in the RE1 Public Recreation zone.

Objectives of the zone

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To protect, manage and restore public land that is of ecological, scientific, cultural or aesthetic value.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

Comment:

The development is considered to be consistent with the relevant objectives of the zone for the following reasons:

- The proposal retains the existing public open space areas for recreational purposes and complements those activities.
- The proposed café is compatible with the surrounding recreational setting and activities.
- The proposed change of use has no impact on the natural environment.
- The proposed change of use has no impact on ecological, scientific, cultural or aesthetic values of the land.

Limit on Gross Floor Area of a Kiosk

Clause 5.4(6) of WLEP 2011 limits the gross floor area of a kiosk to a maximum of 50m². The existing building has a gross floor area of 50m². The proposal is to change the use of the building to a café. The WLEP 2011 does not contain a limit on the gross floor area of a café and the proposal does not propose to increase the gross floor area of the building.

Warringah Development Control Plan 2011 (WDCP 2011)

Built Form Controls

Built form control	Requirement	Proposed	Variation	Complies
B1 Wall height	7.2m	3.3m (existing)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C9 Waste management	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building bulk	Yes	Yes
D12 Glare and reflection	Yes	Yes
D14 Site facilities	Yes	Yes
C18 Accessibility	Yes	Yes
D20 Safety and security	Yes	Yes
D21 Provision and location of utility services	Yes	Yes
D22 Conservation of energy and water	Yes	Yes
D23 Signs	Yes	Yes
E1 Preservation of trees or bushland vegetation	Yes	Yes

Detailed Assessment

C3 Parking Facilities

The approved use of the building as a kiosk was previously assessed on the basis that it generated a demand for car parking at a rate of 1 space per 3 seats. The assessment concluded that there was sufficient carparking available in the vicinity of the site to cater for this demand.

The proposed café requires the same rate of car parking under Clause C3 and Appendix 1 of WDCP 2011. The proposed change of use will therefore not generate the need for additional carparking and the proposal is considered satisfactory in this regard.

As mentioned previously, the approval of the kiosk did not contain any limitations on the number of seats that were provided, although the application (as shown on the approved plans) did include both internal and external seating.

When the site was inspected, there was seating for 6 people internally and 21 people externally, being a total of 27 seats. The applicant's letter dated 23 October 2019 states that seating for 20 people is provided. Therefore, a condition of consent is recommended to limit the number of persons that can be seated at the premises to ensure that the intensity of the usage and the demand for carparking generated by the café does not increase over time (which would require further approval) without further assessment of the impacts that would arise.

D3 Noise

The proposal does not state whether or not live or amplified music is to be provided. Live and amplified music has the potential to have a negative impact on the amenity of nearby residents,

if uncontrolled. It is recommended that a condition of consent be imposed that does not permit live music or amplified music (other than background music) from the proposed café.

The site is separated from the nearest residential premises by approximately 40 metres. The café is oriented away from the nearest residential buildings. Noise is created by other surrounding users of the public open space and by ambient ocean noise. The noise generated by the use of the building as a café is unlikely to result in a loss of amenity to nearby residents because of the separation distance and the ambient noise created by other surrounding land uses, subject to a condition of consent preventing live music or amplified music (other than background music) on the premises.

Council's Environmental Health Officer has assessed the proposal and has raised no objections with regard to noise generated by the proposed café.

Concern was raised in public submissions regarding noise from deliveries which the submissions said began at around 3am-4am in the morning. The applicant has submitted a Plan of Management identifying deliveries occurring between 8am and 2pm with the exception of bread (delivered before 6am), milk (delivered 6am-7am) and small goods (delivered 6am-8am). To ensure that noise from deliveries does not create impacts on the amenity of nearby residents a conditions of consent is recommended requiring deliveries to be carried out between the hours of 6.30am – 8.00pm on any day.

The proposed hours of operation are 6.30am – 5.00pm Monday to Saturday and 7.00am – 5.00pm Sunday. The kiosk was originally assessed as operating from 7.00am – 7.00pm Monday to Sunday, although no condition of consent was imposed in this regard.

It is considered that the use of the premises within the proposed hours are suitable and appropriate.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contribution Plan 2019

No building works are proposed and the estimated cost of works is nil. In these circumstances, no contribution is payable under the Northern Beaches Section 7.12 Contributions Plan 2019.

Coastal Lands Plan of Management

Clause 35 of the Local Government Act 1993 provides that any use of community land must be in accordance with a plan of management applying to the land. The Coastal Lands Plan of Management (2002) applies to the land.

Action 23 in The Plan of Management provides:

23: Implement remaining improvement works at Dee Why Beach area in keeping with the 'Dee Why Beach/The Strand Urban Design Study'. In particular investigate:

- *Future uses of the existing Council 'IRB' storage shed located in the southern corner of Dee Why Beach. Following the construction of the new storage facilities at Dee Why SLSC building, **consideration should be given to this building's use by Council as a locker-hire area, café or like recreational use.** [emphasis added]*

The proposed use of the building as a café is specifically identified in the Plan of Management and the development is considered to be consistent with the Plan of Management.

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 2011;
- Warringah Development Control Plan 2011; and
- Codes and Policies of Council.

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

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2011, Warringah Development Control Plan and the relevant codes and policies of Council. In consideration of the proposal and the merit consideration 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 of the relevant EPI's
- Consistent with the objects specified in Section 1.3 of the Environmental Planning and Assessment Act 1979

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

It is noted that the application is for a change of use only, therefore standard conditions relating to building works are not considered to be relevant.

Because no building works are proposed, there will be no Construction or Occupation Certificates related to the approval. Consequently, certain matters that would normally require compliance prior to the issue of a Construction Certificate are instead required to be complied with within 28 days of the date of consent.

This assessment report examines issues raised in response to the notification of the application including those relating to traffic, odours and to the historical use of the premises.

Subject to conditions included in the recommendation of this report, it is considered that none of those issues are determinative.

Included in the following recommendation are conditions limiting the operation of the premises with regards to hours of operation, noise (live and amplified music), waste collection, and limiting patron seating, so as to ensure that the intensity of the use is not increased and to protect the amenity of the surrounding area.

Conditions of consent recommended by Council's technical officers as part of the referral process have been included in the recommendation of this report.

RECOMMENDATION (APPROVAL)

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority, grant consent to Development Application No. DA2019/1017 for a change of use of the existing building from a kiosk to a café at Lot 1, DP 947971, The Strand, Dee Why, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DR-AR-21, Revision 1	31.10.2019	Ms Building Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Building Code of Australia Report	25.11.2019	All State Building Surveying
Plan of Management	November 2019	Turnbull Planning International Pty Ltd
Waste Water Pit and Pump System	Undated	-

b) 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.

CONDITIONS WHICH MUST BE COMPLIED WITH WITHIN TWENTY-EIGHT (28) DAYS OF THE DATE OF DEVELOPMENT CONSENT

2. Fire Safety Matters

Within twenty-eight (28) days, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

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

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

3. Signage to toilets for patrons

Signage is to be provided on the premises directing patrons to the location of public toilets near the site.

Reason: To advise patrons of the availability of public toilets near the premises.

4. Provide Evidence of Waste Service Contractor

Evidence of the engagement of a waste service contractor is to be provided to Council.

Reason: To ensure appropriate arrangements are made for the removal of waste from the site.

5. Surrender of Development Consent No. DA2013/0613

The applicant shall surrender to Northern Beaches Council the existing Development Consent No: DA2013/0613 in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

Reason: To prevent inconsistencies between consents applying the site.

ON GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

6. Hours of Operation

The hours of operation are to be restricted to:

- Monday to Friday – 6.30am to 5.00pm
- Saturday – 6.30am to 5.00pm

- Sunday and Public Holidays – 7.00am to 5.00pm

Upon expiration of the permitted hours, all service 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.

7. Maximum Seating Capacity

Seating provided internally and externally is to be limited to a maximum of 20 persons, in total.

Reason: To ensure that the intensity of the use is controlled and protect the amenity of the surrounding area.

8. Outdoor Dining

Any proposed outdoor dining shall be the subject of a separate application to Council under the Outdoor Dining Approval Application 19/20 form available on Council's website.

Reason: To ensure the proper regulation of outdoor dining on public land.

9. No Live or Amplified music

No live music (of any type) or amplified music (other than background music) is to be provided on the premises or in the areas adjacent the premises.

Reason: To ensure that residential amenity is protected from uncontrolled music.

10. Commercial Waste Collection

Waste and recyclable material generated by the premises must not be collected between the hours of 8.00pm to 6.30 am the following day (Monday to Friday) and 8.00pm to 8.00am the following day (Saturday, Sunday and Public Holidays).

Reason: To ensure the acoustic amenity of surrounding properties.

11. Waste Water Pit and Pump

The business must maintain a valid s68 (Local Government Act 1993) approval to operate the waste water maceration pit and pump equipment.

This must include:

- a. Compliance with Sydney Water requirements including the limitations on food preparation, waste and menu items.
- b. Compliance and record keeping in accordance with the ongoing risk management plan (undated) submitted to Council.

Reason: To ensure health and safety standards are maintained (DACHPGOG5)

12. Service and Delivery Vehicle Hours

No service and delivery vehicles are to serve the premises between the hours of 8.00pm to 6.30 am the following day (Monday to Friday) and 8.00pm to 8.00am the following day (Saturday, Sunday and Public Holidays).

Reason: To maintain residential amenity to neighbouring premises. (DACHPGOG5)

13. No Cooking on Premises

Cooking is to be carried out off site in approved notified premises and only reheating and "toasting" permitted, implications being:

- No mechanical ventilation on premises.
- Pest proofing limitations
- No grease trap (Sydney Water)
- Maceration pit risk management plan.

Reason: To comply with food safety, Sydney Water and AS1668.2 requirements (DACHPGOG6)

14. Provision of Contract Waste Services

At all times during the operation of the premises, the operator is to engage a private waste service contractor to attend the site 7 days a week at a frequency to ensure that no bins overflow with rubbish or recycling.

Reason: To maintain the amenity of the area.

15. Waste to be Contained

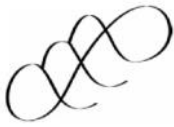
All waste must be contained within the bins in the enclosed storage area located adjacent to the premises. The enclosure contains the three x 240L bins on Oaks Avenue for efficient collection as stated in the Plan of Management prepared by Turnbull Planning International Pty Ltd dated November 2019, Section 5.5 Waste. The enclosure must be locked and maintained in a clean and tidy condition at all times. (DACHEBOC1).

Reason: To maintain the amenity of the area.

16. No Approval for any Signage

No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2011 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. (DACPLB06)



MS BUILDING
DESIGN

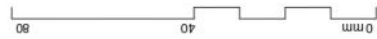
Revision	DESCRIPTION	DATE	APPRO
REV A	APPLICATION OF CHANGE OF USE	01/08/19	

Client
Example Only

Project
BEACH SHED CAFE
CHANGE OF USE

Drawing
SITE PLAN & ANALYSIS

PRELIMINARY



A1 Scale
Project 06
Issue A
Drawing DEEWHY - DR - AR - 10
Details

Do not scale this drawing and verify all
dimensions and levels on site.



THE WORK IS TO BE COMPLETED WITH THE BUILDING CODE OF AUSTRALIA, SAA
CODES AND RELEVANT BY-LAWS.
THE BUILDING MANUFACTURER SHALL CHECK AND VERIFY ALL DIMENSIONS, RL
GROUNDLINES AND CONSTRUCTION METHODS PRIOR TO COMMENCEMENT OF
WORK.
PREFERENCES OF DIMENSIONED MEASUREMENTS TO BE TAKEN OVER SCALED
MEASUREMENTS.
THESE DRAWINGS HAVE BEEN PREPARED BY MS BUILDING DESIGN & REMAIN THE
PROPERTY OF THE ABOVE NAMED PART. THESE DRAWINGS ARE NOT TO BE USED
IN ANY MANNER WITHOUT THE PERMISSIONS OF MS BUILDING DESIGN AND ARE
SUBJECT TO COPYRIGHT LAWS.
A COPY OF THIS PLAN IS TO BE SUBMITTED BY THE PROPRIETOR TO THE
WATERBOARD FOR APPROVAL AS REQUIRED BY THE LOCAL COUNCIL.
CHANGES TO EXISTING FITOUT.



