

AGENDA

NORTHERN BEACHES LOCAL PLANNING PANEL MEETING

Notice is hereby given that a meeting of the Northern Beaches Local Planning Panel will be held via teleconference on

WEDNESDAY 1 APRIL 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
Brian Kirk	Town Planner
Robert Hussey	Town Planner
Peter Cotton	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 1 April 2020
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 18 MARCH 2020

RECOMMENDATION

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 18 March 2020 were adopted by the Chairperson and have been posted on Council's website.

3.0 DEVELOPMENT APPLICATIONS

ITEM 3.1 **DA2019/0512 - 19-23 THE CORSO, MANLY - ALTERATIONS
AND ADDITIONS TO AN EXISTING SHOP TOP HOUSING
DEVELOPMENT**

AUTHORISING MANAGER RODNEY PIGGOTT

TRIM FILE REF **2020/173153**

ATTACHMENTS	
1	Assessment Report
2	Site Plan and Elevations
3	Clause 4.6 - Floor Space Ratio
4	Clause 4.6 - Height of Building

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority vary the Height of Building 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 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. DA2019/0512 for alterations and additions to an existing Shop Top Housing Development at Lot CP SP 12989, 19-23 The Corso, Manly subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0512
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot CP SP 12989, 19 - 23 The Corso MANLY NSW 2095
Proposed Development:	Alterations and Additions to an existing Shop Top Housing Development
Zoning:	Manly LEP2013 - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 12989
Applicant:	Hilrok Properties Pty Ltd
Application Lodged:	23/05/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/06/2019 to 15/06/2019
Advertised:	01/06/2019
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 48-60% 4.4 Floor space ratio: 7.3%
Recommendation:	Approval
Estimated Cost of Works:	\$ 4,793,973.00

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application DA2019/0512 for alterations and additions to an existing shop top housing development at 19-23 The Corso, Manly. As the proposal is four storeys in height and is subject to the *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* and seeks variations to development standards of greater than 10%, the application is referred to the Northern Beaches Local Planning Panel (NBLPP) for review and determination.

The proposed development is not compliant with the height of building and floor space ratio development standards of the MLEP 2013, with Schedule 3 Parking and Access of the MDCP 2013, and with several clauses of the Apartment Design Guide (ADG), though these elements are directly

resulting from the existing building, which is largely retained. The height of building variation results from an extension of the existing upper storey towards Market Lane. The floor space ratio variation also results from the extension of the existing upper storey to accommodate the new unit. These non-compliances are minor in nature, and are supported on merit. The proposed development is otherwise compliant with applicable planning controls. The proposed development received no submissions.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing shop top housing development, including:

- Reconfiguration of the existing ground floor;
- Alteration to first, second and third floor residential units;
- Construction of one additional third floor residential unit with terrace;
- Reconfiguration of services and circulation (stairs and lift);
- Changes to windows and doors on The Corso and Market Lane frontages; and
- New roof.

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 Development Control Plan - 3.2 Heritage Considerations
Manly Development Control Plan - 4.2.1 FSR (Consideration of Exceptions including Arcades)
Manly Development Control Plan - 4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)
Manly Development Control Plan - 4.2.4 Car parking, Vehicular Access and Loading Controls for all

LEP Business Zones including B6 Enterprise Corridor
Manly Development Control Plan - 4.2.5.4 Car Parking and Access

SITE DESCRIPTION

Property Description:	Lot CP SP 12989 , 19 - 23 The Corso MANLY NSW 2095
Detailed Site Description:	The Assessing Officer carried out a site visit on 17 July 2019. The subject site consists of one (1) allotment located on the north-western side of The Corso, Manly. The site is regular in shape with frontages of 16.835m along The Corso and 16.76m along Market Lane, and a depth of 31.2m. The site has an area of approximately 524m². The site is located within the B2 Local Centre zone and accommodates shop top housing development and a pub. The subject site forms part of heritage-listed Item 106 Group of Commercial Buildings, and is within the Town Centre Conservation Area. The site is level and does not contain vegetation. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by mixed use and commercial premises.

Map:



SITE HISTORY

The land has been used for commercial and residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- Pre-lodgement Meeting PLM2018/0134 was held on 26 June 2018 to discuss Alterations and Additions to existing building.
- DA2019/0574 for Change of use to a pub, alterations and additions to the premises, fitout and signage was approved on 3 October 2019 under staff delegation.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Mainly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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. 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. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been

Section 4.15 Matters for Consideration'	Comments
	addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This 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 Manly Development Control Plan 2013 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 have been received in relation to this application.
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 respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below. Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.
Environmental Health (Industrial)	General Comments Significant alterations and additions to the existing building have been assessed acoustically by Acoustic Logic in their report dated 30.4.2019 Project 20190376.1. The main issue being noise from many external sources to occupiers. Design recommendations have been made but mechanical ventilation and other site generated noise needs to be assessed following equipment selection. Noise and vibration from the lift is not mentioned but can be conditioned. Recommendation APPROVAL - subject to conditions
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
Strategic and Place Planning (Heritage Officer)	It is somewhat unclear what exactly is the proposal, as the submitted plans and elevations are marked "preliminary" and dated "05/09/2019" (sic!). In any case, further to review of the available documents: The subject site is a heritage item, being part of the group of The Corso buildings, collectively listed as one item, and it is in the town Centre conservation area. The site is well visible from: - The Corso, not only in direct 90 degree views, but also under various angles, from a distance, - from Market Lane and - from the Market Lane Carpark. Main issues can broadly be divided into heritage design issues, and issues implied by relation to other matters. These are: Heritage design: - The design of the proposed addition is in stark contrast with the original building. This contradicts council's objectives for heritage

Internal Referral Body	Comments
	conservation, as it will impact on ability of the item to interpret historical themes, when viewed from both The Corso and the carpark. Due to its visual prominence, it may create a council-wide precedent for an undesirable approach. Advice of Council's urban designer is also agreed with, as it directly accords with heritage advice. The issues are materials, bulk, disposition of masses, forms, to mention but a few. Applicants are referred to applicable DCPs for details. - Structural changes implied by the proposal are numerous. It is noted that this is not engineering concern. However, structural/heritage impact of the proposed new floor and the lift shaft are not addressed in available documents. It is reasonable to assume that additional new weight will require new load bearing elements, that lift shaft will require structural changes, and these will in turn require new penetrations and damage to historical fabric. Implied impacts: - BCA: As per input from Council specialists, "provided BCA report is not adequate". The outstanding matters include (but are not limited to) door width, access/egress, fire protection, disabled access, facilities, etc. Each of these aspects will require changes to heritage fabric. Therefore it should be detailed, and may not be supported. - Geotech: As per submitted report, it is "advisable to assume that continuous underpinning works will be required for the full section of the excavation." Some questions are not resolved in the report, e.g. footing design. It is therefore necessary to provide additional documentation to demonstrate stability and safety of the historical elements of the building and adjacent buildings during the required works. - Noise: noise report also recommends masonry walls, which, in turn, increases weight of the structure. Conclusions of this report are unclear, as they seem to explain the process of assessment, rather than to give recommendations. Please note that these comments are based on available documents only, and thus may not be comprehensive. In case I obtain access to additional documents, I reserve right to alter or revoke my comments. <u>Assessing Officer's Comments:</u> The issues raised above are addressed as follows: • Site Visibility: The site is in a prominent location, fronting both The Corso and Market Lane. However, the proposed additional bulk (for the purpose of the additional unit) is set back, so as not to be visible from the street level, in accordance with pre-lodgement advice. This ensures that the proposed works do not have an unreasonable visual impact. • Heritage Design: In relation to building colours and materials, the proposal generally maintains and refurbishes the existing palette. The proposal provides greater facade articulation and visual interest, so as to improve the appearance of the existing building. As above, the additional building mass is set back, so

Internal Referral Body	Comments
	as not to be visible from the street level. A more detailed assessment is provided in the section of this report relating to Clause 3.2 Heritage Considerations of the MDCP 2013. • BCA Report: The proposed development has been reviewed by Council's Building Assessment Team, who are supportive of the proposal, subject to the preparation of an updated BCA Report prior to the issue of the Construction Certificate. • Geotechnical Concerns: The proposed development does not include earthworks, so is not anticipated to result in high levels of noise and vibration during construction. The proposed development is supported by a geotechnical report, which provides recommendations for safe risk levels associated with the construction required. Conditions of consent are applied to ensure adherence to these recommendations. • Noise Concerns: The proposed development increases the number of units in the building from 10 to 11, which is not considered a significant increase in intensity of use. The proposed development is supported by an acoustic report, which has been reviewed by Council's Environmental Health Officer, who raised no objections to the proposal, subject to conditions of consent. As such, the proposed development (including recommendations of the acoustic report) is acceptable in relation to generation.
Strategic and Place Planning (Urban Design)	The proposal cannot be supported for the following reasons: 1. The proposal exceeds the 10m building height control with the proposed additional built form. The addition of a new residential unit on the roof terrace would add substantially to the mass of the existing building which is currently over the 10m height. It will also set a precedent for surrounding developments to breach the building height control in the future. 2. The proposed new bedrooms facing the light wells will not receive any solar access with the south facing windows proposed. The existing light wells will also be reduced in size allowing less solar access to other window openings into the light well. The Apartment Design Guide (page 83) states that light wells should not be used as the primary air source for habitable rooms so the existing situation is already a compromised situation. The amenities provided by the light wells could possibly be further compromised in the future when the next door neighbours are developed so reducing the current sizes would not be advisable. <u>Assessing Officer's Comments:</u> The issues raised above are addressed as follows: • Building Height: The proposed development is acceptable in relation to height for the reasons detailed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the MLEP 2013. • Light Wells: The existing development relies on light wells for

Internal Referral Body	Comments
	sunlight to the existing apartments. The proposed development re-orientates the windows to the relevant bedrooms to the south, though provides greater internal amenity by increasing bedroom size, reconfiguring the apartments to provide greater livable space, and providing greater privacy for both the subject site and adjacent sites. This is considered a better outcome than the existing configuration. • Future Development: Development of adjoining sites will be assessed at the time of lodgement of a development application, should there be any.
Traffic Engineer	The proposal is for alterations and additions to an existing mixed use building including extension of the existing third floor level to create an additional two bedroom apartment. No offstreet parking or loading facilities are proposed. Traffic generation as a result of the alterations and additions will be minimal the RMS Traffic Generation guidelines for medium density residential development suggesting that the additional 2 bedroom dwelling will result in approximately 0.5 additional trips per hour in the am and pm peak periods. This is acceptable. The existing development on the site provides no offstreet parking and no additional parking is proposed under the development proposal. There is a requirement under the DCP for 1 parking space for the additional dwelling and 0.25 visitor parking space. Although there is a high parking demand near the development site it is considered impractical in this location to require that the developer provided offstreet parking for the one residential space as providing that space would require the construction of a driveway. The provision of offstreet parking would also increase vehicle movements in a location which is dominated by pedestrian movements and may therefore impact negatively on pedestrian safety. The absence of offstreet parking is not therefore opposed in this instance. The development also proposes no offstreet loading facility but relies upon use of the on-street Loading Zones on Market Lane adjacent to the development site. Again, provision of an offstreet loading dock, while desirable is considered impractical given the small scale of the proposed development. The provision of an offstreet Loading Dock would increase vehicle movements across a heavily used footpath area in Market lane which would impact negatively on pedestrian safety. A limitation on the size of vehicle servicing this development is required as there is a 6m length restriction on trucks entering Whistler Street from Sydney Road. The lack of a Loading Dock is not opposed in this instance subject to a condition limiting size of service vehicles. Construction access to the site as outlined in the Construction Traffic

Internal Referral Body	Comments
	Management Plan (CTMP) submitted with the DA suggests that truck movements up to and including vehicles of 8.8m in length will be required. Amendment of the CTMP will be required to demonstrate via swept path plots and amended Traffic Control Plans how entry and exit to and from the site and to/from Whistler Street will be possible. <u>Assessing Officer's Comment:</u> It should be noted that the density of the development is increased by on 2-bedroom apartment only, thereby not placing significant extra load on traffic and parking generation in the locality. With the availability of car-share schemes, and bus and ferry services in close proximity, the proposal is acceptable in relation to traffic and parking.
Waste Officer	Proposal does not comply with Council's Waste Management Guidelines - in particular • Applicants proposing these types of developments must ensure the commercial and residential Waste Storage Areas are separated. • Storage capacity for the residential component needs to contain 9 x 240 litre bins, with a footprint of 735mm x 580mm each. • Waste storage must comply with other requirements of 4.2, 4.3 and 4.4 of the Northern beaches Council Waste Management Guidelines. <u>Assessing Officer's Comment:</u> It is understood that the proposal foresees private daily collection of both residential and retail waste. However, the Waste Officer raised concern that the waste storage area would be inadequate, should waste collection be managed by Council in the future. As such, the proposal must provide waste storage areas of suitable dimensions to allow for potential Council collection. That is, separate bin storage areas of adequate dimensions (as above) for the residential and commercial components of the development. A condition of consent has been applied requiring. This may require minor reconfiguration of the ground floor area.
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 and commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential and commercial land use.

SEPP 65 - Design Quality of Residential Apartment Development

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

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

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

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

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

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

The proposed development is for alterations and additions to an existing four-storey shop top housing development, resulting in 11 self-contained dwellings. As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

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 proposal is consistent with this principle, as demonstrated in the ADG assessment below.

Principle 2: Built Form and Scale

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

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

Comment:

The proposal is consistent with this principle, as demonstrated in the ADG assessment below.

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 this principle, as demonstrated in the ADG assessment below.

Principle 4: Sustainability

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

Comment:

The proposal is consistent with this principle, as demonstrated in the ADG assessment below.

Principle 5: Landscape

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

the streetscape and neighbourhood.

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

Comment:

The proposal is consistent with this principle, as demonstrated in the ADG assessment below.

Principle 6: Amenity

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

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

Comment:

The proposal is consistent with this principle, as demonstrated in the ADG assessment below.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose.

Opportunities to maximise passive surveillance of public and communal areas promote safety.

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

Comment:

The proposal is consistent with this principle, as demonstrated in the ADG assessment below.

Principle 8: Housing Diversity and Social Interaction

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

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

Comment:

The proposal is consistent with this principle, as demonstrated in the ADG assessment below.

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 this principle, as demonstrated in the ADG assessment below.