MS BUILDING
DESIGN

Revision
REV
A
DESCRIPTION
APPLICATION OF
CHANGE OF USE
DATE
01/09/19
APPROVED
APPO

Client
Example Only

Project
BEACH SHED CAFE

Drawing
EXISTING FLOOR PLAN

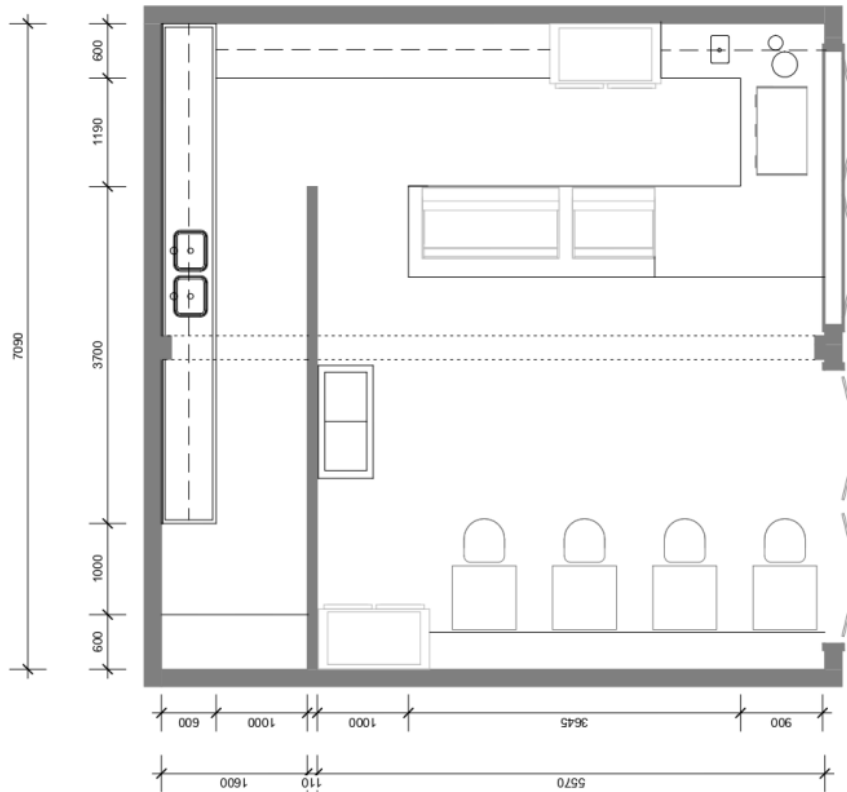
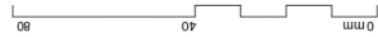
A1 Scale 1 : 50
Project 06
Issue A

Drawing DEEWHY - DR - AR - 21

Details

Do not scale this drawing and verify all
dimensions and levels on site.

PRELIMINARY



NOTE:
• NO WORKS TO EXISTING FITOUT. APPLICATION FOR
CHANGE OF USE TO CAFE.
• EXISTING FITOUT PREVIOUSLY APPROVED

ITEM 3.4	DA2019/0748 - 19 BUNGAN STREET, MONA VALE - DEMOLITION OF ALL EXISTING STRUCTURES AND THE CONSTRUCTION OF A FOUR STOREY SHOP TOP HOUSING DEVELOPMENT OVER BASEMENT CAR PARKING
AUTHORISING MANAGER	ANNA WILLIAMS
TRIM FILE REF	2020/081220
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ NBLPP Minutes - 18 December 2019 3 ↓ Supplementary Report 4 ↓ Site Plan and Elevations 5 ↓ Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 of Pittwater Local Environmental Plan 2014 as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives 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. DA2019/0748 for demolition of all existing structures and the construction of a four storey shop top housing development over basement car parking at Lot 200 DP 746507, 19 Bungan Street, Mona Vale subject to the conditions and for the reasons set out in the Assessment Report and Supplementary Assessment Report.
-



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0748
Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 200 DP 746507, 19 Bungan Street MONA VALE NSW 2103
Proposed Development:	Demolition of all existing structures and the construction of a four storey shop top housing development over basement car parking
Zoning:	B4 Mixed Use
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Mona Vale Developments Pty Ltd
Applicant:	Mona Vale Developments Pty Ltd
Application Lodged:	15/07/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Mixed
Notified:	27/07/2019 to 24/08/2019
Advertised:	27/07/2019
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 15%
Recommendation:	Approval
Estimated Cost of Works:	\$ 14,114,100.00

Executive Summary:

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

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



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

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

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

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

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

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

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

PROPOSED DEVELOPMENT IN DETAIL

The Proposed Development

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

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



Amended Plans

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

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

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



Photomontage of development looking south-west along Bungan Street.



Photomontage of development looking west along Bungan Street.



Photomontage of development looking north along Waratah Street.

ASSESSMENT INTRODUCTION

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

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



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

SUMMARY OF ASSESSMENT ISSUES

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

SITE DESCRIPTION

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



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

Map:



SITE HISTORY

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

Pre-lodgement meeting PLM2018/0087

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

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



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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation has been submitted. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional

Section 4.15 Matters for Consideration'	Comments
	information was requested in relation to height, setbacks, trees, parking and waste. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter may be addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would



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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

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

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

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

The matters raised within the submissions are addressed as follows:

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

Comment:

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



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



East elevation to Bungan Street



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

The building density is excessive

Comment:

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



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

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

Comment:

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

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

Comment:

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

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



without compromising solar access.

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

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

Loss of views to Mona Vale headland.

Comment:

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

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

Comment:

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

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

Comment:



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

There is not enough 'green' design.

Comment:

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

Security Impacts.

Comment:

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

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

Comment:

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

No notice of the DA being exhibited.

Comment:

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

Devalue property

Comment:

This is not a material planning consideration.



REFERRALS

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

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



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



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

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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



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

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

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

SEPP 55 - Remediation of Land

Detailed assessment

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

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

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

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

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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



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

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

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

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

Clause 28 of SEPP 65 requires:

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

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

DESIGN REVIEW PANEL

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

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

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

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

Comment:

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



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



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



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



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

Principle 2: Built Form and Scale

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

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

Comment:

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

Principle 3: Density

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

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

Comment:

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



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

Principle 4: Sustainability

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

Comment:

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

Principle 5: Landscape

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

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

Comment:

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

Principle 6: Amenity

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

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

Comment:

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



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

Principle 7: Safety

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

SEPP 65

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

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

CPTED

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

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

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

Comment:

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



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



View of secure residential and vehicular entries from Waratah Street.

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

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

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

Principle 9: Aesthetics

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

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

Comment:

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



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

APARTMENT DESIGN GUIDE

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

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



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

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

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

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

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

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

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

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

Street.

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

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

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

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

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

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

Access	sunlight to habitable rooms, primary windows and private open space: 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.	72% (26 out of 36 units) receive the required solar access.
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	Complies: All of the apartments received at least some direct sunlight between 9am and 3pm at midwinter.
Natural Ventilation	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by: 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.	Complies: All apartments are cross ventilated.
	Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	Complies
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	Assessed as satisfactory: All residential units have a compliant 2.7m floor to ceiling level. Due to the inclusion of clerestory windows some of the units on level 3 have a floor to ceiling height that exceeds the 2.7m height limit.
	Minimum ceiling height	
	Habitable rooms	2.7m
	Non-habitable	2.4m
	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope
	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use
Apartment Size and Layout	Apartments are required to have the following minimum internal areas:	Assessed as satisfactory: The one 3 bedroom unit on level 3 measures

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

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

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

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

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

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



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

STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

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

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

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

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

Comment:

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

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

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



(3) To remove doubt:

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

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

Comment:

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

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

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

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

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



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

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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



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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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



s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

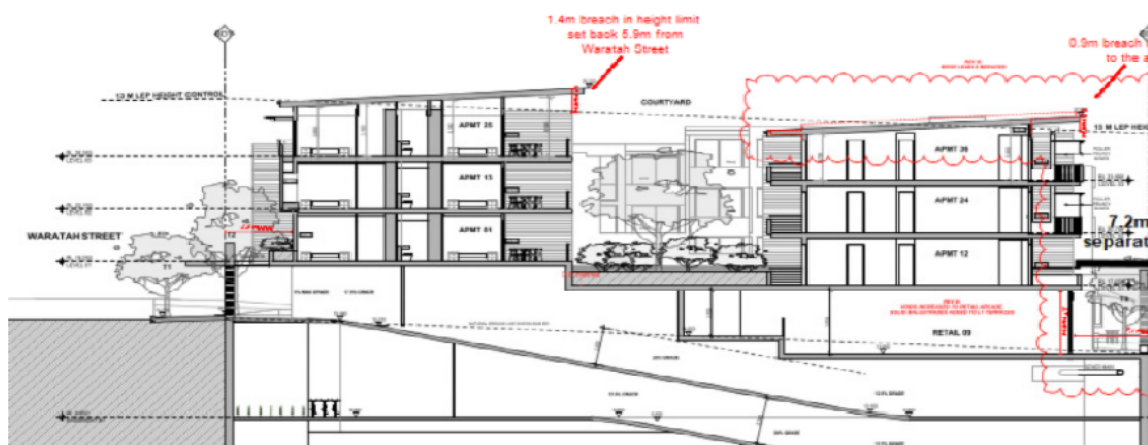
The applicants written request argues, in part:

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

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



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



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

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

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

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

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

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

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

Comment:

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



Objectives of development standard

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

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

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

Comment:

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

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

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

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

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

Comment:

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



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



Two storey development to the north along Bungan Street.

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

c) to minimise any overshadowing of neighbouring properties,

Comment:

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

d) to allow for the reasonable sharing of views,

Comment:

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



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

Comment:

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

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

Comment:

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

Zone objectives

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:



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

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

Comment

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

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

Comment:

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

Conclusion:

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

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

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

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

7.1 Acid sulfate soils

Detailed Assessment

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



soils and cause environmental damage.

Comment:

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

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

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

Comment:

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

7.2 Earthworks

Detailed Assessment:

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

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

Comment:

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

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

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

Comment:



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

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

Comment:

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

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

Comment:

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

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

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

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

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

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

Comment:



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

The likelihood of disturbing relics.

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

Pittwater 21 Development Control Plan

Built Form Controls

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



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

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B2.6 Dwelling Density and Subdivision - Shop Top Housing	No	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B6.8 Access Driveways and Works on the Public Road Reserves on or Adjacent to a Commercial Centre Primary Road	No	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes



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

Detailed Assessment

B2.6 Dwelling Density and Subdivision - Shop Top Housing

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



Community.

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

Detailed Assessment:

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

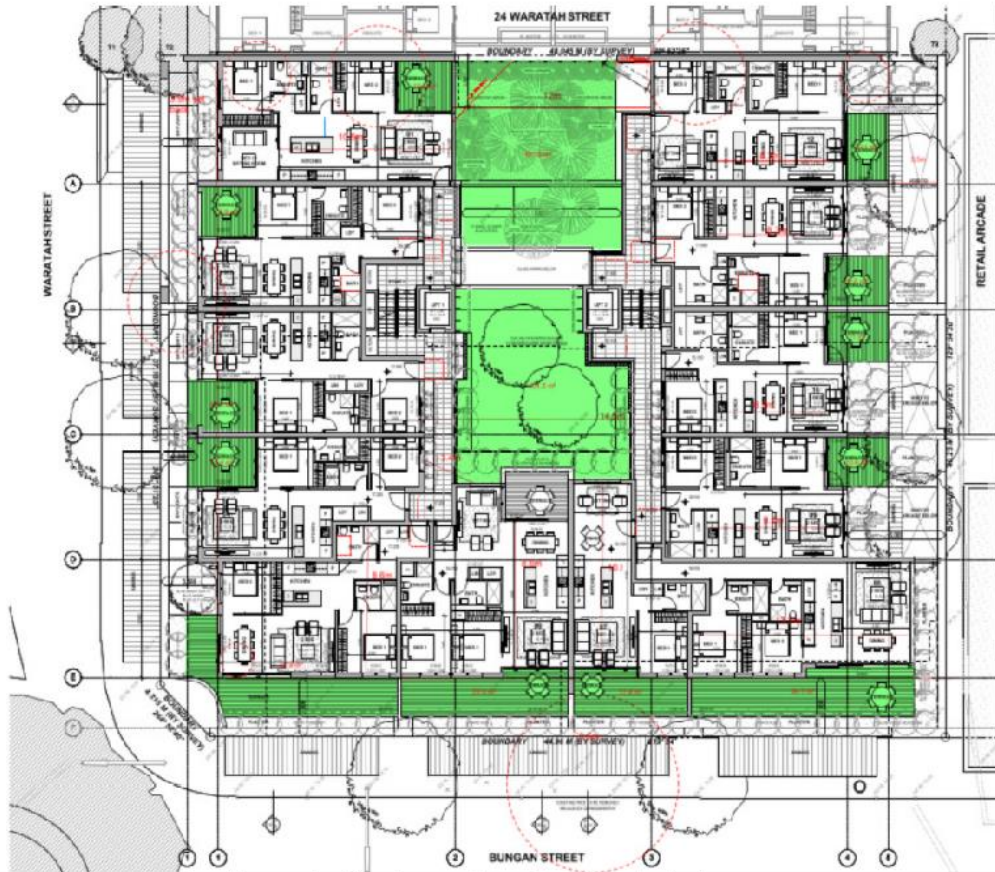
The site bound by two primary roads, Waratah Street and Bungan Road with existing access via Waratah Street. The proposed access is also via Waratah Street and as there is no alternative access to a local road this arrangement has been assessed as acceptable by Council's Transport Unit.