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?		Satisfactory. The proposed development adequately addresses the subject site and its context.			
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?		Satisfactory. The proposed development is consistent with developments in the streetscape and allows for adequate solar access to the subject site and adjacent sites.			
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?		Satisfactory. The proposed development clearly delineates public and private land. The amenity of the public domain is retained and enhanced, and the facades provide visual interest along each street frontage.			
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)		Not compliant. The proposed development does not provide any communal open space. However, the existing building being altered also does not include any communal open space, and the extent of alterations do not warrant the provision of communal open space (as the development is not for demolition and rebuilding). Further, the setting of the site provides reasonable access to public open space, with both Manly Beach and Manly Oval within short walking distance of the subject site. The proposed development is acceptable in relation to this clause.			
Deep Soil Zones	Deep soil zones are to meet the following minimum requirements: <table><tr><td>Site area</td><td>Minimum</td><td>Deep soil</td></tr></table>		Site area	Minimum	Deep soil	Not compliant. The proposed development does not
Site area	Minimum	Deep soil				

	<table> <tr> <th></th><th>dimensions</th><th>zone (% of site area)</th></tr> <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> </table>		dimensions	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	provide any deep soil zones. However, no deep soil zones currently exist on the subject site, or on surrounding sites, so the proposal does not worsen the existing scenario. Similar developments in the locality have been approved with nil deep soil zones. The proposed development is acceptable in relation to this clause.
	dimensions	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> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </table> Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms. Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	Not compliant. The proposed development retains some existing windows within 6m of the site boundaries. However, these windows are either behind a wall in a light well, or overlook the roof of adjoining properties. In this way, these windows are suitable in relation to visual privacy. The proposed new Unit 11 includes new windows and the terrace space within 6m of the adjoining boundaries. The proposed new windows and terrace are at such a height that they overlook roof spaces only, and do not result in overlooking concerns. The proposal is acceptable in relation to this clause.
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
Pedestrian Access and entries	Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify? Large sites are to provide pedestrian links for access to streets and connection to destinations.	Satisfactory. The proposed development provides clear pedestrian entry to the frontage on both The Corso and Market Lane.												
Vehicle Access	Are the vehicle access points designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	Satisfactory. The proposal provides clear pedestrian access, suitably located and designed so as to provide high quality streetscape presentation. The subject												

		site is located on the pedestrianised area of the Corso and Market Lane, so does not include vehicular access.
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, as the subject site is not located within 80m of a railway station or light rail stop in the Sydney Metropolitan Area and is not on land zoned or within 400m of land zoned, B3 Commercial Core, B4 Mixed Use. In this case, the parking requirement under the MDCP 2013 applies, as follows: Retail: 1 space per 40sqm GFA = 8 spaces required Residential: 0.6 spaces per 1-bed 1 space per 2-bed = 10 spaces required Visitor: 0.25 spaces per dwelling = 3 spaces required. The proposal does not provide any parking. The proposal is acceptable in relation to parking for the reasons detailed in the section of this report relating to Clause 4.2.4 of the MDCP 2013.
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space: Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter.	Not compliant. The configuration of the subject site, being built boundary-to-boundary on each elevation restricts the amount of solar access available, while also retaining suitable visual privacy. Given this, and

		considering that the living areas of each existin unit is centralised, direct sunlight to the living areas of 70% of units is not achievable. The proposed development achieves suitable internal amenity by opening up the sunrooms to allow light to be borrowed through to the living areas. The proposed new Unit 11 achieves compliant solar access. The proposal is acceptable in relation to this clause.
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.	Satisfactory. All apartments achieve at least some direct sunlight.
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.	Satisfactory. 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.	Not applicable.
Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	Satisfactory. The proposed development includes floor to ceiling heights of minimum 3m at each residential level.
	Minimum ceiling height	
	Habitable rooms	
	Non-habitable	
	For 2 storey apartments	
	Attic spaces	
	If located in mixed used areas	

Apartment Size and Layout	Apartments are required to have the following minimum internal areas: <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Satisfactory. The proposed development achieves the minimum areas for both one- and two-bedroom units.
	Apartment type	Minimum internal area										
	Studio	35m ²										
	1 bedroom	50m ²										
	2 bedroom	70m ²										
	3 bedroom	90m ²										
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.	Satisfactory. Each habitable room has access to a window of sufficient dimensions.										
Habitable room depths are limited to a maximum of 2.5 x the ceiling height.	Satisfactory. Habitable rooms include depths of less than 7.5m, except where in relation to open plan living, dining and kitchen areas.											
In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Not compliant. The proposed development includes four apartments with open plan kitchen/dining/living room depths of greater than 8m (Units 1, 2, 5 and 6). However, this is due to the existing configuration of the building. The proposed development provides improved amenity, by opening the sunroom to the living areas, thereby providing greater internal access to light and air than the existing scenario. The proposal is acceptable in relation to this clause.											
Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space).	Satisfactory. All bedrooms achieve minimum required areas.											
Bedrooms have a minimum dimension of 3.0m and must include built in wardrobes or have space for freestanding wardrobes, in addition to the	Satisfactory. All bedrooms achieve minimum required											

	3.0m minimum dimension.	dimensions.															
	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	Satisfactory. All living/dining rooms achieve the minimum dimensions.															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Not applicable. The proposed development does not include any cross-over/cross-through apartments.															
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	Not compliant. The proposed development does not include balconies, with the exception of for proposed Unit 11. This is a result of the existing configuration of the building, which precludes balcony spaces. The proposed terrace for Unit 11 is compliant with the required minimum dimensions and area. The proposal is acceptable in relation to this clause.
	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.	Not applicable. The proposed development does not include any ground or podium level apartments.															
Common Circulation and Spaces	The maximum number of apartments off a circulation core on a single level is eight.	Satisfactory. The maximum number of units accessed via the lift core at any one level is four.															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Not applicable. The proposed development is four storeys in height, with only three storeys of residential apartments.															
Storage	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom</td><td>8m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	1 bedroom apartments	6m ²	2 bedroom	8m ²	Not compliant. The new Unit 11 is compliant with this requirement. Existing apartments are restricted in the area of storage space available to be provided, given the existing							
	Dwelling Type	Storage size volume															
	Studio apartments	4m ²															
	1 bedroom apartments	6m ²															
2 bedroom	8m ²																

	apartments		dimensions. In order to supplement the existing units, a generous area has been included for residential storage at the ground floor, for storage of bulky items.
	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 proposal includes seven apartments that contain bedrooms within 3m from circulation areas. However, each apartment is designed to achieve compliance with the relevant acoustic treatment standards.
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. The proposed development is laid out and designed to mitigate noise disruption from external sources.
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 retains a mix of one- and two-bedroom apartments.
Ground Floor Apartments	Do the ground floor apartments deliver amenity and safety for their residents?		Not applicable. The proposed development does not include any ground floor apartments.
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.		Satisfactory. Each building facade provides visual interest consistent with the existing character of that 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 roof contains centralised mechanical plant and a lift overrun. The roof is not used for the purpose of communal open space, given the subject site's close proximity to Manly Oval and Manly Beach.
Landscape Design	Was a landscape plan submitted and does it		Not applicable.

	respond well to the existing site conditions and context.	The subject site is wholly built upon.				
Planting on Structures	When planting on structures the following are recommended as minimum standards for a range of plant sizes:				Not applicable. The subject site is wholly built upon.	
	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		
Universal Design	Do at least 20% of the apartments in the development incorporate the Livable Housing Guideline's silver level universal design features?				Not compliant. The existing units are unable to be made accessible, given the existing configuration of the building. New Unit 11 is capable of being adaptable. The proposed development is acceptable in relation to this clause.	
Adaptable Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.				Satisfactory. The proposed development incorporates complementary contemporary design for the additional bulk.	
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain?				Satisfactory. The subject site is accessible via bus and	

	Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.	ferry services. The proposed development upgrades the existing building, thereby positively contributing to the public domain. The proposal retains the retail use at the ground floor.
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.	Satisfactory. The proposed development retains the awning along The Corso frontage, and includes a new awning along the Market Lane frontage, in order to provide shelter to pedestrians.
Performance		
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?	Satisfactory. The proposed development is supported by valid BASIX certificate.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?	Satisfactory. The proposed development is designed to suitably manage water.
Waste Management	Has a waste management plan been submitted as part of the development application demonstrating safe and convenient collection and storage of waste and recycling?	Satisfactory. The proposed development is supported by a suitable waste management plan.
Building Maintenance	Does the development incorporate a design and material selection that ensures the longevity and sustainability of the building?	Satisfactory. 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 car parking proposed for the site exceeds the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide (as per the Guide to Traffic Generating Developments). However, this parking rate 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 parking rate within the MDCP 2013 has been applied. The proposed internal areas for each apartment exceed the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide. The proposed ceiling heights achieve the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide. 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 Apartment Design Guide, as certified by the accompanying Design Verification Statement.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1010747M_04 dated 7 May 2019). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	35	35

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

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:	10m	14.8-16m	48-60%	No
Floor Space Ratio	2.5:1 (1,310sqm)	2.68:1 (1,406.2sqm)	7.3%	No
Gross floor area in Zone B2	Min. 25% GFA as Commercial	37.7% (530.2sqm)	N/A	Yes
	Max. 1,000sqm per premises	530.2sqm	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.1 Acid sulfate soils	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes

Clause	Compliance with Requirements
6.11 Active street frontages	Yes
6.12 Essential services	Yes
6.13 Design excellence	Yes
6.16 Gross floor area in Zone B2	Yes

Detailed Assessment

4.6 Exceptions to development standards

HEIGHT OF BUILDINGS

Description of Non-Compliance:

Development standard:	Height of Buildings
Requirement:	10m
Proposed:	16m
Percentage variation to requirement:	60%



Above: The 10m height of building line is shown in pink. The third floor extension is shown in yellow.

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 is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a).

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written

request under cl 4.6 must be “environmental planning grounds” by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.’

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The Applicant's written request argues, in part:

- There is no change in the existing maximum height of the building on the site which already exceeds the height standard.
- The proposed height variation is consistent with the existing development on the site in that it either matches or is lower than the existing maximum building height.
- The bulk and scale impacts associated with the breach of the height standard are addressed by the proposed development through the siting and design of the proposed additions to minimise their visual prominence from the public domain and to maintain the overall existing streetscape and townscape views of the site from The Corso and Market Place.
- The proposed development, including the height variation, is consistent with the townscape objectives and design principles for the Manly Town Centre and The Corso.
- The proposed development, including the height variation, is an appropriate response to the heritage significance of the site, as part of The Corso heritage item, and the wider Manly Town Centre Conservation Area as detailed in the submitted HIS (see Appendix 5 to the SEE).
- The height variation will not give rise to any significant adverse amenity impacts on surrounding development in terms of overshadowing, loss of solar access or loss of views.
- The proposed development results in the upgrade of the existing residential units in the building and improvements in their amenity to achieve the Design Quality principles in SEPP 65.
- The additional apartment constructed as a result of the proposed height variation will enjoy a high level of amenity, which in the absence of significant external amenity impacts, confirms that the height variation can be accommodated on the site.
- The proposed development, including the height variation, achieves compliance with the relevant underlying objectives of the standard and the objectives of the zone.

The above justification is agreed with by the Assessing Officer. In this regard, the Applicant’s written

request has demonstrated that the proposed development is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying Clause 1.3(g) of the EPA Act. Therefore, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6(3)(b). Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B2 Local Centre zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 Height of Buildings of the MLEP 2013 are addressed as follows:

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

Comment:

The proposed development includes works above the maximum height of building, but below the existing maximum height built on the subject site. The proposed development includes a roof form consistent with and complementary to the existing retained portion of roof. The proposed third floor extension is generally not visible from the street level, so does not unreasonably impact upon the streetscape.

b) to control the bulk and scale of buildings,

Comment:

The proposed development includes a breach to the floor space ratio development standard (which controls bulk and scale). This non-compliance is acceptable for the reasons detailed below. In short, the third floor addition is designed so as not generally not be visible from the street level, thereby mitigating any visual impact from the proposed additional bulk.

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 development is adequately designed and sited so as to retain view sharing for surrounding sites.

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 development results in a minor increase to overshadowing, but does not impact upon private open space or habitable rooms of adjacent dwellings.

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

Comment:

Not applicable. The subject site is zoned B2 Local Centre.

Zone Objectives

The underlying objectives of the B2 Local Centre zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment:

The proposed development retains the use of the site as shop top housing, so includes retail premises at ground level. This supports the needs of the people who live in, work in, and visit the local area.

- *To encourage employment opportunities in accessible locations.*

Comment:

As above, the proposed development retains retail premises at ground level, which will provide employment opportunities. The subject site is accessible in that it is located within short walking distance of regular bus and ferry services.

- *To maximise public transport patronage and encourage walking and cycling.*

Comment:

The subject site is located within short walking distance of bus and ferry services, as well as walking and cycling paths.

- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

Comment:

Not applicable. The subject site does not adjoin any other zones.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone.

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

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of Buildings Development Standard is assumed by the Local Planning Panel.

FLOOR SPACE RATIO

Description of Non-Compliance:

Development standard:	Floor Space Ratio

Requirement:	2.5:1 (1,310sqm)
Proposed:	2.68:1 (1,406.2sqm)
Percentage variation to requirement:	7.3%

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 is not expressly excluded from the operation of this clause.

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

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

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

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

(a) *the consent authority is satisfied that:*

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

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

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

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

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a).

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

Comment:

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

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

Section 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The Applicant's written request argues, in part:

- *The existing development on the site involves a breach of the FSR standard. The additional breach now proposed is minor at 0.12:1 (59.9 sqm GFA).*
- *The bulk and scale impacts associated with the breach of the FSR standard are addressed by the proposed development through the siting and design of the proposal to minimise its visual prominence from the public domain and to maintain the existing townscape views of the site from The Corso and Market Place.*
- *The bulk and scale of the proposed development, including the proposed FSR variation, are consistent with the existing and desired streetscape character, will not obscure important landscape and townscape features and maintain an appropriate visual relationship between new development and the existing character and landscape of the area.*

- The proposed development, including the FSR variation, is consistent with the townscape objectives and design principles for the Manly Town Centre.
- The proposed development, including the FSR variation, is an appropriate response to the heritage significance of the site, as part of The Corso heritage item, and the wider Manly Town Centre Conservation Area as detailed in the submitted HIS (see Appendix 5 to the SEE).
- The FSR variation will not give rise to any significant adverse amenity impacts on surrounding development in terms of overshadowing, loss of solar access, loss of privacy, loss of views or noise.
- The proposed development results in the upgrade of the existing residential units and improvements in their amenity to achieve the Design Quality principles in SEPP 65.
- The additional apartment constructed as a result of the proposed FSR variation will enjoy a high level of amenity, which in the absence of significant external amenity impacts, confirms that the FSR variation can be accommodated on the site.
- The proposed development, including the FSR variation, achieves compliance with the relevant underlying objectives of the standard and the objectives of the zone.

The above justification is agreed with by the Assessing Officer, although the Assessing Officer has carried out independent calculations of gross floor area. In this regard, the Applicant's written request has demonstrated that the proposed development is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying Clause 1.3(g) of the EPA Act. Therefore, the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6(3)(b). Council is satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the B2 Local Centre zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 Floor Space Ratio of the MLEP 2013 are addressed as follows:

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

Comment:

The proposed development is designed and sited in such a way that retains the existing and desired streetscape character of the locality. The proposed additional bulk resulting from the third floor extension is generally not visible from the street level, as it is setback from the property boundaries. As such, the proposed development does not result in any discernible visual impact beyond that of the existing building.

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 extension of the third floor does not obscure views to or from any important landscape or townscape features.

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

Comment:

The proposed development respected the visual relationship between existing and new development, in that the additional building bulk is largely disguised, with its generous setback from street level. This suitably maintains the existing character of the locality.

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

Comment:

Despite the non-compliance with the floor space ratio development standard, the proposed development does not unreasonably impact upon the use or enjoyment of adjoining land. This is due to the purposeful location of the third floor extension, which is not generally seen from street level, and does not result in any unreasonable amenity impacts.

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 proposed retention and reconfiguration of retail spaces at the ground floor strengthens the viability of the B2 Local Centre business zone and will contribute to economic growth, retention of local services, and employment opportunities.

Zone Objectives

The underlying objectives of the B2 Local Centre zone are addressed above in the section relating to Height of Buildings.

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

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

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

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 524sqm	Requirement	Proposed	% Variation*	Complies
4.2.3 Setbacks Controls in LEP Zone B1 and B2	0m	0m	N/A	Yes
4.4.4.1 Awnings in LEP B1 and B2 Business Zones	Min. 3.5m above ground	4.2m	N/A	Yes
Schedule 3 Parking and Access	Retail: 1 space per 40sqm GFA	0 spaces	100%	No

	= 8 spaces			
	Pub: 1 space per 4sqm of licensed floor area = 24 spaces			
	Residential: 0.6 spaces per 1-bed 1 space per 2-bed = 10 spaces			
	Visitor: 0.25 spaces per dwelling = 3 spaces			

***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
3.1.3 Townscape (Local and Neighbourhood Centres)	Yes	Yes
3.2 Heritage Considerations	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
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.2 Development in Business Centres (LEP Zones B1 Neighbourhood Centres and B2 Local Centres)	Yes	Yes
4.2.1 FSR (Consideration of Exceptions including Arcades)	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)	No	Yes
4.2.3 Setbacks Controls in LEP Zones B1 and B2	Yes	Yes
4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor	No	Yes
4.2.5 Manly Town Centre and Surrounds	Yes	Yes
4.2.5.1 Design for Townscape	Yes	Yes
4.2.5.2 Height of Buildings: Consideration of Townscape Principles in determining exceptions to height in LEP Zone B2 in Manly Town Centre	Yes	Yes
4.2.5.3 Security Shutters	Yes	Yes
4.2.5.4 Car Parking and Access	No	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.1 Manly Town Centre Heritage Conservation Area and The Corso	Yes	Yes
5.1.1 General Character	Yes	Yes
5.1.2 The Corso	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.2 Heritage Considerations

The subject site forms part of heritage-listed Item 106 Group of Commercial Buildings, and is within the Town Centre Conservation Area. The proposed development is addressed in relation to heritage significance as follows:

Objective 1) To retain and conserve environmental heritage and cultural significance of Manly including:

- *significant fabric, setting, relics and view associated with heritage items and conservation areas;*
- *the foreshore, including its setting and associated views; and*
- *potential archaeological sites, places of Aboriginal significance and places of natural significance.*

Comment:

The proposed development was referred to Council's Heritage Advisor, who raised objection to the proposal in relation to its form and massing, as well as materials and colours. The proposed development retains and conserves the elements of heritage significance in the existing building, as demonstrated in submitted materials and finishes, heritage conservation, and interior heritage plans, as well as the statement of heritage significance. The proposed development sets its additional bulk in such a way that it is not visible from the street level, and incorporates complementary

colours and materials where existing colours and materials are not refurbished. As such, the proposed avoids jarring contrasts in architectural style between the existing and proposed developments. It is readily apparent that the proposed development respects the heritage fabric and setting of the subject site. The proposed development does not impede views to the item or foreshore, and does not impact upon archaeological sites, or places of Aboriginal or natural significance.