C1.1 Landscaping

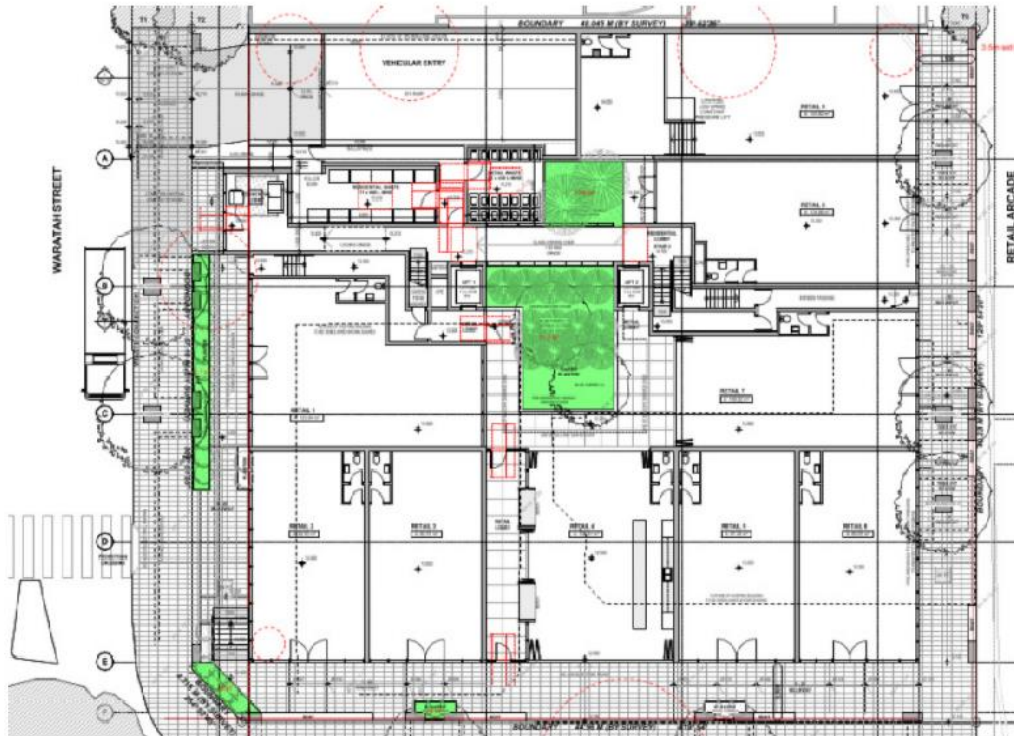
Clause C2.1 Landscaping

Detailed Assessment

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



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

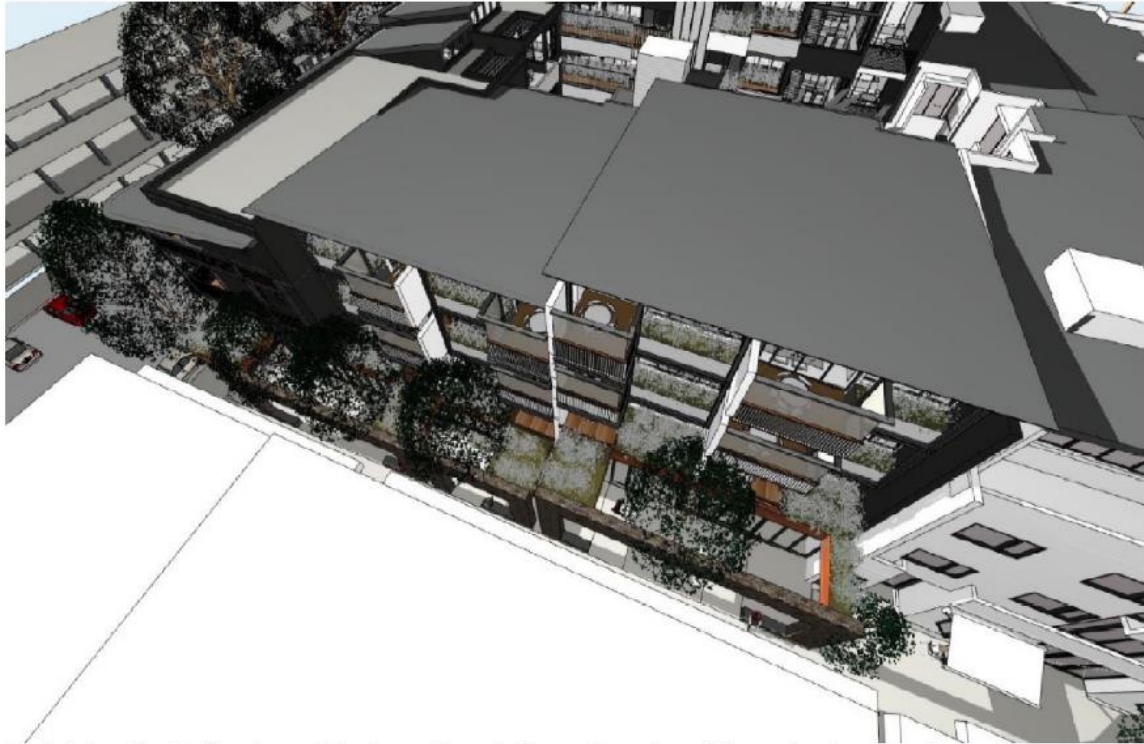


Ground level plan showing areas of landscaping.

A built form softened and complemented by landscaping.

Comment:

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



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

Landscaping reflects the scale and form of development.

Comment:

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

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

Comment:

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

Development results in retention of existing native vegetation.

Comment:

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



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

Comment:

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

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

Comment:

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

Landscaping enhances habitat and amenity value.

Comment:

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

Landscaping results in reduced risk of landslide.

Comment:

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

Landscaping results in low watering requirement.

Comment:

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

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

C1.3 View Sharing

Detailed Assessment:

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

Step One

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly



than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Comment:

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



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

Image 2: Balconies to No 24 Waratah Street.

Step Two

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

Comment:

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



observed from a standing position. Refer to images below:



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

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

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



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



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



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



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

Step Three

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

Comment:

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



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

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

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

Step Four

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

Comment:

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

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

Outcomes

A reasonable sharing of views amongst dwellings.

Comment:

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

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

Comment:

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

Canopy trees take priority over views.

Comment:

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



C1.5 Visual Privacy

Detailed Assessment:

The Clause requires:

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

The development is assessed against the outcomes of the control:

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

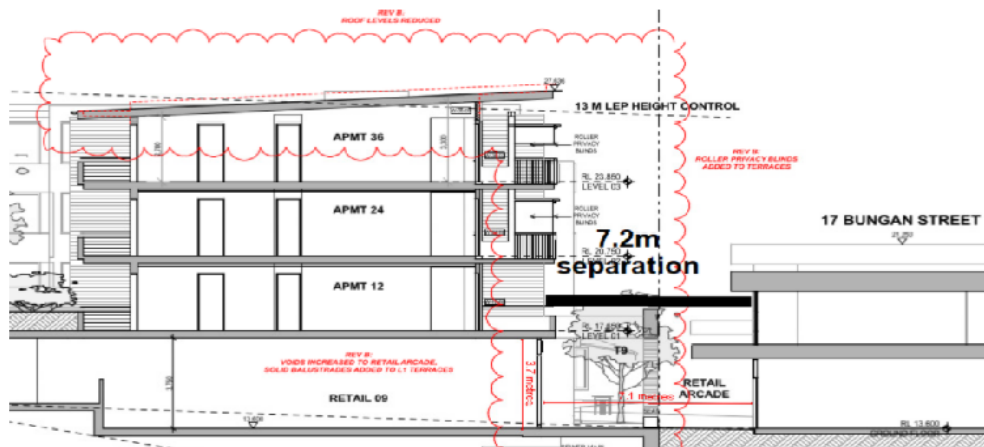
Northern boundary:

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



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

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



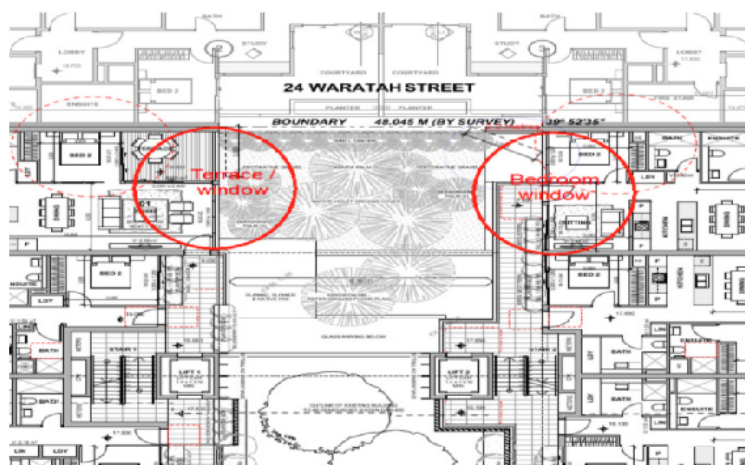
Section showing the 7.2m separation between terraces and the first floor windows to the commercial building at 17 Bungan Street.

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

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

West (rear) boundary

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



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



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

A sense of territory and safety is provided for residents.

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

C1.23 Eaves

Detailed Assessment:

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

C2.11 Signage

Detailed Assessment:

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

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

Detailed Assessment:

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

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

D9.3 Building colours and materials

Detailed Assessment:

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

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



as acceptable.

D9.6 Front building line

Detailed Assessment:

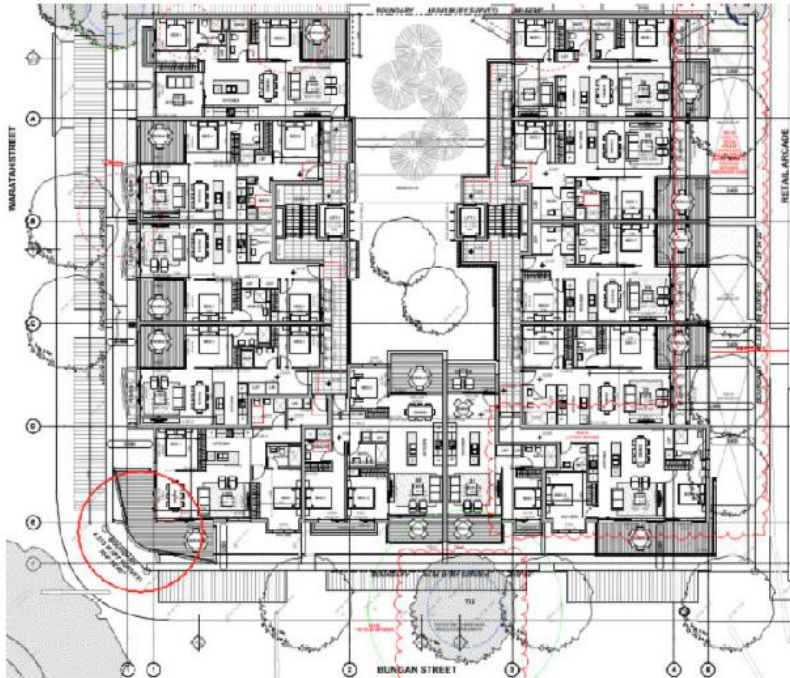
Clause D9.6 requires a 3.5m setback up to a height of 8.49m from the front property boundary, then 6m above a height of 8.5m. The proposed development is inconsistent with the minimum front building line as detailed below.

Waratah Street

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



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



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

Bungan Street:

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

Retail Arcade

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

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

Merit consideration

The development is considered against the outcomes of the clause:

Achieve the desired future character of the Locality.

Comment:

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

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



Comment

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

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

Comment

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

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

Comment:

The proposal has been amended to retain the street trees.

Vehicle manoeuvring in a forward direction is facilitated.

Comment:

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

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

Comment:

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



Existing view looking north-west to the site.



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

To encourage attractive street frontages and improve pedestrian amenity.

Comment:

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

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

Comment:

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

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



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

CONCLUSION

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

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

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

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

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

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

Height of buildings

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

Communal open space / landscaping

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

Front set backs

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

Building separation

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



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

Visual privacy

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

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

RECOMMENDATION

Council is satisfied that:

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

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

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/0748 for Demolition of all existing structures and the construction of a four storey shop top housing development over basement car parking on land at Lot 200 DP 746507, 19 Bungan Street, MONA VALE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Cover Sheet DA00	3 July 2019	Gartner Trovato Architects
Site Analysis Plan DA-01 Rev B	17 October 2019	Gartner Trovato Architects
Basement B2 Plan DA-02 Rev C	1 November 2019	Gartner Trovato Architects



Basement B1 Plan DA-03 Rev C	1 November 2019	Gartner Trovato Architects
Ground Floor Plan DA-04 Rev E	27 November 2019	Gartner Trovato Architects
Level 1 Floor Plan DA-05 Rev B	17 October 2019	Gartner Trovato Architects
Level 2 Plan DA-06 Rev B	17 October 2019	Gartner Trovato Architects
Level 3 Plan DA-07 Rev B	17 October 2019	Gartner Trovato Architects
Roof Plan Lower DA-08 Rev B	17 October 2019	Gartner Trovato Architects
Roof Plan Upper DA-09 Rev B	17 October 2019	Gartner Trovato Architects
North and south elevation DA-10 Rev B	17 October 2019	Gartner Trovato Architects
East and west elevation DA-11 Rev B	17 October 2019	Gartner Trovato Architects
Section A DA-12 Rev B	17 October 2019	Gartner Trovato Architects
Section B DA-13 Rev B	17 October 2019	Gartner Trovato Architects
Section C DA-14 Rev B	17 October 2019	Gartner Trovato Architects
Section 1 DA-15 Rev B	17 October 2019	Gartner Trovato Architects
Section 2 DA-16 Rev B	17 October 2019	Gartner Trovato Architects
Schedule of colours and materials DA-23 Rev A	3 July 2019	Gartner Trovato Architects

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

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Report Ref 109775-Access-r1	6 June 2019	BCA Logic Access
Noise Assessment Ref 18287 Version A	July 2019	BCA Logic Access
BCA Assessment Report Ref 109775-BCA-r1	6 June 2019	BCA Logic Access
Arboricultural Impact Assessment	June 2019	Urban Forestry Australia



NatHERS Report 0003995920	2 July 2019	NatHERS nad BASIX Solutions
Traffic and Parking report ref 18051	27 June 2019	Terraffic Pty Ltd
Geotechnical Report R ef 2018-132.1 Issue 1	June 2019	Crozier Geotechnical Consultants

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

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

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

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

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

2. Prescribed Conditions

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

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



- A. the name of the owner-builder, and
- B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative Requirement

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

- (a) Unless authorised by Council:
Demolition and excavation works are restricted to:
 - o 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

- (e) The applicant shall bear the cost of all works that occur on Council's property.



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

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

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

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

4. **Staff and Contractor Parking**

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

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

5. **Existing Bus Stop**

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

Approval of STA is required to relocate any Bus Stops.

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

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

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



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

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

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

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

7. **Security Bond**

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

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

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

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

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

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

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

Reason: Protection of Council's Infrastructure.

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

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

Reason: Protection of Council's Infrastructure.

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

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

Reason: Protection of Council's Infrastructure.



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

11. Public Domain Plan

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

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

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

Reason: enhance the public domain amenity

12. On slab landscape planting and associated works

- a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction



Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided,

b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule,

c) The following soil depths are required to support landscaping as proposed:

- 300mm for lawn
- 600mm for shrubs
- 1m for small trees

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated 3 June 2019 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

Specific reference is given to the following recommendations:

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

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

The design of the pump-out system for Stormwater disposal will be permitted for drainage of hard surfaces areas such as driveways and basement pavement areas only, and must be



designed in accordance with AS/NZS 3500. Engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

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

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

An Application for Works to be approved within Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the design of the kerb and gutter and footpath for the entire frontage of the site, the driveway crossing and the stormwater connections into the existing Council drainage pits fronting the site which are to be generally in accordance with the Development Application, Council's specification for engineering works - AUS-SPEC #1 and Council's Design Guidelines. The plans shall be prepared by a qualified Civil Engineer. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

16. **Utilities Services**

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

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

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

17. **On-site Stormwater Detention**

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

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

The drainage plans must address the following:

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

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

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



18. **Structural Adequacy and Excavation Work**

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

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

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

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

Reason: To provide public and private safety.

19. **Sub-Soil Seepage**

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

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

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

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

20. **Shoring of Adjoining Property**

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

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

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

21. **Construction Management Program**

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

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects



adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

22. **Erosion and Sediment Control Plan**

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

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

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

Reason: Protection of the receiving environment

23. **Water Quality Management**

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

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

Reason: Protection of the receiving environment

24. **Engineering Details**

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



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

25. **Noise Management -Design**

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

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

26. **Tree Protection Plan**

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

a) A Tree Protection Plan prepared by a AQF Level 5 Arborist with qualifications in arboriculture/horticulture shall be provided, in accordance with AS4970-2009 Protection of trees on development sites, demonstrating as a minimum, the following:

- o Layout of the approved development,
- o Extent of permitted basement,
- o Location of trees including trunk, structural root zone and tree protection zone,
- o Location of tree protection fencing / barriers,
- o General tree protection measures, including ground and trunk protection.

b) A schedule of site inspections, hold points and related certification of construction works near T1, T2 and T10.

c) The Tree Protection Plan is to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate.

d) Tree protection measures identified on the plan are to be in place prior to commencement of works.

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

27. **Amended Landscape Plan**

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

The Amended Landscape Plans shall be in accordance with the landscape concepts prepared



by Gartner Trovato Architects on drawing numbers DA-04 Ground Floor Plan, DA-05 Level 1 Plan, DA-06 Level 2 Plan, and DA-07 Level 3 Plan, except where modified by conditions, and shall demonstrate the following:

- o Proposed surface treatments and materials, including but not limited to structures, features, walling, pavements, planters, on slab and at grade gardens, drainage and irrigation,
- o Location, height and materiality of proposed walling and planters,
- o Irrigation for all on slab planters,
- o Layout of planting scheme including species selection, quantities and pot sizes, with the following to be detailed on the drawings:

i) Four (4) Eumundi Quandong trees to be planted as shown on the plans, at a container size of 200 litres, with a caliper of 50mm and at least 3 metres in height at installation,

ii) Garden planting along the proposed driveway shall not be taller than 1m at maturity and shall be maintained to ensure growth is limited to such height,

iii) The planting scheme shall utilise long-term planting species to ensure the continued presence of planting, with the use of hardy urban species replacing shrubs and groundcovers as nominated, as follows:

a. Ground Level: Shell Ginger within planters along Waratah Street boundary to be replaced with a suitable long life species, including the following consideration - Rhaps Palm or other selected similar species,

b. Ground Level: White Correa within planters along Bungan Street boundary to be replaced with a suitable long life species, including the following considerations - Acmena or Syzygium 'dwarf varieties', Abelia 'dwarf varieties', Buxus or Metrosideros 'dwarf varieties', or other selected similar species,

c. Level 1: Gristle Fern within planters to be replaced with a suitable long life species, including the following considerations - Birds Nest Fern, or other selected similar species,

d. Level 1: Coast Rosemary and White Alba within planters along Bungan Street to be replaced with a suitable long life species, including the following considerations - Acmena or Syzygium 'dwarf varieties', Abelia 'dwarf varieties', Buxus or Metrosideros 'dwarf varieties', or other selected similar species,

e. All planting within planters on Levels 1, 2, and 3 shall be selected to be easily accessed and maintained by residents / landscape maintenance contractors.

Reason: provide landscape amenity to soften the built form

28. Pre-commencement Dilapidation Report

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



Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

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

29. **Compliance with Standards**

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

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

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites**
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 - 2009* Design for access and mobility - General requirements for access – New building work**
- (m) AS 1428.2 - 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

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

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

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

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

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

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



31. **Construction Traffic Management Plan**

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

The CTMP must address following:-

- The proposed phases of construction works on the site, and the expected duration of each construction phase;
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored on site, at all times;
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.

For use when near a school zone

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



appropriately qualified and practising Structural Engineer, or equivalent;

- Proposed protection for Council and adjoining properties;
- The location and operation of any on site crane; and

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

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

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner’s property rights and protects amenity in the locality, without unreasonable inconvenience to the community. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site. (DACTRCPC1)

32. **On-street Work Zone**

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

33. **Public Liability Insurance - Works on Public Land**

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

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

34. **Tree removal within the Property**

The following trees within the property are approved for removal:

- Group 3: Brush Cherry (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building)
- Tree 4: Willow Bottlebrush (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building)
- Tree 5: Bottlebrush (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building)
- Group 6: Group of Brush Cherry shrubs
- Tree 7: Willow Bottlebrush (exempt under Pittwater DCP 21 due to location within 2m



- from an approved existing building)
- Tree 8: Willow Bottlebrush (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building and less than 5m in height)
- Tree 11: Paperbark (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building)
- Tree 12: White Sallow Willow (exempt under Pittwater DCP 21 due to height less than 5m)

35. **Demolition Traffic Management Plan**

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

The DTMP must:-

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

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

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

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



flow and parking) and pedestrian amenity adjacent to the site. (DACTRDPC1)

36. **Work Zones and Permits**

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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

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

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

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

38. **Demolition Works - Asbestos**

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

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

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

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

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

39. **Property Boundary Levels**

The property boundary levels shall match the existing levels except where modified for the



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

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

40. **Stormwater Connection**

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

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

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

41. **Civil Works Supervision**

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

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

42. **Footpath Construction**

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

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

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

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

43. **Notification of Inspections**

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

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

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



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

44. **Traffic Control During Road Works**

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

Reason: Public Safety

45. **Vehicle Crossings**

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

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

Reason: To facilitate suitable vehicular access to private property.

46. **Maintenance of Road Reserve**

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

Reason: Public Safety.

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

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

Reason: To ensure private and public safety

48. **Cleaning of Vehicles Leaving Site**

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

Reason: To reduce sediment being taken offsite

49. **Noise and Vibration**

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

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



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

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

Reason: To ensure private and public safety

51. **Kerb and Gutter Construction**

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

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

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

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

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

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

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

53. **Dust**

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

Measures may include but not be limited to :

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

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



54. **Tree and vegetation protection**

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

i) all trees and vegetation located on adjoining properties, including T2, and T9,

ii) all road reserve trees and vegetation, including T1 (Waratah Street), and T10 (Bungan Street).

b) Tree protection shall be generally undertaken as follows:

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

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

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

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

v) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,

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

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

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

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

x) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken



using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,

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

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

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

55. Existing Pavers within the road reserve footpath

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

56. Project Arborist

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

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

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

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

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



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

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

57. Implementation of Construction Traffic Management Plan.

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

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

58. Implementation of Demolition Traffic Management Plan.

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

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

59. Installation and Maintenance of Sediment and Erosion Control

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

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment



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

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

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

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

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

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

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

62. **Landscape works**

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

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

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

63. **Condition of retained vegetation**

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

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



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

64. **Stormwater Disposal**

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

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

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

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

Reason: To create encumbrances on the land.

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

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

Reason: To identify encumbrances on land.

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

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

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

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

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

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



Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

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

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

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

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

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

70. **Works as Executed Drawings - Stormwater Treatment Measures**

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

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

Reason: Protection of the receiving environment

71. **Post-Construction Dilapidation Report**

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

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

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

73. **Environmental Reports Certification**



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

- (a) Access Report Ref 109775 - Access -r1 dated 6 June 2019 prepared by BCA Logic Access
- (b) Noise Assessment Report Ref 18287 Version A dated July 2019 prepared by BCA Logic Access
- (c) BCA Assessment Report Ref 109775- BCA -r1 - dated 6 June 2019 prepared by BCA Logic Access
- (d) Arboricultural Impact Assessment dated June 2019, prepared by Urban Forestry Australia.
- (e) (Nathers Report 0003995920, dated 2 July 2019, prepared by NatHERS and BASIX Solutions
- (f) Traffic Report Ref 18051 dated 27 June 2019 prepared by Terraffic Pty Ltd
- (g) Geotechnical Report Ref 2018-132 dated June 2019 prepared by Crozier Geotechnical Consultants.
- (h) BASIX Certificate no 1026565M dated 3 July 2019 prepared by Gartner Travato Architects

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

Reason: To ensure compliance with standards.

74. Prior to occupation certificate - Food premises

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

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

75. Noise Assessment

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

Reason: To manage noise from use of the development.

76. Garbage and Recycling Facilities

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

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

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

77. House / Building Number

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

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



Reason: Proper identification of buildings.

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

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

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

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

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

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

Reason: To ensure consistent numbering for emergency services access.

79. **Sydney Water**

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

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

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

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

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

80. **Fire Safety Matters**

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

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



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

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

81. **Basement Garage Traffic Signal System**

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

The signal system must;

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

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

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

82. **Shared Zone Bollard**

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

Reason: To ensure compliance with Australian Standards (DACTRFPOC2)

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

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

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

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

84. **Waste/Recycling Compliance Documentation**

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

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

85. **Positive Covenant for Waste Services**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to



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

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

86. Authorisation of Legal Documentation Required for Waste Services

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

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

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

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

87. Landscape Maintenance

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

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

88. Maintenance of Stormwater Treatment Measures

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

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

Reason: Protection of the receiving environment

89. Commercial Waste and Recycling Storage

Commercial waste and recycling material/storage bins must be stored in a separate area to the



residential waste and recycling material/storage bins as shown on the approved plans.

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

90. **Commercial Waste Collection**

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

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

91. **Landscaping adjoining vehicular access**

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

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

92. **Sight lines within carparks.**

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

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

3.0 DEVELOPMENT APPLICATIONS

3.1 DA2019/0748 - 19 BUNGAN STREET, MONA VALE - DEMOLITION OF ALL EXISTING STRUCTURES AND THE CONSTRUCTION OF A FOUR STOREY SHOP TOP HOUSING DEVELOPMENT OVER BASEMENT CAR PARKING

PROCEEDINGS IN BRIEF

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

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

The Panel viewed the site and its surrounds. At the public meeting which followed the Panel was addressed by two representatives of the applicant.

At the public hearing a representative of the applicant advised that the applicant had no objection to a condition providing for a public right of footway over the strip of land between Bungan Street and 24 Waratah Street, Mona Vale.

On the morning of the public meeting the Panel was advised that a petrol service station was formerly on the site. The Panel had not been provided with the report required by clause 7 of SEPP 55 – Remediation of Land specifying the findings of a preliminary investigation of the land carried out in accordance with the contaminated land planning guidelines. In those circumstances the Panel is prohibited from giving consent to the carrying out of the proposed development by clause 7. At the public hearing the applicant's representative requested that the matter be deferred for consideration by the Panel in the New Year. It was subsequently ascertained that the petrol service station was the subject of a development approval in 1965. In these exceptional circumstances the Panel made the decision set out below.

DECISION ON DEVELOPMENT APPLICATION

The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **defers** Application No. DA2019/0748 for demolition of all existing structures and the construction of a four storey shop top housing development over basement car parking at Lot 200 DP 746507, 19 Bungan Street, Mona Vale until the meeting of the Panel on 19 February 2020. In the meantime, the applicant is required to submit the report required by clause 7(2) of SEPP 55 by 31 January 2020.