Objective 2) To ensure any modification to heritage items, potential heritage items or buildings within conservation areas is of an appropriate design that does not adversely impact on the significance of the item or the locality.

Comment:

As above, the proposed development includes substantial consideration and conservation of the existing heritage significance of the site. The proposed development refurbishes and reinvigorates the existing building, while remaining complementary to and consistent with the architectural style and form of the streetscape. The proposal is demonstrated to be of appropriate design so as not to adversely impact on the significance of the item or locality.

Objective 3) To ensure that development in the vicinity of heritage items, potential heritage item and/ or conservation areas, is of an appropriate form and design so as not to detract from the significance of those items.

Comment:

As above, the proposed development is of suitable form and design so as not to detract from the heritage significance of the site and locality, in that it disguises additional bulk from view, and incorporates complementary colours and materials where existing finishes are not refurbished.

Objective 4) To provide infrastructure that is visually compatible with surrounding character and locality/visual context with particular regard to heritage buildings/areas and cultural icons.

Comment:

Not applicable. The proposed development does not include infrastructure.

Objective 5) To integrate heritage management and conservation into the planning development process including incentives for good heritage management, adaptive reuse, sustainability and innovative approaches to heritage conservation.

Comment:

The proposed development refurbishes the elements of heritage significance in the existing building, including in relation to fenestration and colours. As such, it can be seen that the proposed development adequately manages and conserves the heritage significance of the site. The proposed development has been extensively assessed in relation to heritage and it is concluded to be satisfactory in the circumstances of this case.

4.2.1 FSR (Consideration of Exceptions including Arcades)

The floor space ratio variation is discussed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of MLEP 2013.

4.2.2 Height of Buildings (Consideration of exceptions to Building Height in LEP Business Zones B1 and B2)

The height of buildings variation is discussed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of MLEP 2013.

4.2.4 Car parking, Vehicular Access and Loading Controls for all LEP Business Zones including B6 Enterprise Corridor

The proposed development includes alterations and additions to both the commercial and residential components of the existing shop top housing development, thereby altering parking requirements for the site. Retail premises require 1 parking space per 40sqm of gross floor area, equating to 8 parking spaces for the 310.1sqm of retail gross floor area. The proposal includes four one-bedroom units and seven two-bedroom units, requiring 10 residential parking spaces, and 3 visitor parking spaces. The proposed development does not provide any parking spaces on site. However, it should be noted that the existing development does not provide for any vehicular parking on site, as the site is located on The Corso and Market Lane, which are both accessed by pedestrians only. Further, the proposal increases parking demand in relation to the additional residential unit only. That is, the proposal increases parking demand from the existing scenario by one space, being for one new two-bedroom unit.

Objective 1) To ensure there is adequate provisions for car parking access and loading in future development and redevelopment in all business zones.

Comment:

Council's Traffic Engineer has reviewed the application and is supportive of the proposal, despite the lack of vehicular parking. Council's Traffic Engineer has established that the proposed minor increase in intensity is unlikely to result in any appreciable increase in traffic generation when compared to the existing development, and that the existing development provides for no off-street parking or loading facilities. Further, given the existing pedestrianised portion of land the site is located on, the provision of off-street parking or loading facilities would impact negatively on pedestrian amenity in the vicinity.

Objective 2) To minimise conflicts between pedestrian and vehicular movement systems within the business areas.

Comment:

As no vehicular parking is proposed in this instance, the proposed development will not result in any conflict between pedestrian and vehicular movement in the B2 Local Centre Zone.

4.2.5.4 Car Parking and Access

The non-compliance in relation to vehicular parking is addressed in the section of this report relating to Clause 4.2.4 of the MDCP 2013.

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 \$47,940 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$4,793,973.

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 MLEP 2013 seeking to justify a contravention of the development standards contained within 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.

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

Non-compliance with Clause 4.3 Height of Buildings of the MLEP 2013

The proposed development includes a maximum height of 16m, where the development standard allows for maximum 10m. The proposed development achieves the requirements of Clause 4.6 Exceptions to Development Standards, and the non-compliance is supported on merit.

Non-compliance with Clause 4.4 Floor Space Ratio of the MLEP 2013

The proposed development includes a floor space ratio of 2.68:1, where the development standard allows for a maximum of 2.5:1. The proposed development achieves the requirements of Clause 4.6 Exceptions to Development Standards, and the non-compliance is supported on merit.

Non-compliance with the parking requirement of Schedule 3 Parking and Access of the MDCP 2013

The proposed development results in additional parking requirements onsite. The proposed development does not include parking on site. The proposed intensification of use is not considered to

result in significant traffic or parking impacts and the subject site is located in a pedestrianised area without vehicular access. As such, the non-compliance is supported on merit. 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 Clauses 4.3 Height of Building and 4.4 Floor Space Ratio 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 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 DA2019/0512 for Alterations and Additions to an existing Shop Top Housing Development on land at Lot CP SP 12989, 19 - 23 The Corso, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
17349-A-05 Rev E Ground and First Floor Plan	2 May 2019	NBRS Architecture
17349-A-06 Rev E Second and Third Floor Plan	2 May 2019	NBRS Architecture
17349-A-07 Rev A Proposed Roof Plan	2 May 2019	NBRS Architecture
17349-A-08 Rev E Elevations	2 May 2019	NBRS Architecture
17349-A-09 Rev D Elevations	2 May 2019	NBRS Architecture
17349-A-10 Rev D Elevations	2 May 2019	NBRS Architecture
17349-A-15 Rev D Materials & Finishes	2 May 2019	NBRS Architecture
Market Place Elevation Option 1	Undated	NBRS Architecture
Market Lane Elevation - Proposed Finishes Schedule Page 1 of 2	Undated	NBRS Architecture
Market Lane Elevation - Proposed Finishes Schedule Page 2 of 2	Undated	NBRS Architecture

Engineering Plans		
Drawing No.	Dated	Prepared By
ESM1 Notes, Legend & Details	15 April 2019	Jones Nicholson (JN) Consulting Engineers
ESM2 ESM Plan	15 April 2019	Jones Nicholson (JN) Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Assessment Report	7 May 2019	Jones Nicholson (JN) Consulting Engineers
BASIC Certificate No. 1010747M_04	7 May 2019	Jones Nicholson (JN) Consulting Engineers
Geotechnical Report	30 April 2019	GeoEnviro Consultancy
DA Acoustic Assessment	30 April 2019	Acoustic Logic
BCA - DDA/Access Compliance Review	1 May 2019	NBRS Architecture
Essential Fire Safety Measures	12 April 2019	NBRS Architecture
Heritage Impact Statement	17 April 2019	NBRS Architecture
Traffic and Parking Assessment Report	30 April 2019	Varga Traffic Planning
Construction Traffic Management Plan	30 April 2019	Varga Traffic Planning

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
Site Waste Minimization & Management Plan	April 2019	NBRS Architecture

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

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

2. Prescribed Conditions

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

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable

cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

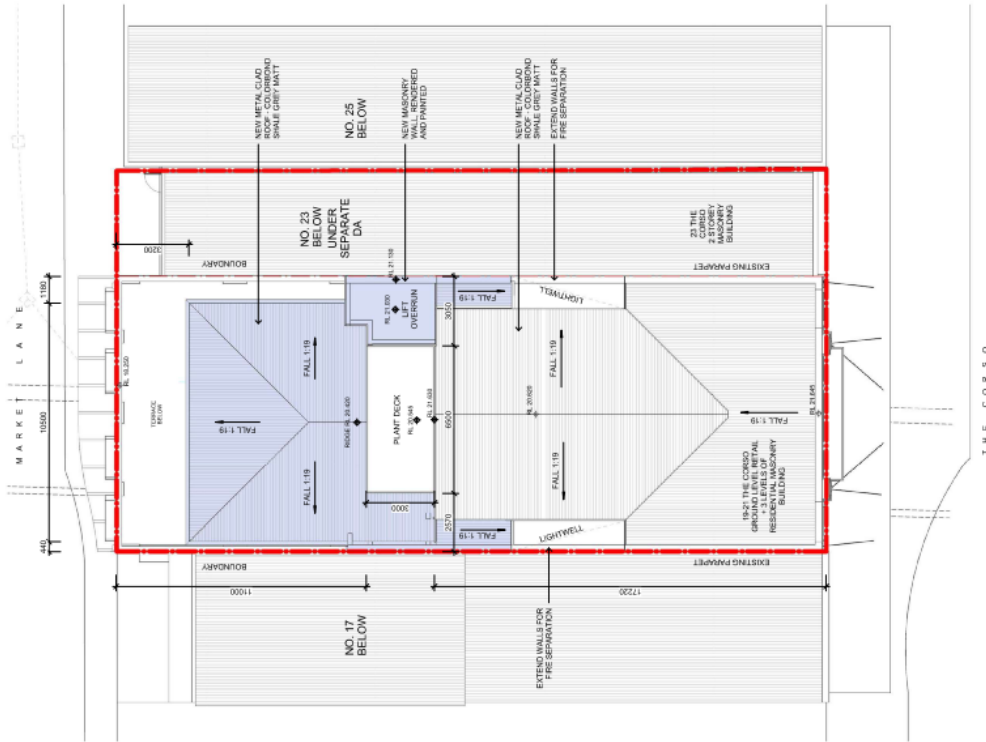
A monetary contribution of \$47,939.73 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$4,793,973.00.

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

NBR ARCHITECTURE.



PRELIMINARY

**Drawing Title
PROPOSED ROOF PLAN**

**Project
MANLY CORSO APARTMENTS
REFURBISHMENT + ADDITIONS**

**at
15-21 THE CORSO, MANLY
for
HURICK PROPERTIES PTY LTD**

**Architect
NBR ARCHITECTURE.
Sydney
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nbrisarchitecture.com
15-21 THE CORSO, MANLY
NSW 1513 202 202 202
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**Date
5/9/2019 3:05:14 PM
Scale
1:0 @ A1 or 1:0 @ A3
Drawing Reference
17349-A-07
Revision
A**







Traditional awning similar to
The Corso frontage

Rendered corbel

Paint finish

Border tile

Wall tiles

Aluminium doors with
fixed highlight windows above

Plinth with large wall
tile finish

Roller door with historic
archival image

Market Place Elevation - Option 1

Submitted DA showing detailed finishes + historic graphic image to Market Lane



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MIS Aust

WRITTEN REQUEST PROVIDING GROUNDS FOR VARIATION TO FSR DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6 OF MANLY LEP 2013

PART OF 19-23 THE CORSO, MANLY

ALTERATIONS AND ADDITIONS TO THE EXISTING SHOP TOP HOUSING BUILDING AT 19-21 THE CORSO, MANLY

Context – Clause 4.6 of Manly LEP 2013

This written request has been prepared in respect of Clause 4.6 of Manly LEP 2013 (the LEP) to accompany a Development Application for alterations and additions to the existing shop top housing building at 19-21 The Corso, Manly which forms part of the site at 19-23 The Corso.

No works are proposed to the existing two storey shop building at No. 23 The Corso as part of the subject proposal as it is to be the subject of a separate DA to Council.

The Development Application seeks a variation to the development standard provided at Clause 4.4 of the LEP, being Floor Space Ratio (FSR). Under Clause 4.4 of the LEP, the FSR development standard for the site is 2.5:1.

The existing building on the site already exceeds the 2.5:1 FSR standard under the LEP with a FSR of 2.66:1 (1397 sqm GFA), an exceedance of 0.16:1 (84 sqm GFA) (see **Appendix 3** to the SEE).

The proposed development results in an increase in the existing FSR to 2.78:1 (1456.9 sqm GFA), an increase of 59.9 sqm GFA (0.12:1) compared with the existing situation.

The proposal therefore involves an overall exceedance of the standard by 0.28:1 (147 sqm GFA).

The increase in the FSR of the proposed development results from the proposed roof top additions, together with additional floor space within the existing light wells.

The proposed FSR of 2.78:1 represents a variation to the controls provided by Clause 4.4 of 0.28:1, or 11.2%.

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Clause 4.6 of the LEP provides:

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the Development Application's proposed variation to the FSR development standard.

It is noted that the NSW Department of Planning and Environment provides guidance on how to prepare clause 4.6 variations in the form of *Varying development standards: A Guide* (August 2011). This written request to vary the FSR development standard is based on the DP&E's Guide.

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This written request has also been prepared having regard to the recent judgment of the Chief Justice of the Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action). At paragraphs 17 – 21 of *Initial Action*, Preston CJ confirmed the findings in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe), regarding the available avenues to establish that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case (in accordance with the test provided by cl 4.6(3)(a) of the LEP) including establishing that the objectives of the development standard are achieved notwithstanding non-compliance with the standard (*Initial Action* at [17]).

Further, Preston CJ found in *Initial Action*, at paragraphs 87 and 88, in the context of Clauses 4.6(3)(a) and (b) that:

“...Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...”

“...The requirement in Clause 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard...”

Written Request

As stated above, and as set out in the Statement of Environmental Effects dated May 2019 (the SEE), when measured in accordance with the definition in the LEP, the existing building on the site already exceeds the 2.5:1 FSR standard under the LEP with a FSR of 2.66:1 (1397 sqm GFA), an exceedance of 0.16:1 (84 sqm GFA) (see **Appendix 3** to the SEE).

The proposed development results in an increase in the existing FSR to 2.78:1 (1456.9 sqm GFA), an increase of 0.12:1 (59.9 sqm GFA) compared with the existing situation. The proposal therefore involves an overall exceedance of the standard by 0.28:1 (147 sqm GFA).

The increase in the FSR of the proposed development results from the proposed roof top additions, together with additional floor space within the existing light wells.

The questions set out in the DP&E’s Guide are addressed below.

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

Manly Local Environmental Plan 2013 (the LEP).

2. What is the zoning of the land?

The zoning of the land is B2 Local Centre.

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3. What are the objectives of the zone?

The objectives of the B2 zone are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.

4. What is the development standard being varied?

The development standard being varied is the FSR development standard.

5. Under what Clause is the development standard listed in the environmental planning instrument?

The development standard is listed under clause 4.4 of the LEP.

6. What are the objectives of the development standard?

The objectives of clause 4.4 are:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

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

The numeric value of the FSR development standard is 2.5:1.

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

The maximum numeric value proposed is 2.78:1, equating to an additional FSR of 0.28:1.

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

The percentage variation is 11.2%.

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10. *How is strict compliance with the development standard unreasonable or unnecessary in this particular case?*

In the circumstances of the case, it is considered that strict compliance the FSR development standard applicable to the site is unreasonable and unnecessary for the following reasons:

A. The objectives of the development standard are achieved notwithstanding non-compliance with the standard (cl 4.6(3)(a), cl 4.6(4)(ii) and *Initial Action* at [17])

Objective 4.4(1)(a) - to ensure the bulk and scale of development is consistent with the existing and desired streetscape character

Objective 4.4(1)(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

Objective 4.4(1)(c) - to maintain an appropriate visual relationship between new development and the existing character and landscape of the area

Assessment:

The bulk and scale of the proposed development, including the proposed FSR variation, is considered to be acceptable in its context and would not give rise to unacceptable impacts on the existing streetscape, townscape or character of the area. The existing building already exceeds the FSR standard with a FSR of 2.67:1. The proposal represents a minor increase (59.9 sqm GFA) from the existing situation with a FSR of 2.78:1.

The proposed FSR variation relates to the proposed additions to the rear of the building comprising the proposed roof top additions, together with additional floor space within the existing light wells.

The proposed FSR variation would be sympathetic to the existing development on the site and in the wider area. As alterations and additions to an existing building, the proposal, and the associated breach of the FSR standard, maintains the overall bulk and scale of the existing building and, in particular, does not extend beyond the building's existing maximum height set by the parapet to The Corso.

The proposal, including the FSR variation, maintains the overall bulk and scale of the existing development as viewed from the public domain and the existing relationship of built forms in the streetscapes. The proposed development will therefore be compatible with the adjoining development, the streetscapes of The Corso and Market Place and will maintain the amenity of the public domain.

The proposed additional floor space, and the FSR variation, are sited and designed to minimise their visual prominence when viewed from the public domain in order to maintain the existing streetscape/townscape character of the site as viewed from The Corso and Market Place. The proposed FSR variation will not obscure any important landscape or townscape features having regard to the siting and design of the proposed additions.