Vote: 4/0

DEVELOPMENT APPLICATION SUPPLEMENTARY REPORT

Application Number:	DA2019/0748
Land to be developed (Address):	19 Bungan Street, Mona Vale
Proposed Development:	Demolition of all structures and construction of a four storey shop top housing development over basement car parking

Background:

The proposal was presented to the Northern Beaches Local Planning Panel (LPP) on Wednesday 18 December 2019 with a recommendation for approval. Refer to Attachment (1) – the original Assessment Report. The Panel deferred consideration of the Application to the meeting of 19 February 2020 and to require the applicant to submit the report required by clause 7(2) of SEPP 55 to address contamination issues. In addition, conditions were requested to be prepared relating to the requirement for a right of footway over the informal retail arcade and acoustic treatment of the residential units. Refer to Attachment (2) – Minutes of the NBLPP meeting 18 December 2019.

Contamination – SEPP 55

SEPP No. 55 – Remediation of Contaminated Lands establishes State-wide provisions to promote the remediation of contaminated land.

The SEPP states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. The Managing Land Contamination: Planning Guidelines were prepared to assist Councils and Developers in determining when land has been at risk.

Clause 7 of the SEPP requires that:

(1) A consent authority must not consent to the carrying out of any development on land unless

- (a) it has considered whether a site is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

(3) The applicant for development consent must carry out the investigation required by subclause and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.

(4) The land concerned is—

- (a) land that is within an investigation area,*

- (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
- (c) *to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—*
- (i) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
- (ii) *on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

Response

It has been confirmed that a petrol station once existed on the site. Petrol stations are listed in Table 1 of the Contaminated Land Guidelines, as a potentially contaminating land use. As such, the land concerned falls within land specified in subclause 7(4) of SEPP 55. Sub-clause 7(2) of SEPP 55 requires the consent authority to consider the findings of a preliminary site investigation report before the determination of a development that would result in a change of use of land specified in sub-clause 4.

In response to the Clause 7 requirements of the SEPP, the applicant has submitted a report titled "*Preliminary site investigation 19 Bungan Street, Mona Vale*" referenced as E24520_Rev0, prepared by Eiaustralia dated 24 January 2020. The phase one (1) preliminary contamination report has looked at the historic uses of the site, which includes a former service station with five (5) Underground Storage Tanks (UST).

The report recommends. "*Prior to demolition works, a survey of the existing building be completed by a suitably qualified and experienced consultant, to identify any hazardous materials present within the building fabrics.*"

The report also recommends "*a detailed site assessment or phase 2 contamination report to be undertaken post demolition as the area of concern where the former UST were located from the previous development is located beneath the current development*"

Based on the information provided, Council's Environmental Health Unit has considered ways to minimise potential harm on the environment and practically investigate and remove any contaminated material that remain beneath the current building envelope. It is noted that a detailed site investigation cannot be completed until the building has been demolished, therefore in order to address sub-clause 7(3) of SEPP 55, a phase 2 report would be required immediately after the demolition of the structure and before any further work is carried out.

Having reviewed the phase 1 preliminary contamination report submitted by the applicant to satisfy SEPP 55 Council's Environmental Health Unit have confirmed that the subject site will be suitable for shop-top-housing subject to the applicant complying with the following recommended steps:

1. That the site is, sampled for contaminants in accordance with "Guidelines for Consultants Reporting on Contaminated Sites" (NSW), "Contaminated Sites Sampling design Guidelines" EPA (NSW) & "AS4976–2008: The removal and disposal of underground petroleum storage tanks";
2. Any contaminated materials found are to be disposed of to an approved facility and a receipt's of disposal provided.
3. Validation report of the site following disposal of any contaminated materials.

If the Panel are of the mind to approve the development application, Council's Environmental Health Unit have prepared draft conditions, which are contained within the Recommendation of this report, namely conditions 38(a) and 73(i). This includes conditions required for each step of the above process, including the submission of a phase 2 contamination report following demolition of the building and prior to excavation and the submission of a Remediation Action Plan, if required.

Retail arcade as a public right of way

The Panel requested a condition requiring a public right of footpath over the strip of land between Bungan Street and 24 Waratah Street, Mona Vale (the informal retail arcade).

The land in question is contained wholly within the subject site and is currently owned by the applicant. The public right of footway will ensure pedestrian access over the part of the site proposed as a footpath. As such, it is considered to be appropriate to include such a condition. As such, the condition meets the *Newbury Principles* in that it relates to a planning matter and the development and is reasonable. Furthermore, the applicant has no objection to such a condition being imposed.

If the Panel are of mind to approve the development application, an amendment to condition number 65 is recommended.

Acoustic Treatment

In order to ensure that the acoustic amenity of the residential apartments is protected the Panel requested that a condition be imposed requiring the common wall between the bedrooms of one unit and the living rooms or bathrooms of adjoining units are protected.

If the Panel are of mind to approve the development application, an amendment to condition 25 is recommended.

RECOMMENDATION

That the Northern Beaches Local Planning Panel on behalf of the Northern Beaches Council as the consent authority, approve development application DA2019/0748 for Demolition of all existing structures and construction of a four storey shop top housing development over basement car parking on land at Lot 200 DP 746507, 19 Bungan Street, Mona Vale subject to the following amended conditions.

*Note: the amended conditions No 25 (a) (Internal Acoustic Treatment), 38 (a) (Contamination Management), 65 (a) Public Right of Footway and 73(i) Validation of Remediation are in ***bold and italics***:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Cover Sheet DA00	3 July 2019	Gartner Trovato Architects
Site Analysis Plan DA-01 Rev B	17 October 2019	Gartner Trovato Architects
Basement B2 Plan DA-02 Rev C	1 November 2019	Gartner Trovato Architects
Basement B1 Plan DA-03 Rev C	1 November 2019	Gartner Trovato Architects

Ground Floor Plan DA-04 Rev E	27 November 2019	Gartner Trovato Architects
Level 1 Floor Plan DA-05 Rev B	17 October 2019	Gartner Trovato Architects
Level 2 Plan DA-06 Rev B	17 October 2019	Gartner Trovato Architects
Level 3 Plan DA-07 Rev B	17 October 2019	Gartner Trovato Architects
Roof Plan Lower DA-08 Rev B	17 October 2019	Gartner Trovato Architects
Roof Plan Upper DA-09 Rev B	17 October 2019	Gartner Trovato Architects
North and south elevation DA-10 Rev B	17 October 2019	Gartner Trovato Architects
East and west elevation DA-11 Rev B	17 October 2019	Gartner Trovato Architects
Section A DA-12 Rev B	17 October 2019	Gartner Trovato Architects
Section B DA-13 Rev B	17 October 2019	Gartner Trovato Architects
Section C DA-14 Rev B	17 October 2019	Gartner Trovato Architects
Section 1 DA-15 Rev B	17 October 2019	Gartner Trovato Architects
Section 2 DA-16 Rev B	17 October 2019	Gartner Trovato Architects
Schedule of colours and materials DA-23 Rev A	3 July 2019	Gartner Trovato Architects

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

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Report Ref 109775-Access-r1	6 June 2019	BCA Logic Access
Noise Assessment Ref 18287 Version A	July 2019	BCA Logic Access
BCA Assessment Report Ref 109775-BCA-r1	6 June 2019	BCA Logic Access
Arboricultural Impact Assessment	June 2019	Urban Forestry Australia
NatHERS Report 0003995920	2 July 2019	NatHERS nad BASIX Solutions

Traffic and Parking report ref 18051	27 June 2019	Terraffic Pty Ltd
Geotechnical Report Ref 2018-132.1 Issue 1	June 2019	Crozier Geotechnical Consultants

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

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

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

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

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

2. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in

progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement

3. General requirements (Demolition):

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

(b) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling

centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

4. Staff and Contractor Parking

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity (DACTRBOC1)

5. Existing Bus Stop

The location of existing bus stops along the frontage of the site must remain in its current location. Approval of STA is required to relocate Bus Stops. Reason: To ensure certain services are not relocated at any stage during the project.

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$141,141.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$14,114,100.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash

contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

7. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

8. Construction, Excavation and Associated Works Bond (Drainage)

A Bond of \$5,000 as security against any damage to Council's stormwater drainage infrastructure as part of this consent.

Reason: Protection of Council's Infrastructure.

9. Construction, Excavation and Associated Works Bond (Crossing / Kerb)

A Bond of \$30,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

Reason: Protection of Council's Infrastructure.

10. Construction, Excavation and Associated Works Bond (Failure to Remove Waste)

A bond of \$10,000 as security against damage to Council's road(s) fronting the site caused by the transport and disposal of materials and equipment to and from the site.

Reason: Protection of Council's Infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

11. Public Domain Plan

A Public Domain Plan shall be submitted to the Certifying Authority, with sufficient detail design information including the following:

- Alignment levels showing existing and proposed levels for altered driveway crossovers, kerbs and gutters,
- Details of any utility alignment and level changes,
- Finished pavement gradients shall achieve a minimum 2.5% fall from building openings to top of kerb, and match existing levels to adjoining properties,
- The public domain pavement from building to kerb shall be granite paving 'Sesame Green' 600 x 300 x 40mm set onto a 30mm sand cement bed, set onto a 75mm unreinforced concrete slab, and set perpendicular to the kerb and building alignment,
- Tactile ground surface indicators at the pedestrian crossings in accordance with AS1428.4.1,
- Existing utility pit lids are to be altered to paver infill types to accommodate the granite paving 'Sesame Green' 600 x 300 paver,
- Street tree planting in accordance with Northern Beaches Standard Drawing 1300 - Tree Pit Details, Plan and Section, including 4600 x 2200 strata cell system, 1600 x 1400 tree pit opening finished with porous paving sitting on a cast iron perforated grate. The perforated grate shall sit over the strata cell system,
- Two (2) Brushbox street trees to be planted along Bungan Street, in consideration of existing street lighting and utilities, at a container size of 200 litres, with a caliper of 50mm and at least 3 metres in height at installation,
- Two (2) Eumundi Quandong street trees to be planted along Bungan Street, in consideration of existing street lighting and utilities, at a container size of 200 litres, with a caliper of 50mm and at least 3 metres in height at installation,
- Street trees shall include tree guard TG6 'Silva Guard', black in colour, manufactured by Street Furniture Australia,
- Retention of existing street trees T1 along Waratah Street, and T10 along Bungan Street, with nominated tree pit clearances from any slab for paving, including:
 - i) a minimum 5m length along the kerb x 1.5m width unobstructed natural ground area for T10, subject to confirmation by the Project Arborist;
 - ii) a minimum 2.5m length along the kerb x 1.0m width unobstructed natural ground area for T1, both subject to clarification and recommendation by the Project Arborist.

Any work carried out upon public land shall have all the necessary prior approvals and permits from Council in place prior to commencement to conduct such works.

Reason: enhance the public domain amenity

12. On slab landscape planting and associated works

a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided,

b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule,

c) The following soil depths are required to support landscaping as proposed:

- 300mm for lawn
- 600mm for shrubs
- 1m for small trees

d) Design certification shall be submitted to the Certifying Authority by a structural engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: to ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system.

13. Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated 3 June 2019 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

Specific reference is given to the following recommendations:

- An assessment of the water table and the potential for lowering the water table within adjacent Acid Sulfate Soils Class 1 to 4.
- Further geotechnical investigation in at least four locations within the site to provide accurate soil and bedrock strength parameters prior to structural design and construction.
- Confirming of the groundwater conditions at depth below the site by the installation (and potentially monitoring) of groundwater piezometers to confirm the requirement for tanking or dewatering.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

14. Pump-Out System Design for Stormwater Disposal

The design of the pump-out system for Stormwater disposal will be permitted for drainage of hard surfaces areas such as driveways and basement pavement areas only, and must be designed in accordance with AS/NZS 3500. Engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for the discharge of Stormwater from the excavated parts of the site.

15. Submission Roads Act Application for Civil Works in the Public Road

An Application for Works to be approved within Council Roadway, including engineering plans is to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include four (4) copies of Civil Engineering plans for the

design of the kerb and gutter and footpath for the entire frontage of the site, the driveway crossing and the stormwater connections into the existing Council drainage pits fronting the site which are to be generally in accordance with the Development Application, Council's specification for engineering works - AUS-SPEC #1 and Council's Design Guidelines. The plans shall be prepared by a qualified Civil Engineer. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure infrastructure works are in accordance with Council's specifications.

16. Utilities Services

Prior to the issue of the Construction Certificate, evidence is to be submitted to the Certifying Authority that

- (a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
- (b) Evidence that notification has been received from a utility provider, requirements for the development can be provided.

Reason: To ensure that service have been provided as required by this Consent.

17. On-site Stormwater Detention

An On-site Stormwater Detention system must be designed and constructed in accordance with Northern Beaches Council's current PITTWATER DCP21 Clause B5.7 and generally in accordance with the concept drainage plans prepared by Barrenjoey Consulting Engineers, drawing number 190302 SW1DA and SW2DA, dated 07/06/2019.

Detailed drainage plans are to be prepared by a qualified experienced practicing Civil Engineer, with Corporate membership of the Institute of Engineers Australia (M.I.E.) or who is eligible to become a Corporate member and has appropriate experience and competence in the related field.

The drainage plans must address the following:

- i) A second access pit to the detention tank
- ii) Services plan for the outlet pipes in the road reserve

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's requirements, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of storm water and storm water management arising from the development.

18. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
 - (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.
- Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

19. Sub-Soil Seepage

All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line being [INSERT] and is to be carried out in accordance with relevant Australian Standards. (Note: At the time of determination the following (but not limited to) Standards applied:

- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 Plumbing and drainage - Stormwater drainage
- Australian/New Zealand Standard AS/NZS 3500.3 - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.)

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate drainage and Stormwater management on site to protect amenity of residents.

20. Shoring of Adjoining Property

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings.

Council approval is required if temporary ground anchors are to be used within Council land. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

21. Construction Management Program

An application for Traffic Management Plan is to be submitted to Council for approval. The Traffic Management Plan shall be prepared to RMS standard by an appropriately certified person. An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

22. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls
- North point and scale.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

23. **Water Quality Management**

The applicant must install a filtration device (such as a silt arrestor pit with trash screen or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment

24. **Engineering Details**

Civil engineering details of the proposed excavation/landfill are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who has corporate membership of the Institution of Engineers Australia (M.I.E) or who is eligible to become a corporate member and has appropriate experience and competence in the related field.

Reason: To ensure excavation and landfill are completed to an appropriate standard and conducted in a safe manner.

25. **Noise Management -Design**

The recommendations contained in the noise assessment by Wilkinson Murray Pty Ltd Report 18287 relating to design shall be incorporated in plans and specifications prior to the issue of a Construction Certificate.

Reason: To ensure compliant acoustic measures are included in the building design before work commences.

(a) INTERNAL ACOUSTIC TREATMENT OF APARTMENTS

The common walls between the bedrooms of one unit and the living rooms or bathrooms of an adjoining unit are to be constructed to a minimum of 10Rw (sound reduction index) units above the minimum requirement specified in the Building Code of Australia for separating wall construction applicable to this building. Details are to be provided to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To provide for internal acoustic amenity as required under Part 4H of the Apartment Design Guide.

26. **Tree Protection Plan**

In order to protect and enhance trees worthy of retention within the road reserve footpath (T10 Paperbark along Bungan Street and T1 Water Gum along Waratah Street) and within adjoining property (T2 Coast Banksia), the following applies to the development site:

a) A Tree Protection Plan prepared by a AQF Level 5 Arborist with qualifications in arboriculture/horticulture shall be provided, in accordance with AS4970-2009 Protection of trees on development sites, demonstrating as a minimum, the following:

- ❑ Layout of the approved development,
- ❑ Extent of permitted basement,
- ❑ Location of trees including trunk, structural root zone and tree protection zone,
- ❑ Location of tree protection fencing / barriers,
- ❑ General tree protection measures, including ground and trunk protection.

b) A schedule of site inspections, hold points and related certification of construction works near T1, T2 and T10.

c) The Tree Protection Plan is to be submitted to the Certifying Authority for approval prior to issue of a Construction Certificate.

d) Tree protection measures identified on the plan are to be in place prior to commencement of works.

Reason: to ensure compliance with the requirement to retain and protect significant planting on the site.

27. Amended Landscape Plan

Amended Landscape Plans, with sufficient detail design information as listed in the Northern Beaches Council DA Lodgement requirements including hardscape elements layout and details, as well as planting layout and schedules, shall be issued to the Certifying Authority at Construction Certificate stage.

The Amended Landscape Plans shall be in accordance with the landscape concepts prepared by Gartner Trovato Architects on drawing numbers DA-04 Ground Floor Plan, DA-05 Level 1 Plan, DA-06 Level 2 Plan, and DA-07 Level 3 Plan, except where modified by conditions, and shall demonstrate the following:

- Proposed surface treatments and materials, including but not limited to structures, features, walling, pavements, planters, on slab and at grade gardens, drainage and irrigation,
- Location, height and materiality of proposed walling and planters,
- Irrigation for all on slab planters,
- Layout of planting scheme including species selection, quantities and pot sizes, with the following to be detailed on the drawings:
 - i) Four (4) Eumundi Quandong trees to be planted as shown on the plans, at a container size of 200 litres, with a caliper of 50mm and at least 3 metres in height at installation,
 - ii) Garden planting along the proposed driveway shall not be taller than 1m at maturity and shall be maintained to ensure growth is limited to such height,
 - iii) The planting scheme shall utilise long-term planting species to ensure the continued presence of planting, with the use of hardy urban species replacing shrubs and groundcovers as nominated, as follows:

- a. Ground Level: Shell Ginger within planters along Waratah Street boundary to

be replaced with a suitable long life species, including the following consideration
- Rhaps Palm or other selected similar species,

b. Ground Level: White Correa within planters along Bungan Street boundary to be replaced with a suitable long life species, including the following considerations
- Acmena or Syzygium 'dwarf varieties', Abelia 'dwarf varieties', Buxus or Metrosideros 'dwarf varieties', or other selected similar species,

c. Level 1: Gristle Fern within planters to be replaced with a suitable long life species, including the following considerations - Birds Nest Fern, or other selected similar species,

d. Level 1: Coast Rosemary and White Alba within planters along Bungan Street to be replaced with a suitable long life species, including the following considerations - Acmena or Syzygium 'dwarf varieties', Abelia 'dwarf varieties', Buxus or Metrosideros 'dwarf varieties', or other selected similar species,

e. All planting within planters on Levels 1, 2, and 3 shall be selected to be easily accessed and maintained by residents / landscape maintenance contractors.

Reason: provide landscape amenity to soften the built form

28. Pre-commencement Dilapidation Report

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public and private properties and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

Reason: Protection of Council's and Private Party's Infrastructure during construction.

29. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'**
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 - 2009* Design for access and mobility - General requirements for access - New building work**
- (m) AS 1428.2 - 1992*, Design for access and mobility - Enhanced and additional requirements

- Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website [www.hreoc.gov.au/disability rights /buildings/good.htm](http://www.hreoc.gov.au/disability%20rights%20/buildings/good.htm). <www.hreoc.gov.au/disability%20rights%20/buildings/good.htm>

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02).

30. Compliance with standards (Demolition):

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

Reason: To ensure the development is constructed in accordance with appropriate standards.

31. Construction Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Certifying Authority prior to issue of any Construction Certificate.

The CTMP must address following:-

- The proposed phases of construction works on the site, and the expected duration of each construction phase;
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored on site, at all times;
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.

For use when near a school zone

- Specify that, due to the proximity of the site adjacent to Mona Vale Public School, no heavy

vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).

- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
 - The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
 - Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
 - The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
 - Proposed protection for Council and adjoining properties;
 - The location and operation of any on site crane; and

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742

– “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner’s property rights and protects amenity in the locality, without unreasonable inconvenience to the community. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site. (DACTRCPC1)

32. On-street Work Zone

The applicant shall lodge an application for a work zone for the frontage of the site to Council for consideration and approval. The provision of a work zone will require approval from Northern Beaches Local Traffic Committee. Application forms for work zones are available on Council’s website or at the Customer Service section at Council’s administration building. Applications shall be lodged at least 4 weeks prior to work commencing.

Reason: To ensure works vehicles do not impact on parking, traffic flows and pedestrian thoroughfares.(DACTRCPC2)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

33. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

34. Tree removal within the Property

The following trees within the property are approved for removal:

- Group 3: Brush Cherry (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building)
- Tree 4: Willow Bottlebrush (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building)
- Tree 5: Bottlebrush (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building)
- Group 6: Group of Brush Cherry shrubs
- Tree 7: Willow Bottlebrush (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building)
- Tree 8: Willow Bottlebrush (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building and less than 5m in height)
- Tree 11: Paperbark (exempt under Pittwater DCP 21 due to location within 2m from an approved existing building)
- Tree 12: White Sallow Willow (exempt under Pittwater DCP 21 due to height less than 5m).

35. Demolition Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the certifying authority prior to commencing any demolition work.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Specify that, due to the proximity of the site adjacent to Mona Vale Public School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.

- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site. (DACTRDPC1).

36. Work Zones and Permits

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site. Separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane. A Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure works vehicles do not impact on parking, traffic flows and pedestrian thoroughfares. (DACTRDPC2)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

37. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- 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.

38. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and

disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

(a) CONTAMINATION MANAGEMENT

(i) Requirement to Notify about New Contamination Evidence

Any new information revealed during demolition and excavation works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Northern Beaches Council and the Principal Certifying Authority.

Reason: To protect human health and the environment.

(ii) Remedial Action Plan

If the phase 2-contamination report specifies that a Remedial Action Plan is required then a Remediation Action Plan is to be prepared by a suitably qualified Environmental Consultant in accordance with State Environmental Planning Policy No. 55 - Remediation of Land, and with any contaminated land planning guidelines under the Contaminated Land Management Act 1997.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the commencement of any excavation work.

Reason: Protection of the environment, SEPP 55 compliance.

(iii) Detailed phase 2 contamination report prior to any excavation.

A detailed phase 2-contamination report is to be submitted to the Certifying authority and Northern Beaches Council after the demolition of the building and prior to any excavation works being completed.

The phase 2-contamination report is to be completed in accordance with "Guidelines for Consultants Reporting on Contaminated Sites" (NSW), "Contaminated Sites Sampling design Guidelines" EPA (NSW) & "AS4976-2008: The removal and disposal of underground petroleum storage tanks"

The phase 2-contamination report is to recommend if a Remediation Action Plan (RAP) is required to manage the removal of any contamination found.

Reason: Protection of the environment, SEPP 55 compliance.

(iv) Off-site Disposal of Contaminated Soil - Chain of Custody
'Chain of Custody' documentation shall be kept and submitted for any transport of the validated fill material from the subject site at 19 Bungan Street Mona Vale 2103, to an appropriately licenced waste facility. Details demonstrating compliance are to be submitted to the Principal Certifying Authority and Northern Beaches Council within seven (7) days of transport.

Reason: For protection of environment.

39. Property Boundary Levels

The property boundary levels shall match the existing levels except where modified for the vehicular crossing. The applicant shall design and construct having regard for the existing levels. No approval is granted for any change to existing property alignment levels to accommodate the development. Details demonstrating compliance are to be submitted to the Certifying Authority.

Reason: To maintain the existing profile of the nature strip/road reserve.

40. Stormwater Connection

Where connection to Council's nearest stormwater drainage system is required, the applicant shall connect the pipeline in accordance with Council's specification for engineering works and shall reconstruct all affected kerb and gutter, bitumen reinstatements, adjust all vehicular crossings for paths, grass verges and household stormwater connections to suit the kerb and gutter levels. All works shall be undertaken at the applicant's cost, and upon completion certified by an appropriately qualified and practicing Civil Engineer.

Details demonstrating compliance are to be submitted to the Certifying Authority.

Reason: To ensure compliance of drainage works with Council's specification for engineering works.

41. Civil Works Supervision

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practicing Civil Engineer. Details demonstrating compliance are to be submitted to the Certifying Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

42. Footpath Construction

The applicant shall reconstruct the footpath paving full width for the entire frontage of the site. The works shall be in accordance with the following:

- (a) All footpath works are to be constructed in accordance with Council's Specification
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's specification for footpath.

Details demonstrating compliance are to be submitted to the Certifying Authority.

Reason: To ensure compliance of footpath works with Council's specification for engineering works.

43. Notification of Inspections

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of stormwater gully pits
- (d) Prior to pouring of kerb and gutter, footpath and driveway crossing
- (e) Subgrade level / basecourse level / subbase
- (f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification

Reason: To ensure new Council infrastructure is constructed to Council's requirements.

44. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

45. Vehicle Crossings

The provision of one vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 Normal and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority:

Reason: To facilitate suitable vehicular access to private property.

46. Maintenance of Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

47. Safety Fencing of Excavation and/or demolition

The site must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.

Reason: To ensure private and public safety.

48. Cleaning of Vehicles Leaving Site

Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.

Reason: To reduce sediment being taken offsite.

49. Noise and Vibration

The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations

Reason: To ensure the amenity of the surrounding area for residents.

50. Protection of Adjoining Property - Excavation

Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.

Reason: To ensure private and public safety

51. Kerb and Gutter Construction

Kerb and gutter is to be constructed along the entire frontage of the site in accordance with Northern Beaches Council Drawing No. A4 2276/A.

Reason: To facilitate the preservation of on street parking spaces.

52. Community consultation before work commences and during works.

Before demolition, excavation and rock cutting commences, a meeting (community consultation) or letter of advice to or with likely affected neighbours and businesses, by the builder/applicant shall be carried out. This is to include the intended schedule of works and noise reduction measures.

An (email or phone) electronic notification system for neighbours/businesses at least 24 hours in advance of the noisiest work times (and likewise any no work days) be provided so they have the opportunity where possible of not being present/open or managing noise impacts during these processes.

That neighbours/businesses are to be supplied with a phone number for any enquiries or complaints. A record of all calls to this number must be maintained including the concerns raised and any action taken by owner/builder.

Reason: To minimise the disturbance to the amenity of neighbours and business and reduce complaints to Authorities.

53. Dust

Dust control measures including best practice, and in accordance with NSW Workplace Health and Safety Regulations and the Protection of the Environment Operations Act 1997, shall be implemented to minimise dust to neighbouring residents and businesses and ensure any airborne substance is kept within the boundaries of the site

Measures may include but not be limited to :

- Water sprays
- Bunker storage
- Limiting size of stockpiles and covering stock piles
- Vertical barriers eg fencing with fine mesh attached
- Exhaust and capture

Reason: To minimise dust to neighbouring residents and businesses and avoid air pollution.