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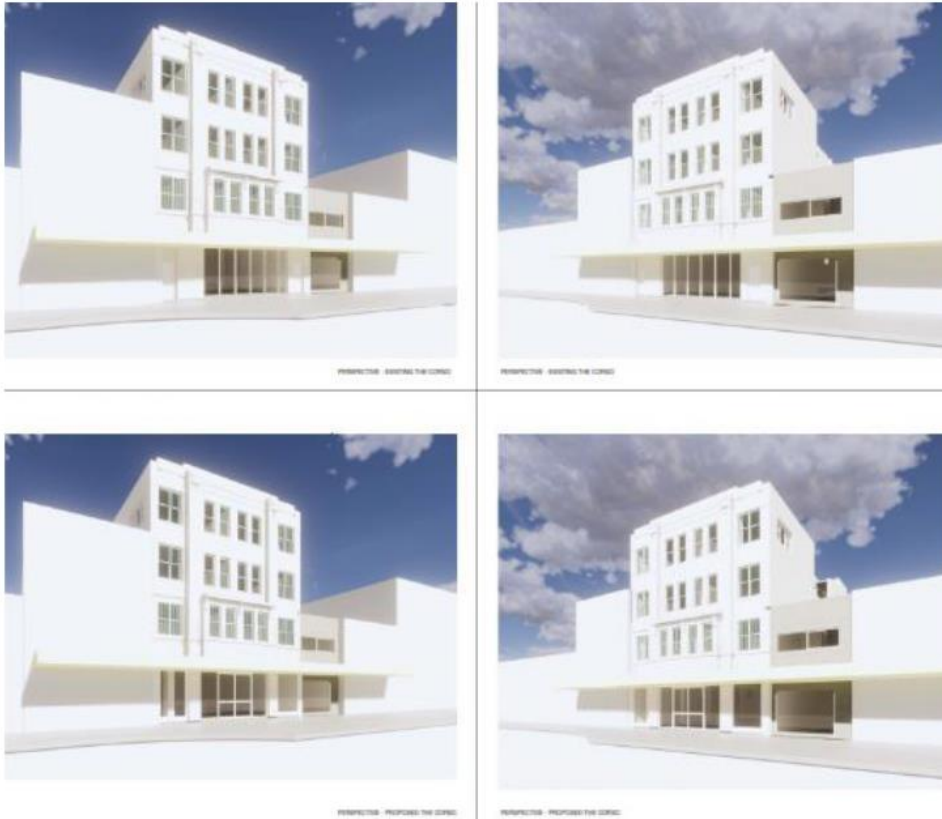


Figure 1: Street View from The Corso (top row - existing; bottom row – proposed)

Source: Extract from Dwg No. 17349-A-12, NBR Architecture, see Appendix 3 to the SEE

From The Corso and Market Place, the proposed FSR variation will only be apparent in oblique views of the side elevations available over the roofs of neighbouring, lower buildings (see **Figures 1** and **2**).

From The Corso, the proposed FSR variation would only be visible over the roof of No. 23 The Corso (see **Figure 1**). It would not be visible in direct views of the building from The Corso as it would be screened by the existing parapet and built form.

The proposed rooftop additions, and associated FSR variation, are set back a minimum of 3.5m from the rear façade with varying setbacks (up to 1.47m) from the side boundaries to minimise their visible bulk and scale (see **Figure 2**). When viewed directly from the rear in Market Place, the proposed FSR variation associated with proposed Unit 11 will not be visible and the proposal maintains the existing maximum height, bulk and scale of the rear façade set by the parapet/balustrade at RL 18.25. Only the edge of the roof form of the proposed unit, and the FSR variation, would be visible in angled views to the rear of the building from Market Place.

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Figure 2: Street View from Market Place (top row - existing; bottom row – proposed)
Source: Extract from Dwg No. 17349-A-12, NBR Architecture, see Appendix 3 to the SEE

The proposed additions, and associated FSR variation, are an extension of the existing built form at the Third Floor of the building and, to the extent that they would be visible along the side elevations, would appear as a logical extension of the existing built form, compatible with its height, scale and bulk. While the materials and finishes of proposed Unit 11 are contemporary to distinguish the addition from the existing building in accordance with heritage requirements, the proposed darker colours will ensure that the proposed addition and FSR variation, where visible, are visually recessive.

Desired Future Streetscape Character

The desired future streetscape character of the subject building is set out in Manly DCP 2013 which contains townscape objectives and provisions for local and neighbourhood centres in Section 3.1, townscape provisions for Manly Town Centre in Section 4.2.5.1 and character provisions for Manly Town Centre Heritage Conservation Area and The Corso in Section 5.1. The proposed development, including the proposed FSR variation, is considered to be consistent with these provisions, as follows.

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Manly DCP Townscape Objectives and Provisions

The townscape objectives of the DCP are as follows:

- Objective 4) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*
- Objective 5) To assist in maintaining the character of the locality.*
- Objective 6) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*
- Objective 7) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.*

The proposal is consistent with the above objectives, in that:

- no parking exists on the site and none is now proposed;
- the proposed development maintains the character of the locality by proposing alterations and additions to the existing building, including the FSR variation, which:
 - maintain the overall built form, bulk and scale of the existing building as viewed from the public domain;
 - do not exceed the existing maximum building height;
 - are sited and designed to minimise their visual prominence from the public domain to maintain the existing streetscape character; and
 - include the retention and upgrade of the existing building, including its façades to The Corso and Market Place, in a manner consistent with its heritage significance.
- it recognises the importance of pedestrian movement and townscape design in strengthening and promoting Manly Town Centre by:
 - maintaining and increasing the active frontage to The Corso and increasing the level of activation to Market Place through the location of the residential entry;
 - by refurbishing the existing awning to The Corso and providing a new awning to Market Place to improve pedestrian amenity; and
 - by improving the appearance of the existing building from both streets through the upgrade and refurbishment of the street front façades;
- it minimises negative visual impacts to promote townscape qualities through the siting and design of the proposed additions to minimise their visual prominence from the public domain, as detailed above and shown in **Figure 2**.

The proposal, including the FSR variation, is consistent with the applicable townscape provisions of the DCP, as follows.

Local role of the site

The proposal generally maintains the local role of the site as minimal changes are proposed to the overall form and scale of the building as viewed from The Corso and Market Place. The proposed additions would only be visible from these vantage points in oblique views to the side elevations over the roofs of neighbouring buildings; they would not be visible in direct views from these frontages. The proposal maintains the existing built form relationship with adjoining development and public spaces.

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While the proposed rooftop addition (Unit 11), and associated FSR variation, would be visible from higher surrounding vantage points (eg. Whistler car park upper levels), it is considered satisfactory as it is below the existing maximum height of the building, is clearly distinguishable from the original building fabric through its design and materials and its visual bulk and visibility from Market Place is minimised through its setbacks and height, as noted above.

No changes are proposed to the street frontage façade to The Corso which is to be retained and conserved in accordance with the HIS (see **Appendix 5** in the SEE) which will enhance the appearance of the building within the heritage item of The Corso. The proposed modifications to the rear façade to Market Place are compatible with the use and location of the building and satisfactory from a heritage perspective.

Townscape Principles Map

The proposed development is consistent with the Townscape Principles map as it relates to the subject site by maintaining and improving the existing important vistas along The Corso and from Darley Road towards the site.

Design Details

The proposal is consistent with the relevant design details controls in that:

- as set out in the HIS (see **Appendix 5** to the SEE) the proposal is complementary to adjacent buildings and the wider conservation area in terms of the design detailing of the façades. As noted above, no changes are proposed to the façade to The Corso;
- no change is proposed to the overall maximum height of the building which is the existing parapet to The Corso. The proposed additions sit below this height. No change is proposed to floor levels within the building, apart from the lowering of the floor levels at the rear Ground Floor in the lobby entry and waste storage area;
- the materials, textures and colours of the existing building are to be retained or reinstated where there is sufficient available evidence, while the proposed additional unit utilises contemporary design, materials and finishes and darker colours to distinguish it as new work;
- the proposal maintains the architectural style of the existing building fabric. The proposed rooftop addition is distinguishable from the original fabric through its materials and detailing;
- no change is proposed to the existing building footprint;
- the proposal will not give rise to any significant additional overshadowing or adverse wind effects as minimal change is proposed to the height and form of the building;
- the proposal will improve the appearance of the side walls of the building, to the extent that they are visible, through the rationalisation of the light wells and removal of external attachments/infrastructure;
- the Ground Floor has level access from The Corso and Market Place with an internal ramp within the entry from Market Place;
- retail space occupies the full width of the building frontage to The Corso;
- street numbering will be provided as required; and
- new plant and associated installations are proposed over the rear of the existing roof top. Screening in the form of a minimum 990mm high slatted screen is proposed around the plant to minimise any adverse visual impact on existing outlooks over the rear of the site.

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Manly DCP Character Provisions for Manly Town Centre Heritage Conservation Area and The Corso

General Character

The proposal, including the FSR variation is consistent with the general character of the Town Centre Conservation Area as set out in the DCP (see also **Appendix 5** to the SEE) in that it involves alterations and additions to an existing building which:

- maintain the existing scale of the street frontage façades;
- is built to the property boundaries to The Corso and Market Place;
- provides a good level of pedestrian amenity afforded by the existing and proposed footpath awnings; and
- contributes to the range of architectural styles in the area.

The Corso

The proposed development is consistent with the guidelines for The Corso (see also **Appendix 5** in the SEE), in that:

- the existing building at 19-21 The Corso, which is part of the group heritage item on The Corso, is to be conserved, not redeveloped;
- the importance of internal changes is recognised in the approach to the design of the proposed development as detailed in the submitted HIS (see **Appendix 5**);
- the proposed addition is sited to the rear of the Third Floor;
- the parapet to The Corso will continue to be read against the sky as the proposed works match or are below the parapet height;
- there are no critical views to be kept open to or through the site;
- no change is proposed to the existing subdivision pattern;
- a new building is not proposed;
- windows and balconies open to the street;
- the building height has been determined by site-specific requirements, in particular the height of the existing built elements on the site. As noted above, the proposed development does not result in any increase in the overall maximum height of the existing building;
- there is no existing arcade through the site;
- the existing footpath awning to The Corso façade is to be retained and conserved. A new awning is proposed to the Market Lane façade as required;
- the shopfront to The Corso occupies the width of the frontage (apart from piers) to maximise activity. Roller shutters are not proposed.
- the shop front is existing on the site. Alterations are proposed to provide articulation that relates to the loadbearing masonry above and a solid plinth below the contemporary glazing as described in the submitted HIS (see **Appendix 5**);
- the proposed rooftop addition has a clear contemporary design idiom;
- the proposal will utilise external colours that are appropriate for the type and age of the building. The original external colours will be re-instated if there is sufficient evidence on-site;
- all of the residential units within the building (including the existing units) will incorporate measures to reduce transmission of noise into the dwellings to meet the applicable internal noise level criteria as set out in the submitted Acoustic Report (see **Appendix 9**). That Report specifies glazing requirements for all living and bedroom

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- windows and external roof, ceiling and wall construction requirements for lightweight elements with which the proposed development will comply;
- external details for plant, exhausts, ducts etc. are designed to be part of the overall building structure;
- the proposal will contribute to the presentation of the building to Market Place and will improve casual surveillance of Market Place through the proposed changes to the rear façade; and
- the site specific controls in Schedule 6 to the DCP state in relation to 21 The Corso *redesign the two ground level entrance doors to the upper floors to give a more substantial appearance, with transparent glazing (to increase connection with street) and solid returns.* The proposed development removes the ground level doors to the upper floors from the front elevation. Access to the upper floors is via the residential lobby accessible from Market Place. The shopfront has been widened accordingly with masonry piers added to provide articulation that responds to the loadbearing masonry above.

In addition, the proposed FSR variation is an appropriate response to the heritage significance of the site and the streetscape of The Corso. As set out in the submitted HIS (see **Appendix 5** to the SEE):

- *The proposed development supports and enhances the cohesive low-scale development of Manly Town Centre through the retention and conservation of the primary façade and footpath awning to The Corso. It does not result in an increase in development height to a principle street and increases pedestrian amenity through retention and conservation of the footpath awning and full activation of the shopfront facing The Corso. (p. 40)*
- *The proposed development supports and enhances the significance of The Corso through the retention and conservation of a prominent commercial and residential building representative of the early 20th Century development of the Corso. Conservation of the building contributes to the significance and an appreciation of the fine collection of late 19th and early 20th Century buildings and therefore has the potential to enhance the visitor experience of The Corso.*

The proposed development does not attempt to alter the parapet details or the silhouette of the primary street façade against the sky. The conservation and refurbishment of 19-21 The Corso supports an appreciation of the character of The Corso gained through the gradual visual progression from Manly Cove to Ocean Beach through the retention of a prominent façade, its footpath awning and through the re-activation of the shopfront. (p. 42)

- *The primary façade to The Corso will be retained and conserved and will significantly enhance the appearance of the building within the heritage item and heritage listed Town Centre.*

The design of the refurbishment and additions has been carefully considered. It aims to retain and reinstate heritage detailing externally and internally and new additions are in contemporary materials, so they can be read as new fabric.

All existing views to and from the heritage items in the vicinity, and the character of Manly Town Centre and The Corso special Character Area and the Manly Town

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Centre Conservation Area will be retained and conserved. The additions will not be visible in critical views as defined in the Townscape Principles. (p. 49)

Accordingly, despite the FSR variation of the proposed development, the bulk and scale of development is consistent with the existing and desired streetscape character, will not obscure important landscape and townscape features and maintains an appropriate visual relationship between new development and the existing character and landscape of the area.

Objective 4.4(1)(d) - to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain

Assessment:

The proposed FSR variation will not result in significant adverse impacts on the amenity of surrounding properties or the public domain in terms of privacy, overshadowing/solar access or view loss/disruption.

Sunlight Access and Overshadowing

The proposed FSR variation will not result in any significant adverse impacts on the public domain or residential properties in terms of overshadowing/solar access.

As shown in the submitted shadow diagrams (see **Appendix 3** to the SEE), the proposal does not give rise to any significant additional overshadowing as minimal change is proposed to the height and form of the building.

The diagrams show that the proposal, including the FSR variation, will result in minimal additional overshadowing of public open spaces affecting small areas of Whistler Street and Market Place. However, it is noted that those areas are likely to already be subject to overshadowing by existing neighbouring buildings and, taking into account that existing impact, the proposal will have no additional impact.

In addition, as the only change to its form, bulk or massing is at the rear of the existing building, the proposal will not result in any additional overshadowing of The Corso

Further, the proposal will not result in additional overshadowing of any residential development.

Privacy

The proposed FSR variation will not result in a loss of visual privacy to any neighbouring developments. The units have their primary outlook over The Corso and Market Place. Where they also have windows facing the side boundaries, these either face the side wall enclosing the lightwell or, for those at the Third Floor, are over the roofs of the neighbouring buildings.

The proposed FSR variation will not result in a loss of aural privacy to any neighbouring developments. Noise from the mechanical plant is considered in the assessment undertaken in the preparation of the Acoustic Report (see **Appendix 9**). That Report recommends that detailed acoustic review of plant selections should be undertaken at CC stage to determine appropriate acoustic treatments to meet the applicable noise emission

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criteria. The Report states that satisfactory levels will be achievable through plant selection and location and standard acoustic treatments, if required.

The proposal will comply with the recommendations of the Acoustic Report and, therefore, it will not result in a loss of acoustic privacy to surrounding properties.

In addition, the proposal provides for an appropriate acoustic environment within the existing and proposed residential units through compliance with the recommendations of the Acoustic Report with respect to glazing requirements for all living and bedroom windows and external roof, ceiling and wall construction requirements for lightweight elements (see **Appendix 9**). Implementation of these measures will ensure that the development meets the applicable internal noise level criteria.

Views

The proposed FSR variation will not result in any significant impact on views. As noted above, the FSR variation does not exceed the existing maximum height of the building to The Corso and the additions to the rear of the Third Floor are of a lesser height designed to have minimal visual prominence from the public domain. To the extent that the FSR variation would be visible from the rear of the site, the additions and the FSR variation are designed to be compatible with the bulk and scale of the existing building.

The proposed addition to the rear of the Third Floor (Unit 11) extends some 3.5m beyond the rear building line of the existing rooftop laundry with a similar height. While there are taller residential developments to the west that may enjoy views over the subject site, the proposed development, including the FSR variation, would have a marginal impact on those views given its limited additional bulk compared with the existing building on the site.