54. Tree and vegetation protection

a) Existing trees and vegetation shall be retained and protected in accordance with the approved Tree Protection Plan, the Arboricultural Impact Assessment prepared by Urban Forestry dated June 2019, and AS 4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures, and as follows:

- i) all trees and vegetation located on adjoining properties, including T2, and T9,
- ii) all road reserve trees and vegetation, including T1 (Waratah Street), and T10 (Bungan Street).

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
 - iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,
 - iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
 - v) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 Project Arborist on site,
 - vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
 - viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, including advice on rootprotection measures,
 - ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - x) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works, is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009,
 - xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.
 - c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree.
- Reason: to retain and protect significant planting on development and adjoining sites.

55. Existing Pavers within the road reserve footpath

The existing unit pavers to be removed as part of the new public domain works within the footpaths shall be salvaged, collected and delivered to Council's nominated Depot for re-use by Council. Please contact Parks Operations department for delivery instructions.

56. Project Arborist

a) A Project Arborist with a minimum AQF Level 5 qualification in arboriculture/horticulture is to be appointed prior to commencement of works,

b) The Project Arborist is to oversee all activity including excavation and construction adjacent to the following trees to be protected: T10 Paperbark along Bungan Street, T1 Water Gum along

Waratah Street, and T2 Coast Banksia within adjoining property. The Project Arborist shall supervise and certify all recommendations of the Tree Protection Plan, and certify that the works comply with AS 4970-2009 Protection of trees on development sites,

c) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent,

The Project Arborist is to recommend tree protection measures such as tree fencing, trunk protection and ground protection, and supervise all excavation and construction works near all trees, including recommending the construction methods near the existing trees to protect tree roots, trunks, branches and canopy.

Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

The Project Arborist shall provide certification to the Certifying Authority prior to Occupation that all works recommended in the Tree Protection Plan, and any subsequent on-site directions have been satisfied.

Reason: to ensure the protection of the existing landscape amenity.

57. Implementation of Construction Traffic Management Plan.

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: to ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.
(DACTREDW1)

58. Implementation of Demolition Traffic Management Plan.

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project
(DACTREDW2)

59. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment

60. Waste/Recycling Requirements (Waste Plan Submitted)

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan titled [INSERT] and dated [INSERT].

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

61. Waste/Recycling Requirements (Materials)

During demolition and/or construction the following materials are to be separated for recycling – timber – bricks – tiles – plasterboard – metal – concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible. (DACWTE02)

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

62. Landscape works

Landscape is to be implemented in accordance with the approved Amended Landscape Plans.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the amended landscape plans, and any relevant condition of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity.

63. Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with AQZ Level

5 qualifications in arboriculture/horticulture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- i) compliance to any Arborist recommendations for tree protection and excavation works,
- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: to retain and protect significant planting on development sites.

64. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

65. Authorisation of Legal Documentation Required for Onsite Detention

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

(a) PUBLIC RIGHT OF FOOTWAY

A Right of Footway, for pedestrian access only, under the provisions of Section 88B of the Conveyancing Act is to be created over the area of land (the informal retail arcade) measuring 3.3m x 40m between Bungan Street and the eastern boundary of 24 Waratah Street, Mona Vale.

The Section 88B instrument shall be accompanied by a survey plan detailing the location of the right of way and endorsed by Northern Beaches Council prior to the issue of the Interim/Occupation Certificate.

Reason: To ensure adequate space for public thoroughfare.

66. Registration of Encumbrances for On-site Stormwater Detention

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

67. On-Site Stormwater Detention Compliance Certification

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure stormwater disposal is constructed to Council's satisfaction.

68. Positive Covenant for the Maintenance of Stormwater Pump-out Facilities

A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the property title to ensure the on-going maintenance of the stormwater pump-out facilities on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

69. Positive Covenant and Restriction as to User for On-site Stormwater Detention

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services.

Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure the on-site detention and/or pump system is maintained to an appropriate operational standard.

70. Works as Executed Drawings - Stormwater Treatment Measures

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council

Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment

71. Post-Construction Dilapidation Report

The applicant must prepare and submit a post-construction dilapidation report. The report must clearly detail the final condition of all property, infrastructure, natural and man-made features that were originally recorded in the pre-commencement dilapidation report. A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties

Reason: To ensure security against possible damage to Council and private property.

72. Geotechnical Certification Prior to Occupation Certificate

Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy is to be completed and submitted to the Principal Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

73. Environmental Reports Certification

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

- (a) Access Report Ref 109775 - Access -r1 dated 6 June 2019 prepared by BCA Logic Access
- (b) Noise Assessment Report REf 18287 Version A dated July 2019 prepared by BCA Logic Access

- (c) BCA Assessment Report Ref 109775- BCA -r1 - dated 6 June 2019 prepared by BCA Logic Access
- (d) Arboricultural Impact Assessment dated June 2019, prepared by Urban Forestry Australia.
- (e) (Nathers Report 0003995920, dated 2 July 2019, prepared by NatHERS and BASIX Solutions
- (f) Traffic Report Ref 18051 dated 27 June 2019 prepared by Terraffic Pty Ltd
- (g) Geotechnical Report Ref 2018-132 dated June 2019 prepared by Crozier Geotechnical Consultants.
- (h) BASIX Certificate no 1026565M dated 3 July 2019 prepared by Gartner Travato Architects.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Interim / Final Occupation Certificate.

Reason: To ensure compliance with standards.

(i) VALIDATION OF REMEDIATION

A validation and site monitoring report, is to be prepared in accordance with relevant guidelines issued under the Contaminated Land Management Act 1997 must be submitted to the Council within one month from completion of the remediation work. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure environmental amenity is maintained

74. Prior to occupation certificate - Food premises

Separate Development Applications shall be lodged for Food Premises to ensure compliance with fit-out requirements as well as noise, odour and food business notification implications.

Reason: To ensure any food premises will comply with legislation.

75. Noise Assessment

A final noise assessment shall be carried out prior to occupation to ensure the findings and recommendations by Acoustic Engineers Wilkinson Murray Pty Ltd Report No 18287 have been complied with.

Reason: To manage noise from use of the development.

76. Garbage and Recycling Facilities

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To prevent pollution of the environment and to protect the amenity of the area.
(DACPLF03)

77. House / Building Number

House/building number is to be affixed to the building to be readily visible from the public domain.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: Proper identification of buildings.

78. Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines

(https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

79. Sydney Water

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site

www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure compliance with the statutory requirements of Sydney Water.

80. Fire Safety Matters

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and Fire and Rescue NSW an annual Fire

Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

81. Basement Garage Traffic Signal System

To prevent conflicting vehicle flows on the internal basement garage ramp and avoid vehicles having to reverse up/ down the ramp, a traffic signal system must be installed at each ramp entry, designed to warn drivers about to enter the road of any conflicting vehicle approaching.

The signal system must;

- be clearly visible from ramp entrances,
- is to clearly indicate to an approaching driver, by way of red light or wording, that an opposing vehicle has entered the ramp,
- Incorporate linemarking to delineate traffic flow and nominate waiting bay locations to allow vehicles to overtake another.

Details of the system, including the system operation, components and placement within the development, must be specified by a practising Traffic Engineer. This engineer is to submit a compliance certificate to the Accredited Certifier that the system has been installed and operating as designed, in accordance with the requirements of this condition, prior to the issue of any Occupation Certificate issued for the development.

Reason: To ensure no vehicle conflicts within the basement carpark (DACTRFPOC1)

82. Shared Zone Bollard

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To ensure compliance with Australian Standards (DACTRFPOC2)

83. Waste and Recycling Facilities Certificate of Compliance

The proposal shall be constructed in accordance with Warringah Development Control Plan – Part C9 Waste Management

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided. (DACWTF01)

84. Waste/Recycling Compliance Documentation

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

85. Positive Covenant for Waste Services

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation

Certificate. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

86. Authorisation of Legal Documentation Required for Waste Services

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land. (DACWTF04)

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

87. Landscape Maintenance

A 12 month establishment period shall apply for all new landscaping within the site and within the road reserve. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. All planting must be maintained for the life of the development, or for their safe useful life expectancy. Planting that may die or is approved for removal must be replaced.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

88. Maintenance of Stormwater Treatment Measures

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment

89. Commercial Waste and Recycling Storage

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed. (DACPLG19)

90. Commercial Waste Collection

Waste and recyclable material, generated by this premises, must not be collected between the hours of 9pm and 8am on any day.

Reason: To ensure the acoustic amenity of surrounding properties. (DACPLG24)

91. Landscaping adjoining vehicular access

The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1,140mm

Reason: To maintain unobstructed sight distance for motorists (DACTRGOG1)

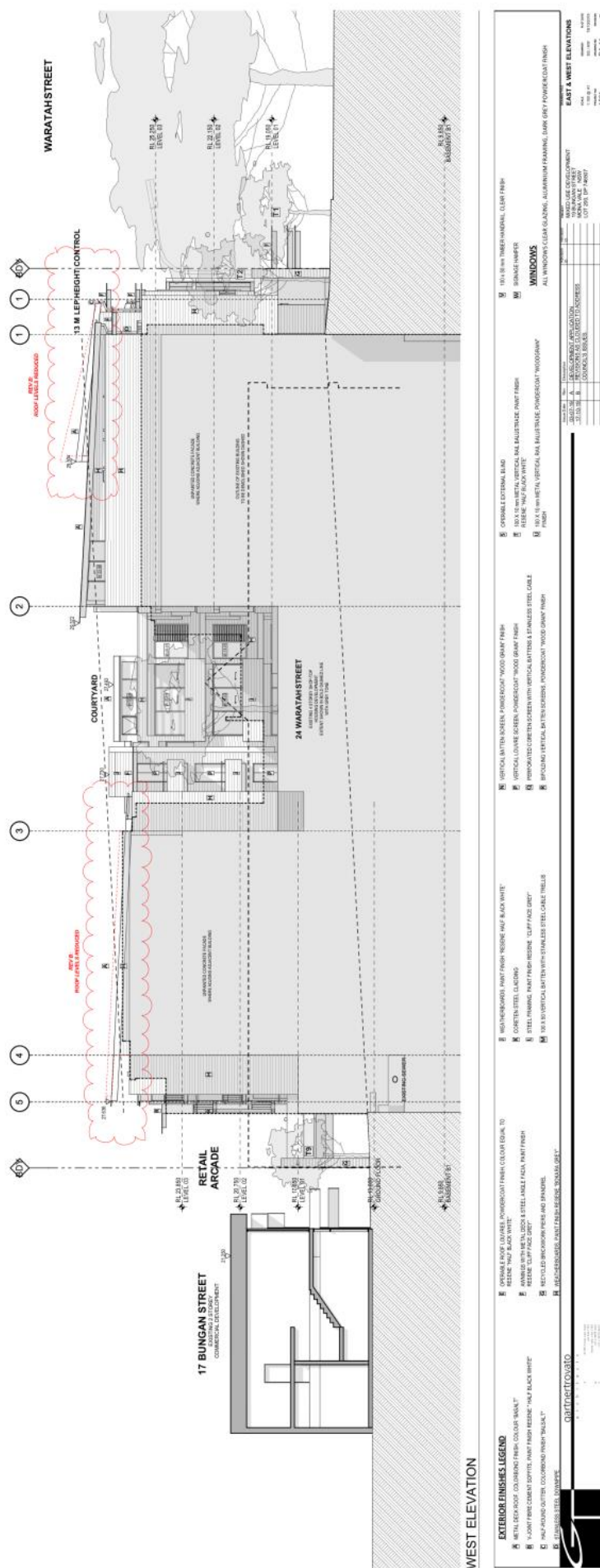
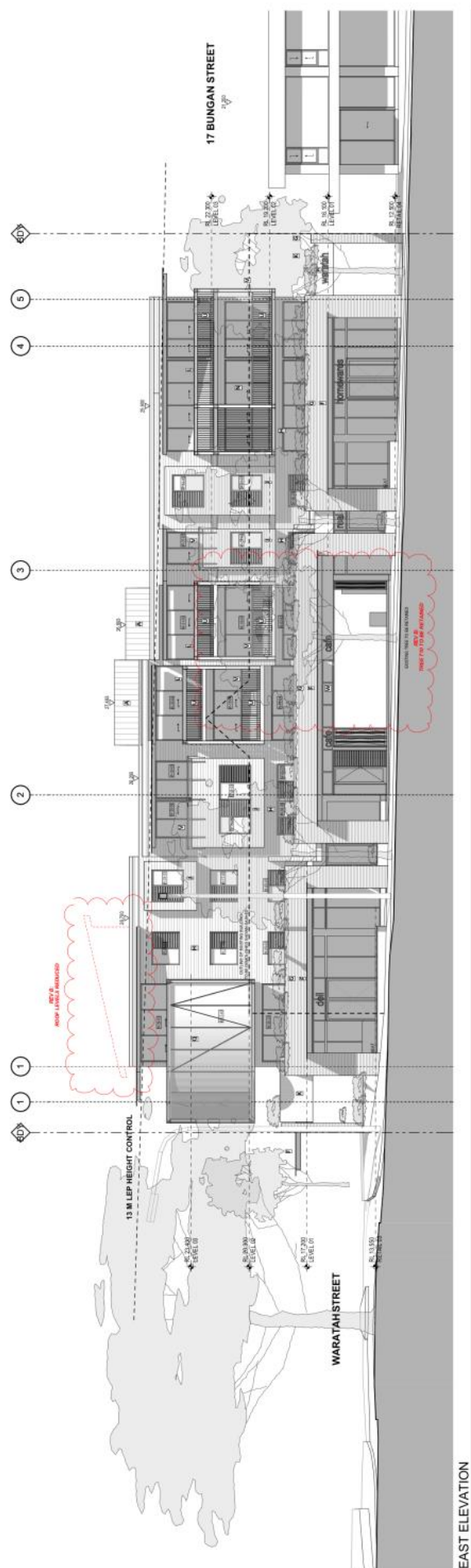
92. Sight lines within carparks.