The proposed additions, and the FSR variation, would also be visible from the upper levels of the Whistler Car Park to the north of the site. However, it would not disrupt views from this vantage point as it does not exceed the existing maximum height of the building as set by the parapet to The Corso.

Accordingly, the FSR variation will not result in adverse environmental impacts on the use or enjoyment of adjoining land and the public domain by way of loss of privacy, overshadowing or loss of views.

Objective 4.4(1)(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

Assessment:

The proposed FSR variation will have no effect on the viability of the business zone.

The proposed development provides for continued retail activity at the ground floor level within a refurbished and upgraded retail space that will enable the proposal to contribute to the economic growth, retention of local services and employment opportunities in the centre. The quantum of non-residential floor space proposed on the site exceeds Council's minimum floor space for such uses.

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B. Consistency with the objectives of the B2 Local Centre zone (cl 4.6(4)(a)(ii))

Assessment:

As well as achieving the objectives of clause 4.3 as demonstrated above, the proposal is also in the public interest as it is consistent with the relevant objectives of the B2 Local Centre zone in that:

- it contributes to the range of retail uses in the zone that serve the needs of people who live in, work in and visit the local area, including existing and future residents of the subject building;
- it provides for employment opportunities in a highly accessible location through the non-residential floor space proposed which exceeds Council's minimum floor space for such uses;
- it maximises public transport patronage and encourages walking and cycling through the provision of residential development in a highly accessible, walkable location without the provision of private car parking; and
- it minimises conflict between land uses in the zone and adjoining zones and ensures amenity for the people who live in the local centre. In particular, it includes design measures to meet applicable acoustic criteria to ensure appropriate internal and external noise levels as set out in the Acoustic Report accompanying the application (see **Appendix 9** to the SEE).

It is therefore considered that the proposed FSR variation does not compromise the ability of the Development Application to satisfy the relevant B2 Local Centre zone objectives. The Development Application must therefore be considered to be in the public interest.

11. *How would strict compliance hinder the attainment of the objects specified in Section 1.3(a) and (c) of the Act?*

The proposal satisfies the zone and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives. The proposal will result in a better outcome and contribute to a better environment by providing for the upgrade and refurbishment of the existing building in a manner which responds appropriately to existing surrounding development, the heritage significance of the building and neighbouring development and which will make a positive contribution to the character of the streetscape and the locality.

Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development and therefore a better planning outcome overall.

In this regard, the proposal also meets the object of the Act with respect to good design and amenity of the built environment.

It is also noted that there is no public interest in maintaining compliance with the relevant FSR standard on the basis that doing so would hinder the attainment of the objects of section 1.3(a) and (c) of the Act, which are to promote the social and economic welfare of the community and to provide a better environment by the proper management, development and conservation of the State's natural and other resources, in addition to promoting and coordinating orderly and economic use and development of land.

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The development as proposed, including the FSR variation is consistent with the provisions of orderly and economic development.

12. *Is the development standard a performance based control? Give Details.*

The FSR development standard is a performance based control as the control contains objectives to which compliance with the standard is targeted to achieve.

13. *Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?*

This matter is addressed in detail above in the answer to Question 10. Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development.

The development is consistent with the provisions of orderly and economic development and good design and amenity of the built environment.

14. *Are there sufficient environmental planning grounds to justify contravening the development standard? Give details. (cl 4.6(3)(b) and Initial Action at [24])*

There are sufficient environmental planning grounds to support the variation to the FSR development standard applicable to the site, being:

- The existing development on the site involves a breach of the FSR standard. The additional breach now proposed is minor at 0.12:1 (59.9 sqm GFA).
- The bulk and scale impacts associated with the breach of the FSR standard are addressed by the proposed development through the siting and design of the proposal to minimise its visual prominence from the public domain and to maintain the existing townscape views of the site from The Corso and Market Place.
- The bulk and scale of the proposed development, including the proposed FSR variation, are consistent with the existing and desired streetscape character, will not obscure important landscape and townscape features and maintain an appropriate visual relationship between new development and the existing character and landscape of the area.
- The proposed development, including the FSR variation, is consistent with the townscape objectives and design principles for the Manly Town Centre.
- The proposed development, including the FSR variation, is an appropriate response to the heritage significance of the site, as part of The Corso heritage item, and the wider Manly Town Centre Conservation Area as detailed in the submitted HIS (see **Appendix 5** to the SEE).
- The FSR variation will not give rise to any significant adverse amenity impacts on surrounding development in terms of overshadowing, loss of solar access, loss of privacy, loss of views or noise.
- The proposed development results in the upgrade of the existing residential units and improvements in their amenity to achieve the Design Quality principles in SEPP 65.

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- The additional apartment constructed as a result of the proposed FSR variation will enjoy a high level of amenity, which in the absence of significant external amenity impacts, confirms that the FSR variation can be accommodated on the site.
- The proposed development, including the FSR variation, achieves compliance with the relevant underlying objectives of the standard and the objectives of the zone.

The above factors confirm that there are sufficient environmental planning grounds to justify the variation and that the Clause 4.6 variation request is well-founded.

Summary

Accordingly, it is considered that there are more than sufficient environmental planning grounds to justify the variation on the basis that compliance with the FSR standard would be unreasonable and unnecessary in the circumstances of this particular case. As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the FSR standard and the objectives of the B2 zone.

In the context of the other requirements of Clause 4.6, it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

The proposal also meets the objects of the EP&A Act with respect to good design and amenity of the built environment and will contribute to a better environment by providing a built form which respects the scale and definition of the existing streetscape and townscape qualities.

This request is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case.

Despite the proposal's non-compliance with the FSR development standard, the proposed development is considered to meet the relevant objectives of the standard and the objectives of the B2 zone.

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FPIA MRTPI FAPI
MIS Aust**WRITTEN REQUEST PROVIDING GROUNDS FOR VARIATION TO HEIGHT
DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6 OF MANLY LEP
2013****PART OF 19-23 THE CORSO, MANLY****ALTERATIONS AND ADDITIONS TO THE EXISTING SHOP TOP HOUSING
BUILDING AT 19-21 THE CORSO, MANLY****Context – Clause 4.6 of Manly LEP 2013**

This written request has been prepared in respect of Clause 4.6 of Manly LEP 2013 (the LEP) to accompany a Development Application for alterations and additions to the existing shop top housing building at 19-21 The Corso, Manly which forms part of the site at 19-23 The Corso.

No works are proposed to the existing two (2) storey shop building at No. 23 The Corso as part of the subject proposal as it is to be the subject of a separate DA to Council.

The Development Application seeks a variation to the development standard contained within Clause 4.3 of the LEP – maximum building height of 10m.

The existing building already exceeds the 10m height standard with a height of 15.585m to the top of the front parapet to The Corso (see **Figure 1**). No change is proposed to this existing maximum height.

The proposed works increase the height of parts of the building at the rear of the Third Floor to accommodate proposed Unit 11, new lift/lift overrun and fire stair, additions to Units 9 and 10 and plant over the existing roof (see **Figure 1**). When measured in accordance with the definition in the LEP, the proposed works have a maximum height of 15.585m (from Ground floor level to the top of plant/screen).

The existing and proposed building height represent a variation of 5.585m or 56% from the numerical standard in the LEP.

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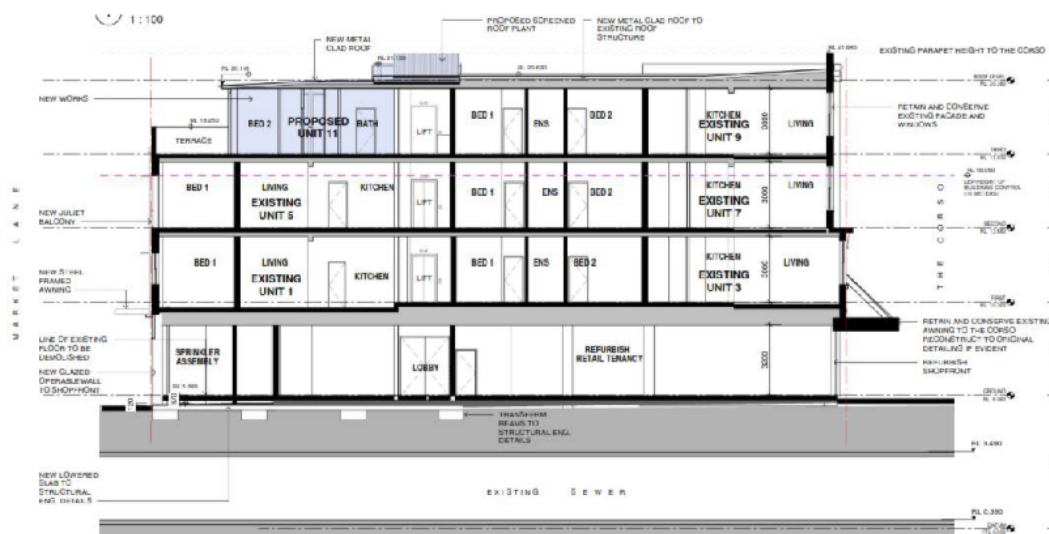


Figure 1: Long Section showing existing and proposed height breach

Source: Extract from Dwg No. 17349-A-10, NBR5 Architecture, see Appendix 3 to the SEE

Clause 4.6 of the LEP provides:

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the*

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objectives for development within the zone in which the development is proposed to be carried out, and

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

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

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

(b) the public benefit of maintaining the development standard, and

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

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's variation of the height development standard.

It is noted that the NSW Department of Planning and Environment provides guidance on how to prepare clause 4.6 variations in the form of *Varying development standards: A Guide* (August 2011). This written request to vary the standard is based on the DP&E's Guide.

This written request has also been prepared having regard to the recent judgment in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action). At paragraphs 17 – 21 of *Initial Action*, Preston CJ confirmed the findings in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe), regarding the available avenues to establish that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case (in accordance with the test provided by cl 4.6(3)(a) of the LEP) including establishing that the objectives of the development standard are achieved notwithstanding non-compliance with the standard: (*Initial Action* at [17]).

Further, Preston CJ found in *Initial Action*, at paragraphs 87 and 88, in the context of Clauses 4.6(3)(a) and (b) that:

“...Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...”

...The requirement in Clause 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard...”

Written Request

As stated above, and as set out in the Statement of Environmental Effects dated May 2019 (the SEE), when measured in accordance with the definition in the LEP, the existing building already exceeds the 10m height standard with a height of 15.585m to the top of the front parapet to The Corso (see **Figure 1**). In the context of the 10m height standard, the whole of the Third Floor of the existing building is above the height control.

No change is proposed to the existing maximum building height.

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As also noted above, the proposed works increase the height of parts of the building at the rear of the Third Floor to accommodate proposed Unit 11, new lift/lift overrun and fire stair, additions to Units 9 and 10 and plant over the existing roof (see **Figure 1**). When measured in accordance with the definition in the LEP, the proposed works have a maximum height of 15.585m (from Ground Floor level to the top of plant/screen).

The proposed works therefore exceed the 10m standard by up to 5.585m.

The questions set out in the DP&E's Guide are addressed below.

1. *What is the name of the environmental planning instrument that applies to the land?*

Manly Local Environmental Plan 2013 (the LEP).

2. *What is the zoning of the land?*

The zoning of the land is B2 Local Centre.

3. *What are the objectives of the zone?*

The objectives of the B2 zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure amenity for the people who live in the local centre in relation to noise, odour, delivery of materials and use of machinery.*

4. *What is the development standard being varied?*

The development standard being varied is the height of buildings development standard.

5. *Under what Clause is the development standard listed in the environmental planning instrument?*

The development standard is listed under clause 4.3 of the LEP.

6. *What are the objectives of the development standard?*

The objectives of clause 4.3 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,*
- 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),*

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- (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.*

7. *What is the numeric value of the development standard in the environmental planning instrument?*

The numeric value of the development standard in the LEP is 10m.

8. *What is the proposed numeric value of the development standard in your development application?*

The maximum numeric value of the proposed variation from the development standard is 15.585m.

9. *What is the percentage variation (between your proposal and the environmental planning instrument)?*

The percentage variation at its highest point above existing ground level is 56%.

10. *How is strict compliance with the development standard unreasonable or unnecessary in this particular case?*

In the circumstances of the case, it is considered that strict compliance with the height of buildings development standard applicable to the site is unreasonable and unnecessary for the following reasons:

A. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard (cl 4.6(3)(a), cl 4.6(4)(ii) and Initial Action at [17])*

Objective 4.3(1)(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

Objective 4.3(1)(b) - to control the bulk and scale of buildings

Assessment:

The height, bulk and scale of the proposed development, including the proposed height variation, is considered to be acceptable in its context as it reflects the existing situation in terms of the existing building height at 19-21 The Corso, the topographic landscape and prevailing building heights and is consistent with Council's townscape objectives for the Manly Town Centre.

As noted above, the existing building at 19-21 The Corso already exceeds the height standard with a height of 15.585m to the existing parapet to The Corso (RL 21.645) and the proposed works do not extend above that height.

When measured in accordance with the definition in the LEP, the top of the proposed rooftop plant/screen matches that height at 15.585m. The other additions reach lesser heights with the lift overrun (RL 21.03) reaching a height of 14.97m and the roof of proposed Unit 11 (RL 20.42) reaching a height of 14.36m (and 14.085m to the gutter line)

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(see **Figure 1**).

The proposal, including the height variation, maintains the overall bulk and scale of the existing building as viewed from the street and the existing relationship of building heights and forms in the streetscape. The proposed development will therefore be compatible with the adjoining development, the streetscapes of The Corso and Market Place and will maintain the amenity of the public domain.

The proposed increases in height, and the height variation, are sited and designed to minimise their visibility and visual prominence when viewed from the public domain to maintain the existing streetscape/townscape character of the building as viewed from The Corso and Market Place.

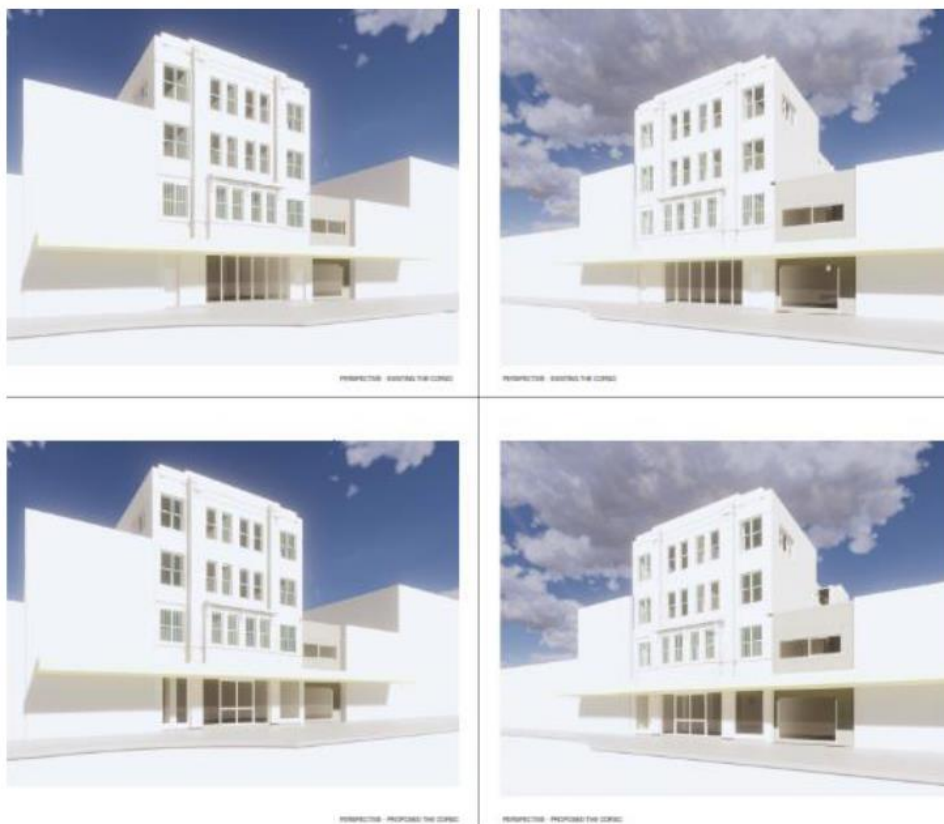


Figure 2: Street View from The Corso (top row - existing; bottom row – proposed)
Source: Extract from Dwg No. 17349-A-12, NBRS Architecture, see Appendix 3 to the SEE

From The Corso and Market Place, the proposed height variation will only be apparent in oblique views of the side elevations available over the roofs of neighbouring, lower buildings (see **Figures 2** and **3**).

From The Corso, the proposed height variation would only be visible over the roof of No. 23 The Corso (see **Figure 2**). It would not be visible in direct views of the building from The Corso as it would be screened by the existing parapet and built form.

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Figure 3: Street View from Market Place (top row - existing; bottom row – proposed)

Source: Extract from Dwg No. 17349-A-11, NBR Architecture, see Appendix 3 to the SEE

Visibility of proposed Unit 11 sited on the rear roof terrace at the Third Floor is minimised through its setbacks from the Market Place elevation (3.5m) and the side elevations (730mm-1.47m) (see **Figure 3**). When viewed directly from the rear in Market Place, the proposed height variation associated with proposed Unit 11 will not be visible and the proposal maintains the existing maximum height, bulk and scale of the rear façade set by the parapet/balustrade at RL 18.25. In this way, it is considered that the proposed development, and the height variation, is consistent with the prevailing building height and maintains the existing bulk and scale of the building.

Only the edge of the roof form of the proposed unit, and the height variation, would be visible in angled views to the rear of the building from Market Place (see **Figure 3**). While the materials and finishes of proposed Unit 11 are contemporary to distinguish the addition from the existing building in accordance with heritage requirements, the proposed darker colours will ensure that the proposed addition and height variation, where visible, are visually recessive.

The height variation associated with the proposed additions for the lift, fire stair and Units 9 and 10, together with the plant platform, is set well back (by a minimum of 10m) from the front and rear façades, with the plant platform also being setback from the side boundaries (2.57-3.05m), to minimise their visible bulk and scale.

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The lift, fire stair and unit additions occupy part of the existing light well and are an extension of the existing built form at the Third Floor of the building. Accordingly, any views of the proposed height variation from the public domain would appear as a logical extension of that existing built form and compatible with its height, scale and bulk (see **Figures 2 and 3**). This relationship is reinforced by the colour, finishes and materials of these additions which will also be consistent with the existing built form.

The roof form of the proposed additions is designed to be consistent with the existing situation with an unobtrusive low profile, sitting below the parapet to The Corso and reducing in height to the north, as noted above.

Desired Future Streetscape Character

The desired future streetscape character of the subject building is set out in Manly DCP 2013 which contains townscape objectives and provisions for local and neighbourhood centres in Section 3.1, townscape provisions for Manly Town Centre in Section 4.2.5.1 and character provisions for Manly Town Centre Heritage Conservation Area and The Corso in Section 5.1.

The proposed development, including the proposed height variation, is considered to be consistent with these provisions, as follows.

Manly DCP Townscape Objectives and Provisions

The townscape objectives of the DCP are as follows:

- Objective 4) To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.*
- Objective 5) To assist in maintaining the character of the locality.*
- Objective 6) To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.*
- Objective 7) To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.*

The proposal is consistent with the above objectives, in that:

- no parking exists on the site and none is now proposed;
- the proposed development maintains the character of the locality by proposing alterations and additions to the existing building, including the height variation, which:
 - maintain the overall built form, bulk and scale of the existing building as viewed from the public domain;
 - do not exceed the existing maximum building height;
 - are sited and designed to minimise their visual prominence from the public domain to maintain the existing streetscape character; and
 - include the retention and upgrade of the existing building, including its façades to The Corso and Market Place, in a manner consistent with its heritage significance.
- it recognises the importance of pedestrian movement and townscape design in strengthening and promoting Manly Town Centre by:
 - maintaining and increasing the active frontage to The Corso and increasing the level of activation to Market Place through the location of the residential entry;

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- by refurbishing the existing awning to The Corso and providing a new awning to Market Place to improve pedestrian amenity; and
 - by improving the appearance of the existing building from both streets through the upgrade and refurbishment of the street front façades;
- it minimises negative visual impacts to promote townscape qualities through the siting and design of the proposed additions to minimise their visual prominence from the public domain, as detailed above and shown in **Figures 2 and 3**.

The proposal, including the height variation, is consistent with the applicable townscape provisions of the DCP, as follows.

Local role of the site

The proposal generally maintains the local role of the site as minimal changes are proposed to the overall form and scale of the building as viewed from The Corso and Market Place. The proposed additions would only be visible from these vantage points in oblique views to the side elevations over the roofs of neighbouring buildings; they would not be visible in direct views from these frontages. The proposal maintains the existing built form relationship with adjoining development and public spaces.

While the proposed rooftop addition (Unit 11), and associated height variation, would be visible from higher surrounding vantage points (eg. Whistler car park upper levels), it is considered satisfactory as it is below the existing maximum height of the building, is clearly distinguishable from the original building fabric through its design and materials and its visual bulk and visibility from Market Place is minimised through its setbacks and height, as noted above.

No changes are proposed to the street frontage façade to The Corso which is to be retained and conserved in accordance with the HIS (see **Appendix 5** in the SEE) which will enhance the appearance of the building within the heritage item of The Corso. The proposed modifications to the rear façade to Market Place are compatible with the use and location of the building and satisfactory from a heritage perspective.

Townscape Principles Map

The proposed development is consistent with the Townscape Principles map as it relates to the subject site by maintaining and improving the existing important vistas along The Corso and from Darley Road towards the site.

Design Details

The proposal is consistent with the relevant design details controls in that:

- as set out in the HIS (see **Appendix 5**) the proposal is complementary to adjacent buildings and the wider conservation area in terms of the design detailing of the façades. As noted above, no changes are proposed to the façade to The Corso which is to be conserved and refurbished;
- no change is proposed to the overall maximum height of the building which is the existing parapet to The Corso. The proposed additions match or sit below this height. No change is proposed to floor levels within the building, apart from the lowering of the floor levels at the rear Ground Floor in the lobby entry and waste storage area;
- the materials, textures and original colours of the existing building are to be retained or reinstated where there is sufficient available evidence, while the proposed additional

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unit utilises contemporary design, materials and finishes and darker colours to distinguish it as new work;

- the proposal maintains the architectural style of the existing building fabric. The proposed rooftop addition is distinguishable from the original fabric through its materials, detailing and colours;
- no change is proposed to the existing building footprint;
- the proposal will not give rise to any significant additional overshadowing or adverse wind effects as minimal change is proposed to the height and form of the building;
- the proposal will improve the appearance of the side walls of the building, to the extent that they are visible, through the rationalisation of the light wells and removal of external attachments/infrastructure;
- the Ground Floor has level access from The Corso and Market Place with an internal ramp within the entry from Market Place;
- retail space occupies the full width of the building frontage to The Corso;
- street numbering will be provided as required; and
- new plant and associated installations are proposed over the rear of the existing roof top set well back from the rear and side boundaries. Screening in the form of a minimum 990mm high slatted screen is proposed around the plant to minimise any adverse visual impact on existing outlooks over the rear of the site.

Manly DCP Character Provisions for Manly Town Centre Heritage Conservation Area and The Corso

General Character

The proposal, including the height variation, is consistent with the general character of the Town Centre Conservation Area as set out in the DCP (see also **Appendix 5** to the SEE) in that it involves alterations and additions to an existing building which:

- maintain the existing scale of the street frontage façades;
- is built to the property boundaries to The Corso and Market Place;
- provides a good level of pedestrian amenity afforded by the existing and proposed footpath awnings; and
- contributes to the range of architectural styles in the area.

The Corso

The proposed development is consistent with the guidelines for The Corso (see also **Appendix 5** in the SEE), in that:

- the existing building at 19-21 The Corso, which is part of the group heritage item on The Corso, is to be conserved, not redeveloped;
- the importance of internal changes is recognised in the approach to the design of the proposed development as detailed in the submitted HIS (see **Appendix 5**);
- the proposed addition is sited to the rear of the building;
- the parapet to The Corso will continue to be read against the sky as the proposed works match or are below the parapet height;
- there are no critical views to be kept open to or through the site;
- no change is proposed to the existing subdivision pattern;
- a new building is not proposed;
- windows and balconies open to the street;

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- the building height has been determined by site-specific requirements, in particular the height of the existing built elements on the site. As noted above, the proposed development does not result in any increase in the overall maximum height of the existing building;
- there is no existing arcade through the site;
- the existing footpath awning to The Corso façade is to be retained and conserved. A new awning is proposed to the Market Lane façade as required;
- the shopfront to The Corso occupies the width of the frontage (apart from piers) to maximise activity. Roller shutters are not proposed.
- the shop front is existing on the site. Alterations are proposed to provide articulation that relates to the loadbearing masonry above and a solid plinth below the contemporary glazing as described in the submitted HIS (see **Appendix 5**);
- the proposed rooftop addition has a clear contemporary design idiom;
- the proposal will utilise external colours that are appropriate for the type and age of the building. The original external colours will be re-instated if there is sufficient evidence on-site;
- all of the residential units within the building (including the existing units) will incorporate measures to reduce transmission of noise into the dwellings to meet the applicable internal noise level criteria as set out in the submitted Acoustic Report (see **Appendix 9**). That Report specifies glazing requirements for all living and bedroom windows and external roof, ceiling and wall construction requirements for lightweight elements with which the proposed development will comply;
- external details for plant, exhausts, ducts etc. are designed to be part of the overall building structure;
- the proposal will contribute to the presentation of the building to Market Place and will improve casual surveillance of Market Place through the proposed changes to the rear façade; and
- the site specific controls in Schedule 6 to the DCP state in relation to 21 The Corso *redesign the two ground level entrance doors to the upper floors to give a more substantial appearance, with transparent glazing (to increase connection with street) and solid returns*. The proposed development removes the ground level doors to the upper floors from the front elevation. Access to the upper floors is via the residential lobby accessible from Market Place. The shopfront has been widened accordingly with masonry piers added to provide articulation that responds to the loadbearing masonry above.

In addition, the proposed height variation is an appropriate response to the heritage significance of the site and the streetscape of The Corso. As set out in the submitted HIS (see **Appendix 5** to the SEE):

- *The proposed development supports and enhances the cohesive low-scale development of Manly Town Centre through the retention and conservation of the primary façade and footpath awning to The Corso. It does not result in an increase in development height to a principle street and increases pedestrian amenity through retention and conservation of the footpath awning and full activation of the shopfront facing The Corso. (p. 40)*
- *The proposed development supports and enhances the significance of The Corso through the retention and conservation of a prominent commercial and residential building representative of the early 20th Century development of the Corso. Conservation of the building contributes to the significance and an appreciation of the*

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fine collection of late 19th and early 20th Century buildings and therefore has the potential to enhance the visitor experience of The Corso.

The proposed development does not attempt to alter the parapet details or the silhouette of the primary street façade against the sky. The conservation and refurbishment of 19-21 The Corso supports an appreciation of the character of The Corso gained through the gradual visual progression from Manly Cove to Ocean Beach through the retention of a prominent façade, its footpath awning and through the re-activation of the shopfront. (p. 42)

- *The primary façade to The Corso will be retained and conserved and will significantly enhance the appearance of the building within the heritage item and heritage listed Town Centre.*

The design of the refurbishment and additions has been carefully considered. It aims to retain and reinstate heritage detailing externally and internally and new additions are in contemporary materials, so they can be read as new fabric.

All existing views to and from the heritage items in the vicinity, and the character of Manly Town Centre and The Corso special Character Area and the Manly Town Centre Conservation Area will be retained and conserved. The additions will not be visible in critical views as defined in the Townscape Principles. (p. 49)

Accordingly, the height variation of the proposed development is consistent with the above objectives as it is consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality and it has been sited and designed to minimise its visual bulk and scale so as to maintain the overall bulk and scale of the existing building on the site when viewed from the public domain.

Objective 4.3(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 the harbour and foreshores),*

Assessment:

The proposed height variation will not result in any significant impacts on views to, from or between public places and nearby residential development. As noted above, the height variation does not exceed the existing maximum height of the building to The Corso and the additions to the rear of the Third Floor are of a lesser height designed to have minimal visual prominence when viewed from the public domain. To the extent that the height variation would be visible from the rear of the site, the additions and the height variation are designed to be consistent and compatible with the overall bulk and scale of the existing building.

The proposed additions to the rear of the Third Floor extend some 3.5m beyond the rear building line of the existing rooftop laundry at varying heights. While there are taller residential developments to the west that may enjoy views over the subject site, the proposed development, including the height variation, would have a marginal impact on

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those views given its limited additional height and bulk compared with the existing building on the site.

The proposed additions, and the height variation, would also be visible from the upper levels of the Whistler Car Park to the north of the site. However, it would not disrupt views from this vantage point as it does not exceed the existing maximum height of the building as set by the parapet to The Corso.

Accordingly, the height variation of the proposed development minimises disruption to views to, from and between public spaces and nearby residential development.

Objective 4.3(1)(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

Assessment:

The proposed height variation will not result in any significant adverse impacts on the public domain or residential properties in terms of overshadowing/solar access.

As shown in the submitted shadow diagrams (see **Appendix 3** to the SEE), the proposal does not give rise to any significant additional overshadowing as minimal change is proposed to the height and form of the building.

The diagrams show that the proposal, including the height variation, will result in minimal additional overshadowing of public open spaces affecting small areas of Whistler Street and Market Place. However, it is noted that those areas would already be subject to overshadowing by existing neighbouring buildings and, taking into account that existing impact, the proposal will have no additional impact.

In addition, as the only change to its form, bulk or massing is at the rear of the existing building, the proposal will not result in any additional overshadowing of The Corso

Further, the proposal will not result in additional overshadowing of any residential development.

Accordingly, the proposed height variation will maintain solar access to public and private open spaces and will maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings.

Objective 4.3(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

Assessment:

This objective is not applicable to the subject proposal as the site is not within a recreation or environmental protection zone.

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B. Consistency with the objectives of the B2 Local Centre zone (cl 4.6(4)(a)(ii))

Assessment:

As well as achieving the applicable objectives of clause 4.3 as demonstrated above, the proposal, including the height variation, is also in the public interest as it is consistent with the relevant objectives of the B2 Local Centre zone in that:

- it contributes to the range of retail uses in the zone that serve the needs of people who live in, work in and visit the local area, including existing and future residents of the subject building;
- it provides for employment opportunities in a highly accessible location through the non-residential floor space proposed which exceeds Council's minimum floor space for such uses;
- it maximises public transport patronage and encourages walking and cycling through the provision of residential development in a highly accessible, walkable location without private car parking; and
- it minimises conflict between land uses in the zone and adjoining zones and ensures amenity for the people who live in the local centre. In particular, it includes design measures to meet applicable acoustic criteria to ensure appropriate internal and external noise levels as set out in the Acoustic Report accompanying the application (see **Appendix 9** to the SEE).

It is therefore considered that the proposed height of buildings variation does not compromise the ability of the Development Application to satisfy the relevant B2 Local Centre zone objectives. The Development Application must therefore be considered to be in the public interest.

11. *How would strict compliance hinder the attainment of the objects specified in Section 1.3(a) and (c) of the Act?*

Compliance with the relevant height standard would hinder the attainment of the objects of section 1.3(a) and (c) of the Act, which are 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, in addition to promoting and coordinating orderly and economic use and development of land.

The proposal satisfies the zone and development standard objectives and therefore strict compliance with the standard is not required in order to achieve compliance with the objectives. Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development and therefore a better planning outcome overall.

The development as proposed, including the height variation, is consistent with the provisions of orderly and economic development as it relates to an existing building already exceeding the height standard and provides for the upgrade and refurbishment of the existing building in a manner which responds appropriately to existing surrounding development, the heritage significance of the building and neighbouring development and which will make a positive contribution to the character of the streetscape and the locality.

In this regard, the proposal also meets the object of the Act with respect to good design and amenity of the built environment.

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12. *Is the development standard a performance based control? Give Details.*

The building height development standard is a performance based control as the control contains objectives to which compliance with the standard is targeted to achieve.

13. *Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?*

This matter is addressed in detail above in the answer to Question 10. Strict compliance would result in an inflexible application of policy. It does not serve any purpose that should outweigh the positive outcomes of the development.

The development is consistent with the provisions of orderly and economic development and good design and amenity of the built environment.