The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) are not to be obstructed by landscaping or signage.

Reason: To maintain unobstructed sight distance for motorists (DACTRGOG2)



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BostonBlythFleming
Town Planners

8th November 2019

The General Manager
Northern Beaches Council
PO Box 882
Mona Vale NSW 1660

Attention: Ms Anne-Marie Young – Principal Planner

Dear Ms Young,

Development Application DA2019/748
Supplementary Statement of Environmental Effects
Updated Clause 4.6 variation request – Height of buildings
Proposed Shop Top Housing
19 Bungan Street, Mona Vale

This amended clause 4.6 variation request has been prepared having regard to the following amended plans recently submitted to Council:

- DA01 – revised roofs (flat and lowered)
- DA02 – amended car park layout
- DA03 – amended car park layout
- DA04 – ground floor plan, driveway entry shift, garbage revision, foyer
- DA05 – L1 plan, apartment 08 (SE corner) revision, voids to lane
- DA06 – L2 plan, apartment 20 (SE corner) revision, voids to lane
- DA07 – L3 plan, apartment 32 (SE corner) revision, voids to lane
- DA08 – lower roof, apt 29 roof lowered to flat
- DA09 – upper roof, apt 26 roof lowered
- DA10 – elevations, roofs lowered 300mm to north façade (lane) – voluntary, roofs lowered to south façade as requested
- DA11 – elevations, roofs lowered to east façade (Bungan st) at corner as requested and reduced to lane

Clause 4.6 Claim for Variation – Height of buildings

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Pursuant to clause 4.3 of the PLEP the maximum height of development on the site is 13 metres. The stated objectives of this standard are as follows:

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) *to minimise any overshadowing of neighbouring properties,*
- (d) *to allow for the reasonable sharing of views,*
- (e) *to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Building height is defined as follows:

building height (or ***height of building***) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Whilst the majority of the development sits comfortably below the height control the north facing clerestory window elements and centrally located lift overruns breach the standard by up to 2 metres or 15.38% with the breaching elements depicted in Figure 1 over page.



Figure 1 – Height blanket diagram showing areas of the development breaching the 13 metre height standard

Clause 4.6 of PLEP provides a mechanism by which a development standard can be varied. The objectives of this clause are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Pursuant to clause 4.6(2) consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This Clause applies to the Clause 4.3 Height of Buildings Development Standard. Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4) states consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Zone and Zone Objectives

The subject property is zoned B4 Mixed Use pursuant to the provisions of Pittwater Local Environmental Plan 2014 (PLEP 2014). The developments performance when assessed against the objectives of the zone is as follow:

- *To provide a mixture of compatible land uses.*

Response: The proposed shop top housing development is permissible in the zone and contains ground level retail and upper level residential uses which are compatible with each other and compatible with the balance of uses permissible in the zone. The proposal is consistent with this objective.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

Response: The proposed shop top housing development is located within the Mona Vale Town centre and within short walking distance of the B-Line bus stops. The proposal accommodates the required quantum of bicycle spaces. The proposal is consistent with this objective.

- *To strengthen the role of Mona Vale as a centre of employment in Pittwater.*

Response: The proposal provides 9 retail tenancies which will collectively strengthen the role of Mona Vale as centre of employment. The proposal is consistent with this objective.

- *To provide healthy, attractive, vibrant and safe mixed use areas.*

Response: The development is of exceptional design quality and will contribute to a healthy, attractive, vibrant and safe mixed use area. The proposal is consistent with this objective.

- *To provide an active day and evening economy.*

Response: The proposal provides 9 retail tenancies which activate both street frontages and the northern arcade between Bungan Street and Akuna Lane. The proposal is consistent with this objective.

- *To provide for residential uses above ground level, where they are compatible with the characteristics and uses of the site and its surroundings.*

Response: The proposed shop top housing development is permissible in the zone and contains ground level retail and upper level residential uses which are compatible with each other and compatible with the balance of uses permissible in the zone. The proposal is consistent with this objective.

- *To encourage retail vitality and provide a high level of amenity for pedestrians and cyclists.*

Response: The project architect has responded to the client brief to design a contextually responsive building of exceptional quality. The design aims to contribute to the village atmosphere of the Mona Vale town centre by orienting entrances, shops and the apartments towards the public domain. This is augmented with the use of day beds, balconies, planter-boxes and various screen devices to create "habitable" facades and to create a fine-grained scale reminiscent of a traditional village. High quality street trees and landscaping are proposed through-out, including a centralised landscaped courtyard, with through site pedestrian permeability enhanced through the retention and visual augmentation of the existing publicly accessible arcade traversing the northern boundary of the property and which provides a link between Bungan Street and Akuna Lane. The development encourages retail vitality and provides a high level of amenity for pedestrians and cyclists. The proposal is consistent with this objective.

Accordingly, the proposal is permissible with consent in the zone and consistent with the zone objectives as outlined.

Building Height Objectives

The standard and associated objectives have previously been identified. Having regard to these objectives, and the considerations in Wehbe, strict compliance with the development standard is both unreasonable and unnecessary in this instance for the following reasons:

- (a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Response: The desired future character of the Mona Vale Locality, as it relates to the town centre, is identified as follows:

The Mona Vale locality will contain a mix of residential, retail, commercial, industrial, recreational, community, and educational land uses.

.....

Retail, commercial and light industrial land uses will be employment-generating. The Mona Vale commercial centre status will be enhanced to provide a one-stop convenient centre for medical services, retail and commerce, exploiting the crossroads to its fullest advantage and ensuring its growth and prosperity as an economic hub of sub-regional status. The permissible building height limit is increased to promote economic growth within the centre. The Mona Vale Hospital, as a regional facility servicing the Peninsula, is an essential part of the future local economy.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

The design, scale and treatment of future development within the Mona Vale commercial centre will reflect principles of good urban design. Landscaping will be incorporated into building design. Outdoor cafe seating will be encouraged.

.....

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. Improved public transport, pedestrian accessibility and amenity, carparking and an efficient surrounding local network will support the commercial centre, moving people in and out of the locality in the most efficient manner. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Response: The areas of the development breaching the 13 metre height of buildings standard will not compromise the developments performance when assessed against the desired future character statement.

The project architect has responded to the client brief to design a contextually responsive building of exceptional quality which takes advantage of the sites superior locational attributes whilst providing high levels of amenity for future occupants. The design aims to contribute to the village atmosphere of the Mona Vale town centre by orienting entrances, shops and the apartments towards the public domain. This is augmented with the use of day beds, balconies, planter-boxes and various screen devices to create “habitable” facades and to create a fine-grained scale reminiscent of a traditional village. High quality street trees and landscaping are proposed through-out, including a centralised landscaped courtyard, with through site pedestrian permeability enhanced through the retention and visual augmentation of the existing publicly accessible arcade traversing the northern boundary of the property and which provides a link between Bungan Street and Akuna Lane.

We have formed the considered opinion that the building, by virtue of its height and scale, is consistent with the desired character of the locality and therefore consistent with objective (a) as outlined.

- (b) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Response: The scheme has been developed through detailed site and contextual analysis to identify the constraints and opportunities associated with the development of this prominent corner site having regard to the height, scale, proximity and orientation of adjoining development including the shop top housing development at No. 24 Waratah Street. Particular attention has been given to the minutes arising from formal pre-DA discussions with Council ensuring that the development responds to its immediate built form context and the form of development anticipated within the Mona Vale Town Centre which is slowly undergoing built form regeneration.

The height and scale of the development is compatible with that established at No.24 Waratah Street and entirely consistent with the 4 storey shop top housing development at northern end of the street block (No. 3 - 5 Bungan Street). We consider this development to reflect the desired future built form character within the street block.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council [2005] NSW LEC 191 we have formed the considered opinion that most observers would not find the proposed development, by virtue of its height or scale offensive, jarring or unsympathetic having regard to the existing and desired future built form characteristics of development within the sites visual catchment. The proposal is consistent with this objective.

- (c) *to minimise any overshadowing of neighbouring properties,*

Response: The accompanying shadow diagrams (DA-17(A)) as depicted over page, demonstrate that the non-compliant building height elements will not cast shadow onto any adjoining residential property between 9am and 3pm on 21st June. Shadowing impacts have been minimised in accordance with this objective.

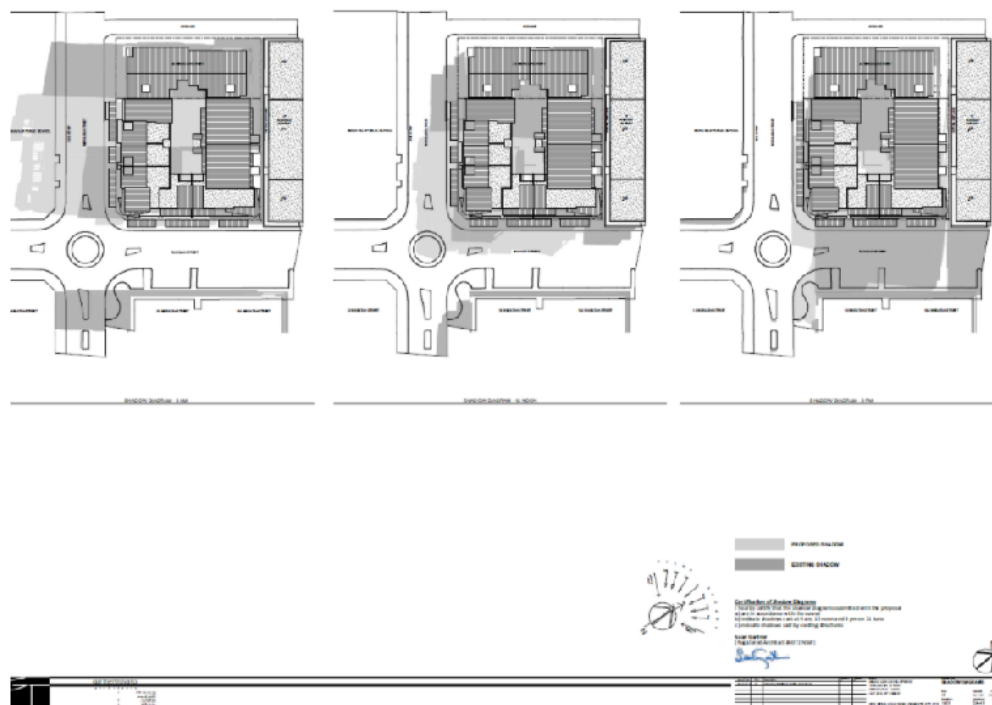


Figure 2 – Shadow diagrams

(d) *to allow for the reasonable sharing of views,*

Response: Having inspected the site and its surrounds to identify available view corridors we have formed the considered opinion that the building height breaching elements will not give rise to any unacceptable public or private view affection. The proposal is consistent with this objective.

(e) *to encourage buildings that are designed to respond sensitively to the natural topography,*

Response: Excavation is limited to the extent necessary to accommodate the basement level carparking. The floor plates have been stepped to respond sensitively to the natural topography. The proposal is consistent with this objective.

(f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Response: The building height breaching elements will not give rise to any heritage related impacts nor give rise to any adverse visual impacts on the natural environment. The proposal is consistent with this objective.

The consent authority can be satisfied that the proposal is consistent with the objectives of the height of building standard and accordingly strict compliance is both unreasonable and unnecessary in this instance.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

In this regard, it is considered that there are sufficient environmental planning grounds to justify the variation sought namely the topography of the land which makes strict compliance with the 13 metre/ 4 storey height standard difficult to achieve and the superior amenity afforded through the provision of north facing clerestory windows which enable sunlight penetration deep into the upper level apartments. A better planning outcome is achieved as a consequence of the variations sought namely enhanced amenity.

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 the enhanced amenity afforded by the breaching north facing clerestory windows is consistent with objective 1.3(g) of the Act in that the variation promotes good design and amenity of the built environment. The proposed development will be in the public interest because it is consistent with the objectives of the height development standard and the objectives of the B4 Mixed Use zone.

Conclusions

Having regard to the clause 4.6 variation provisions of the PLEP, we have formed the opinion:

- a) That the contextually responsive development is consistent with the zone objectives, and
- b) that the contextually responsive development is consistent with the objectives of the building height standard, and

- c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- d) that having regard to (a), (b) and (c) above that compliance with the building height development standard is unreasonable or unnecessary in the circumstances of the case, and
- e) that given the developments compliance with the zone and building height standard objectives that approval would not be antipathetic to the public interest, and
- f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a building height variation in this instance.

Please do not hesitate to contact me to discuss any aspect of this submission.

Yours sincerely

Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director