14. *Are there sufficient environmental planning grounds to justify contravening the development standard? Give details. (cl 4.6(3)(b) and Initial Action at [24])*

There are sufficient environmental planning grounds to support the variation to the height of buildings development standard applicable to the site, being:

- There is no change in the existing maximum height of the building on the site which already exceeds the height standard.
- The proposed height variation is consistent with the existing development on the site in that it either matches or is lower than the existing maximum building height.
- The bulk and scale impacts associated with the breach of the height standard are addressed by the proposed development through the siting and design of the proposed additions to minimise their visual prominence from the public domain and to maintain the overall existing streetscape and townscape views of the site from The Corso and Market Place.
- The proposed development, including the height variation, is consistent with the townscape objectives and design principles for the Manly Town Centre and The Corso.
- The proposed development, including the height variation, is an appropriate response to the heritage significance of the site, as part of The Corso heritage item, and the wider Manly Town Centre Conservation Area as detailed in the submitted HIS (see **Appendix 5** to the SEE).
- The height variation will not give rise to any significant adverse amenity impacts on surrounding development in terms of overshadowing, loss of solar access or loss of views.
- The proposed development results in the upgrade of the existing residential units in the building and improvements in their amenity to achieve the Design Quality principles in SEPP 65.
- The additional apartment constructed as a result of the proposed height variation will enjoy a high level of amenity, which in the absence of significant external amenity impacts, confirms that the height variation can be accommodated on the site.

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- The proposed development, including the height variation, achieves compliance with the relevant underlying objectives of the standard and the objectives of the zone.

The above factors confirm that there are sufficient environmental planning grounds to justify the variation and that the Clause 4.6 variation request is well-founded.

Summary

Accordingly, there are more than sufficient environmental planning grounds to justify the variation of the height standard on the basis that compliance with the standard would be unreasonable and unnecessary in the circumstances of this particular case. As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the height standard and the objectives of the B2 zone.

In the context of the other requirements of Clause 4.6, no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

The proposal also meets the objects of the EP&A Act with respect to good design and amenity of the built environment and will contribute to a better environment by providing a built form which respects the scale and definition of the existing streetscape and townscape qualities.

This request is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case.

Despite the proposal's non-compliance with the height development standard, the proposed development is considered to meet the objectives of the standard and the objectives of the B2 zone.

ITEM 3.2	DA2019/1493 - 163 RIVERVIEW ROAD, AVALON BEACH - CONSTRUCTION OF A BOAT SHED
AUTHORISING MANAGER	MATTHEW EDMONDS
TRIM FILE REF	2020/173218
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

- A. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority vary the Height of Building Development Standard of Clause 4.3 of PLEP 2014, as the applicants written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
 - B. That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2019/1493 for construction of a boat shed at Lot 100 DP 1250837, 163 Riverview Road, Avalon Beach subject to the conditions and for the reasons set out in the Assessment Report.
-

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1493
Responsible Officer:	Georgia Quinn
Land to be developed (Address):	Lot 100 DP 1250837, 163 Riverview Road AVALON BEACH NSW 2107
Proposed Development:	Construction of a boat shed
Zoning:	E4 Environmental Living W1 Natural Waterways
Development Permissible:	Yes - Zone E4 Environmental Living Yes - Zone W1 Natural Waterways
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Geoffrey Howard Lee Yin Lee
Applicant:	Turnbull Planning International Pty Ltd
Application Lodged:	19/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	15/01/2020 to 29/01/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 31.25%
Recommendation:	Approval
Estimated Cost of Works:	\$ 75,000.00

EXECUTIVE SUMMARY

The proposal is for the construction of a boatshed and associated decking and involves a variation to the Height of Buildings development standard of the Pittwater Local Environmental Plan 2014 (PLEP 2014) of 31.25%. Despite the numeric non-compliance, the proposal is not considered to result in unreasonable bulk, scale or amenity impacts as viewed from the adjoining Pittwater Waterway or adjoining properties.

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

The proposed development is generally compliant with the numeric controls under the Pittwater 21 Development Control Plan (P21DCP), with the exception of a side setback and side boundary variation.

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

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

PROPOSED DEVELOPMENT IN DETAIL

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

In particular, the application includes:

- The construction of a boatshed with an electric retractable hoist on the western elevation; and
- Associated timber decking.

ASSESSMENT INTRODUCTION

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

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

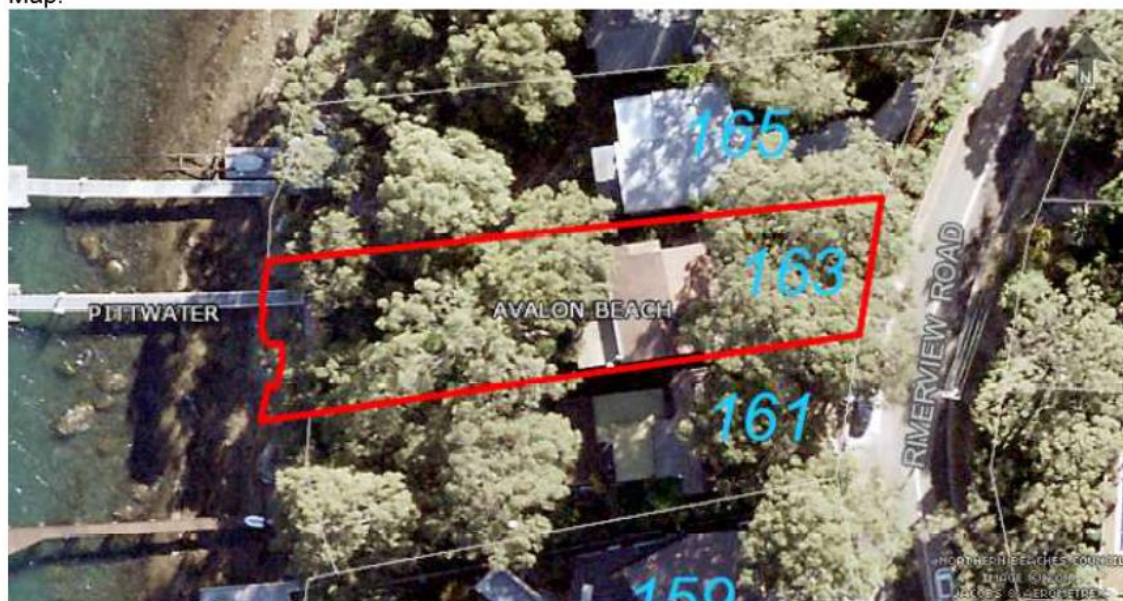
SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.11 Building envelope
Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D1.20 Scenic Protection Category One Areas
Pittwater 21 Development Control Plan - D15.15 Waterfront development

SITE DESCRIPTION

Property Description:	Lot 100 DP 1250837 , 163 Riverview Road AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the western side of Riverview Road, Avalon Beach. The site is irregular in shape with a frontage of 14.885m along Riverview Road and a depth of 66.16m to the mean high water mark . The rear of the site adjoins the Pittwater Waterway. The site has a surveyed area of 1010m². The majority of the site is located within the E4 Environmental Living zone, whilst a small portion at the rear of the site below the seawall is located within the W1 Natural Waterways zone. The site accommodates a four storey dwelling house, a seawall and a jetty. The site has a cross fall from east to west (ie. front to rear) of approximately 34.5m. The site is densely vegetated with mature tree species throughout. Detailed Description of Adjoining and Surrounding Development Adjoining and surrounding development is characterised by similar scaled low density residential development within landscaped settings, most of which contain waterfront facilities including boatsheds and jetties.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Development Application DA2018/2015

This application for alterations and additions to a dwelling house and construction of a swimming pool was granted consent by the NBLPP on 5 June 2019.

Modification Application Mod2019/0638

This application for alterations and additions to a dwelling house and construction of a swimming pool is currently under assessment with Council.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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. Additional information was requested in relation to a Clause 4.6 request. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000

Section 4.15 Matters for Consideration'	Comments
	requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	General Comments Environmental Health have been requested to provide comment on the development in relation to Acid sulphate soils. Acid sulfate soils on Councils mapping software is listed as Class 5. The development has little excavation which is highly unlikely to disturb any acid sulfate soils. As such Environmental Health recommend approval with no conditions. Recommendation APPROVAL - no conditions.
NECC (Bushland and Biodiversity)	The proposal has been assessed against the Biodiversity Conservation Act 2016, Pittwater LEP Cl. 7.6 Biodiversity, Pittwater DCP B4.7 Pittwater Spotted Gum Forest A 'test of significance' (5-part test) was not provided as required under Section 7.3 of the Biodiversity Conservation Act 2016 to assess impacts on the Pittwater Spotted Gum EEC. However, Council has undertaken an internal assessment and has concluded a non-significant impact on the EEC as a result of the Development Application. T1 – Spotted Gum. is approved to be removed as part of the previous approved development application. Biodiversity supports the removal of the other eucalypt tree classified as Low RV as assessed by the Arborist, subject to replacement planting of Pittwater Spotted Gum EEC canopy tree species. Translocation of the Burrawangs is also supported The proposal is for a boat shed which will result in the removal of 1 tree (<i>Eucalyptus umbra</i>) which contains a hollow, and a condition will be imposed around the inspection of the hollow and recommendations regarding appropriateness of removal and/or relocation of fauna species (if occupied) and the tree hollow.
NECC (Coast and Catchments)	The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal

Internal Referral Body	Comments
	Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016. State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development. The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) and Council's Estuarine Hazard Map in the Pittwater DCP 21. Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA. <u>Comment:</u> On internal assessment of the submitted Statement of Environmental Effects (SEE) report Council accepts the assessment and the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. Pittwater LEP 2014 and Pittwater 21 DCP The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site. Estuarine Risk Management In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.72 m AHD would apply at the subject site. On internal assessment Council accepts the ground floor level for the proposed structure is at 3.3m AHD and is above the applicable EPL of 2.72m AHD for the site. Foundations for the structure are below the EPL and will be conditioned. The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP subject to conditions.
NECC (Development	

Internal Referral Body	Comments
Engineering)	No objection to approval, subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	There are no requirements for stormwater. Sediment controls are conditioned, but should already be in place for the alterations and additions to the residence under a previous DA.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

The site is mapped as being located within the 'Coastal Environment Area' and 'Coastal Use Area' under the provisions of the CM SEPP. Accordingly, the proposal is assessed against Clauses 13, 14 and 15 of the CM SEPP.

13 Development on land within the coastal environment area

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

Comment:

The proposed development is to be sited wholly within the subject site and the building footprint is light weight and modest, thus it is unlikely to cause an adverse impact to the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment; coastal environmental values and natural coastal processes; the water quality of the marine estate or to marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms. The proposed development will not hinder the safe access to and along the foreshore, beach, headlands or rock platforms. The subject site has not been identified to contain any Aboriginal cultural heritage, practices or places. The proposed development will not cause an adverse impact on the use

of 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:

As detailed above, the proposed development has been designed, sited and will be managed to avoid any adverse impact on the cultural and environmental aspects referred to in subclause (1).

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

14 Development on land within the coastal use area

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

Comment:

The proposed development is not considered to have an adverse impact on access along the foreshore, beach, headland or rock platforms for members of the public nor are any unreasonable amenity impacts considered likely to arise. The development has been designed, sited and will be managed to avoid adverse impacts referred to above. The proposed development has taken into account the surrounding coastal and built environment which has influenced the design to ensure bulk, scale and size of the proposed development is appropriate.

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

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

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

Comment:

The proposed development is not likely to cause increased risk of coastal hazards on that land or other land, given the proposed development is modest in size, is to be cantilevered above the existing seawall therefore reducing site disturbance and is sited wholly within the subject site.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone E4 : Yes Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone E4 : Yes Zone W1 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	4.0m W1 Zone 8.5m E4 Zone	5.25m	31.25% (1.25m)	No

Compliance Assessment

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

Clause	Compliance with Requirements
23 Use of certain land in the W1 Natural Waterways Zone	Yes

Detailed Assessment

Zone W1 Natural Waterways

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

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

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	4m
Proposed:	5.25m (above 1.17 AHD)*
Percentage variation to requirement:	31.25%

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

Further, it is also noted the submitted Clause 4.6 Variation Request submitted by the Applicant denotes the maximum building height as being 5.52m above existing ground level. As indicated within the Clause 4.6, this figure reflects the measurement to the ridge from RL 0.9m (determined by the applicant as the natural ground level vertically below the highest level of the structure). The applicant has interpolated such ground level from the Survey, where the bottom of the seawall is depicted at RL 0.9m.

Council has previously adopted the approach of measuring the height of development within the Waterways zoning from the Highest Astronomical Tide (ie. 1.17AHD), given the ground level often varies due to tidal influence. Whilst it is acknowledged the applicant's written request contains an alternate building height and calculation method to Council's, the justification provided within the submitted Clause 4.6 request is considered well-founded and the material outcome of the development is considered reasonable.

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).

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

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

- The height of the boatshed is entirely consistent in terms of form and height with the guidelines prescribed within P21DCP, Clause D15.15 and provides an innovative and attractive design solution for providing boat storage;
- The ridge height and scale of the proposed boatshed is not dissimilar nor disproportionate to similar structures built within the immediate area and the wider Pittwater locale;

- The proposed development does not hinder public foreshore access and does not allow use of the roof area for recreational or observational purposes; and
- The boatshed will appear consistent with the desired character of the Pittwater Waterway."

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

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the W1 Natural Waterways zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposal seeks a maximum building height of 5.25m (6.42 AHD), thereby contravening the numeric control by 31.25% (1.25m). The minor height departure will not contribute to an adverse building bulk and scale. The proposal is contemporary in design such that the visual dominance of the built form is broken down as a result of the complementary

external finishes in conjunction with the articulation of the structure. Further, modulation of the front (western) and northern side facade will ensure the development minimises visual impact as viewed from the Pittwater Waterway and surrounding public and private spaces. Boatsheds are common development within the vicinity of the subject site, and the wider Waterway's locality. The height and scale of the proposal is consistent with the design parameters prescribed within Clause D15.15 of P21DCP and is not dissimilar to that of surrounding waterfront development. In turn, the proposed development is considered to be consistent with the desired character of the locality.

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

Comment:

The encroachment of the height of buildings development standard will not be discernible as viewed from the Pittwater Waterway. The height departure is substantially attributed to the existing site characteristics, specifically the seawall of which the cantilevered boatshed will be set upon. Further, the development comprises a height and scale that is in keeping with that of surrounding development within the Avalon locality and those within the wider Pittwater locale.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposal will not unreasonably impact neighbouring properties in terms of solar access, given the undulating topography of the adjoining properties in conjunction with the fact the boatshed will be offset from adjoining built structures.

d) to allow for the reasonable sharing of views,

Comment:

The minor height variation will not be discernible to the casual observer from the waterway perspective. Further, the articulated design and location of the boatshed ensure minimal disruption of views between public and private spaces occur as a result of the development. The boatshed is offset from other structures within the adjoining properties, and at a significantly lower elevation than that of the adjoining dwellings. In turn, the development is considered to achieve the reasonable sharing of views.

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

Comment:

The cantilevered design of the boatshed significantly reduces the degree of site disturbance and excavation required to facilitate the development, thus responding sensitively to the natural topography of the allotment. The development will sit comfortably within its context in terms of scale, massing and form and the variation will provide for a well composed, articulated structure that provides good amenity and function for the dwelling occupants whilst respecting the natural topography of the site and surrounds.

f) to minimise the adverse visual impact of development on the natural environment,

heritage conservation areas and heritage items,

Comment:

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

Zone objectives

The underlying objectives of the W1 Natural Waterways zone

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

Comment:

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

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

Comment:

The proposal has been reviewed by Council's Biodiveristy, Acid Sulphate, Riparian and Coastal Officers, having regard to the management and preservation of the natural environment and have raised no objection to the proposed development subject to conditions included in the recommendation of this report.

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

Comment:

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

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

Comment:

The proposal has been reviewed by Council's Biodiveristy, Acid Sulphate, Riparian and Coastal Officers, having regard to the management and preservation of the natural environment and have raised no objection subject to conditions included in the recommendation of this report. Further, the proposal is located wholly within the boundaries of the subject site, therefore the development will not obstruct the navigation of the waterway.

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

Comment:

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

Conclusion:

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

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

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

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

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:

(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and

(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and

(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and

(iv) any adverse impact on the habitat elements providing connectivity on the land, and

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	56.7m	N/A	Yes
Rear building line	Foreshore Building Line applies	Wholly below FBL	N/A	N/A
Side building line	2.5m North	8.3m Entrance stairs	N/A	Yes
	1m South	0.1m Boatshed	90% (0.9m)	No
Building envelope	3.5m North	Within envelope	N/A	Yes
	3.5m South	Encroachment of between nil and 1.9m in height for length of 4.1m	Up to 52.8%	No
Landscaped area	60% (606m ²)	49.6% (501.3m ²)	17.3% (104.7m ²)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.20 Scenic Protection Category One Areas	No	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes

Detailed Assessment

B8.3 Construction and Demolition - Waste Minimisation

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

D1.9 Side and rear building line

Description of non-compliance

The Control requires structures be setback a minimum of 1.0m from one side boundary and 2.5m from the other side boundary.

The proposed boatshed is sited 0.1m from the southern side boundary, which represents a variation of 90% (0.9m).

Merit consideration

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

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

Comment:

The boatshed complies with the design parameters prescribed within P21DCP and is articulated such that the bulk and scale is minimised as a result. The development is cantilevered over the existing seawall, thereby minimising site disturbance and largely retaining the natural form of the landscape. No unreasonable amenity impacts are likely to arise as a result of the application, therefore it is considered the desired future character of the locality is achieved.

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

Comment:

The boatshed readily complies with the prescribed design parameters including the allowable width, length and height of the structure above the platform on which it is to be built. The boatshed is cantilevered above the existing seawall, which in conjunction with the articulated design is considered to minimise the bulk and scale of the development. Further, the rear portion of the site is densely vegetated with mature tree canopy and shrubs, which will also assist in the visual reduction of the built form.

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

Comment:

The site specific design of the boatshed, in conjunction with the undulating topography of the subject and surrounding allotments, will ensure the equitable preservation of views and vistas to and/or from public and private places.

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

Comment:

As above, the responsive design and siting of the boatshed allows for the reasonable sharing of views to be achieved.

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

Comment:

The proposal will achieve reasonable amenity for the occupants of the subject site as well as those of

adjoining and surrounding sites, due to the relatively minor scale of the development in conjunction with the intended storage nature of a boatshed. In this regard, the development is considered capable of maintaining reasonable visual and acoustic privacy between buildings and given the single-storey nature of the boatshed, reasonable solar access is assumed to be maintained for adjoining sites.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

The proposal requires the removal of one (1) Eucalyptus umbra tree which is identified within the supporting Aborigicultural Impact Assessment as having a low retention value. Council's Biodiversity Officer has reviewed the proposal and raised no objection to the removal of such tree, subject to replacement planting of Pittwater Spotted Gym EEC canopy tree species. The application, as conditioned, will ensure the site maintains the presence of mature tree canopy, particularly within the rear portion that fronts the Pittwater Waterway.

- *Flexibility in the siting of buildings and access.*

Comment:

As detailed above, no unreasonable amenity impacts are considered likely to arise as a result of the proposed development and further, access to the site and the foreshore will remain as existing.

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

Comment:

The proposal requires the removal of one (1) Eucalyptus umbra tree which is identified within the supporting Aborigicultural Impact Assessment (prepared by Urban Forestry Australia dated 15 December 2019) as having a low retention value. Council's Biodiversity Officer has reviewed the proposal and raised no objection to the removal of such tree, subject to replacement planting of Pittwater Spotted Gym EEC canopy tree species. In turn, the on-site provision of landscaping will be enhanced to assist in the visual reduction of the built form.

- *A landscaped buffer between commercial and residential zones is achieved.*

Comment:

Not applicable, given the subject site does not adjoin a commercially zoned property.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.11 Building envelope

Description of non-compliance

The proposed boatshed protrudes beyond the prescribed envelope control on the southern elevation by between nil and 1.9m in height for a length of 4.1m.

This represents a variation of up 52.8%.

It is noted the variations provision of the Control stipulates that where the building footprint is situated on a slope of greater than 30% gradient, variation to this control will be considered on merits. The subject building footprint is situated on a slope with a 63.6% gradient.

Merit consideration

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

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

Comment:

The proposed development as viewed from the public domain (the Pittwater Waterway) will appear consistent and comparable with that of surrounding waterfront development in terms of height, bulk and scale. The boatshed has been designed and sited appropriately within the context of the undulating topography of the site, which results in no unreasonable amenity impacts upon adjoining and surrounding sites therefore it is considered the desired future character of the locality is achieved.

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

Comment:

The proposed development will not be visible as viewed from the streetscape due to its siting in conjunction with the site topography, however will be visible as viewed from the Pittwater Waterway. The boatshed as viewed from the Pittwater Waterway will appear consistent with surrounding waterfront facilities in terms of bulk and scale, such that it will integrate appropriately within its context. The boatshed will remain significantly below the height of the trees of the natural environment.

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

Comment:

The proposed development has been sited and designed to allow for the greatest retention rate of significant species within the site as well as ensuring reasonable amenity for adjoining and surrounding properties. The proposal requires a degree of excavation that in turn causes site disturbance, however the extent is minimal and not inconsistent or dissimilar with that seen throughout the wider locale. Site disturbance has been kept to a minimal as a result of the cantilevered design. In turn, it is considered the development responds to, reinforces and sensitively relates to the spatial characteristics of the existing natural environment.

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

Comment:

The boatshed is well articulated and modulated through the provision of various materials, angles and its cantilevered design above the existing seawall that in turn break up the dominance of the built form. The boatshed readily complies with the design parameters for boatsheds as prescribed within Clause D15.15 of P21DCP such that the built form is considered minimised. Further, the innovative and contemporary design of the boatshed will contribute to the interest and aesthetics of the foreshore whilst integrating appropriately within its context. The bulk and scale of the built form is considered to be minimal in this instance.

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

Comment:

Due to the undulating topography of the site in conjunction with the low elevation of the boatshed, the equitable preservation of views and vistas to and/or from public and private places can be maintained.

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

Comment:

The proposal will achieve reasonable amenity for the occupants of the subject site as well as those of adjoining and surrounding sites, due to the relatively minor scale of the development in conjunction with the intended storage nature of a boatshed. In this regard, the development is considered capable of maintaining reasonable visual and acoustic privacy between buildings and given the single-storey design of the boatshed, reasonable solar access is assumed to be maintained for adjoining sites.

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

Comment:

The proposed development requires the removal of one (1) Eucalyptus umbra tree, which is identified within the supporting Arboricultural Impact Assessment as having a low retention value. Council's Biodiversity Officer has reviewed the proposal and raised no objections to the removal of this tree, subject to conditions included in the recommendation of this report. Conditions have been included requiring the provision of at least two (2) canopy trees, which in turn would satisfy this objective and act as a visual mechanism to assist in the reduction of the built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.14 Landscaped Area - Environmentally Sensitive LandDescription of non-compliance

The Control requires a minimum of 60% (606m²) of the site area to be landscaped.

The proposal provides 49.6% (501.3m²) of the site as landscaped area, which represents a variation of 17.3% (104.7m²).

It is noted the variations provision of the Control allows for impervious pathways less than 1m in width to be included as part of the landscaped area, as well as up to 6% of the site area provided such is allocated to outdoor recreational purposes. Upon application of such provisions, the landscaped area would exceed the 60% requirement.

Merit consideration

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

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

Comment:

The proposed development is appropriate in bulk and scale and is intended to provide storage and service functions for the dwelling occupants. The development is not considered unreasonable within its context nor visually dominant or inconsistent with that of surrounding waterfront facilities therefore the desired future character of the locality is considered to be achieved.

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

Comment:

The boatshed and associated decking is articulated such that the dominance of the built form is broken down as a result. The boatshed achieves compliance with the relevant DCP design requirements and is innovative in design such that site disturbance is minimised as a result. Further, the development as viewed from the Pittwater Waterway will appear consistent with surrounding waterfront facilities, such that it will integrate appropriately within its context. In turn, the bulk and scale of the built form is considered to be reasonable and minimised.

- *A reasonable level of amenity and solar access is provided and maintained.*

Comment:

The proposed development is single-storey therefore it is assumed a reasonable level of solar access will continue to be provided to adjoining sites. Further, the proposal is capable of ensuring reasonable amenity be maintained for the dwelling occupants and those of adjoining and surrounding properties due to the nature of the development.

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

Comment:

The proposed development requires the removal of one (1) Eucalyptus umbra tree, which is identified

within the supporting Arboricultural Impact Assessment as having a low retention value. Council's Biodiversity Officer has reviewed the proposal and raised no objections to the removal of this tree, subject to conditions included in the recommendation of this report. Conditions have been included requiring the provision of at least two (2) canopy trees, which in turn would satisfy this objective and act as a visual mechanism to assist in the reduction of the built form. The rear portion of the site is currently densely vegetated, most of which will remain in place and continue to act as a visual buffer.

- *Conservation of natural vegetation and biodiversity.*

Comment:

As above, the proposal requires the removal of one (1) mature tree only, and conditions have been recommended which require the planting of at least two (2) canopy trees which in turn will allow for the conservation of natural vegetation and biodiversity.

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

Comment:

The proposal has been reviewed by Council's Development Engineer, having regard to provisions for stormwater management and has raised no objections, subject to conditions included in the recommendation of this report.

- *To preserve and enhance the rural and bushland character of the area.*

Comment:

The proposal will allow for the preservation and enhancement of the bushland character of the area, given only one (1) mature tree is required to be removed in order to facilitate the works. The recommended conditions for replanting will enhance the on-site provision of landscaping, further contributing to the retention of the bushland character.

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

Comment:

The boatshed does not exceed the design parameters prescribed within Clause D15.15 of P21DCP, therefore it is considered the application has maximised the soft surface to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1.20 Scenic Protection Category One Areas

Description of non-compliance

The boatshed is sited between 0.53 and 2.53m from the rear boundary, due to its irregular arrangement. The area seaward of the boatshed however is bedrock which dependent on tides, is often immersed by water. In this regard, the feasibility for screen planting between this structure and the boundary facing the waterway is eliminated.

Merit consideration

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

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

Comment:

The proposed development will provide for the needs of the dwelling occupants without compromising the visual appearance of the site as viewed from the Pittwater Waterway. The development maintains consistency with the character and identity of surrounding waterfront development and is therefore considered to achieve the desired future character of the Locality.

- *To preserve and enhance the visual significance of district and local views of Pittwater's natural topographical features such as, ridges, upper slopes and the waterfront.*

Comment:

The proposed development will not obstruct any district or local views of Pittwater's natural topographical features. The boatshed is modest in size and compliant with the DCP design requirements, therefore it is considered the development will preserve and enhance the visual significance of the Pittwater Waterway.

- *Maintenance and enhancement of the tree canopy.*

Comment:

The proposal requires the removal of one (1) mature . Further, conditions of consent have been imposed requiring the planting of additional canopy trees within the front and rear yards. As a result, the maintenance and enhancement of the tree canopy within the subject site will be achieved.

- *Colours and materials recede into a well vegetated natural environment.*

Comment:

A condition of consent has been imposed requiring all external colours and finishes to be of dark and earthy tones so as to harmonise with the natural environment. Further, the rear portion of the site is sufficiently landscaped which will contribute to the visual screening of the development.

- *To maintain and enhance the natural environment of Pittwater as the predominant feature of the landscape with built form being a secondary component.*

Comment:

The proposed development requires the removal of one (1) tree, however a recommended condition requires the provision of at least two (2) canopy trees be planted to enhance the on-site provision of landscaping and in turn reduces the visual impact of the built form.

- *To preserve and enhance district and local views which reinforce and protect the Pittwater's bushland landscape and urban form to enhance legibility.*

Comment:

No views or vistas will be hindered as a result of the proposed development. The boatshed has been appropriately sited so to ensure the preservation of district and local views.

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

Comment:

As above, no views or vistas will be hindered as a result of the proposed development due to the siting and topography of adjoining land. Further, existing and conditioned landscaping will assist the built form in appearing secondary.

- *To ensure sites are designed in scale with Pittwater's bushland setting and encourages visual integration and connectivity to natural environment.*

Comment:

The cantilevered design reduces the extent of site disturbance, thereby largely retaining the natural landform and setting. A condition of consent has also been recommended to ensure the on-site provision of canopy trees enhances as a result of the development. The application is considered to satisfy this objective.

- *Development shall minimise visual impacts on the natural environment when viewed from any waterway, road or public reserve.*

Comment:

The proposed development has been appropriately sited and designed so to ensure minimal excavation and site disturbance is required in conjunction with minimising visual impacts as viewed from the waterway. The development is modest in size and largely screened as a result of existing and conditioned landscape treatment. In turn, the development is considered to minimise visual impacts on the natural environment as viewed from the waterway.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the

proposal is supported, in this particular circumstance.

D15.15 Waterfront development

c) Boatsheds

The boatshed as proposed technically meets the numeric requirements prescribed within this Control.

The Control stipulates boatsheds are to be no greater than 4.5m in building height above the platform on which it is built. Given the proposal consists of a boatshed that is cantilevered above an existing seawall, the platform on which the development is to be built is classified to be the seawall in this instance. In turn, the building height from such platform measures 4.0m, thereby satisfying the numeric requirement of the Control.

The overall building height of the proposal exceeds 4.0m (measuring 5.25m from Highest Astronomical Tide ie. 1.17AHD), however this matter has been addressed under Clause 4.6 of PLEP 2014, as the Height of Buildings Control does not calculate height from the platform on which the boatshed is to be built (unlike this Control).

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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local 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.

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

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

- 4.3 Height of Buildings.

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

- D1.9 Side and rear building line;
- D1.11 Building envelope;
- D1.14 Landscaped Area - Environmentally sensitive land;
- D1.20 Scenic Protection Category One Areas.

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

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

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

recommended for approval, subject to conditions.

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

RECOMMENDATION

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

Accordingly the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2019/1493 for Construction of a boat shed on land at Lot 100 DP 1250837, 163 Riverview Road, AVALON BEACH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S101, Rev. 8 - Site Plan	29 November 2019	Blue Sky Building Designs
S102, Rev. 8 - Boat Shed Plan	29 November 2019	Blue Sky Building Designs
S103, Rev. 8 - Elevations	29 November 2019	Blue Sky Building Designs

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report (Ref: J2506)	16 December 2019	White Geotechnical Group
Arboricultural Impact Assessment	15 December 2019	Urban Forestry Australia

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

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

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

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

2. Prescribed Conditions

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

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

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

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

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

Reason: Legislative requirement.

3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

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

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

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

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

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group, dated 16 December 2019 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

6. Boundary Identification Survey

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

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

7. **Flood Compatible Materials**

All structural elements below the coastline planning level of 2.72 m AHD shall be comprised of flood compatible materials.

Reason: To ensure potential impact of coastal inundation is minimised

8. **Estuarine Hazard Design Requirements**

The following applies to all development:

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

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

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

9. **Estuarine Planning Level Requirements**

An Estuarine Planning Level 2.72m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- o All structural elements below 2.7m AHD shall be of flood compatible materials;
- o All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.7m AHD or waterproofed to this level; and
- o The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.7m AHD .
- o All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.7m AHD . All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.7m AHD to avoid the likelihood of contact with splashing waves and spray.

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

10. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 100years unless otherwise justified and accepted by Council) the development is able to withstand the wave impact forces and loadings.

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

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

11. **Project Ecologist**

A Project Ecologist is to undertake an inspection of the hollow located in the Broad-leaved White Mahogany in the boatshed footprint, and provide written advice to the project manager and certifier regarding the most appropriate method to relocate any wildlife encountered and/or the nesting hollow, where appropriate

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

- o Practising member of the NSW Ecological Consultants Association OR
- o Biodiversity Assessment Method assessor accreditation under the NSW Biodiversity Conservation Act 2016

Reason: To ensure bushland and fauna management.

12. **Low Level Coastal Inundation Risk Design**

All development must be designed and constructed to achieve a low risk of damage and instability due to coastal inundation, wave impact and foreshore erosion hazards.

13. **Compliance with Standards**

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

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

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

14. **External Finishes to Boatshed**

The external finish colour of the boatshed and roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

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

15. **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.

16. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in

accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

19. **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.

20. **Fauna and Tree Hollow re-location**

During any vegetation clearance for construction works the Project Ecologist is to be present to re-locate any displaced fauna that may be disturbed during this activity.

Tree hollows are to be salvaged from trees within the development area and placed within the retained vegetation / Conservation Areas within the Lots. This is to be done by a qualified and experienced Arborist, under the direction of the Project Ecologist.

Details prepared by the project ecologist in writing demonstrating compliance are to be

submitted to the Principal Certifying Authority.

Reason: To ensure bushland management in accordance with Local Habitat Strategy 2007.

21. **Pollution Control**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

22. **Pollution Control**

Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the stormwater network and/or receiving waterways.

Reason: To ensure that building associated chemicals and pollutants don't enter the surrounding environment.

23. **Arborist Recommendations to be Implemented**

As there are existing trees to be retained within 5 metres of proposed development works, all recommendations as outlined in the supplied arborist report by Urban Forestry Australia dated 15 December 2019 are required to be complied with before and throughout the development period, particularly with regard to the following:

- a) Works, erection/demolition of structures, excavation or changes to soil levels within 5 metres of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials, soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;
- b) Where specified, tree guards are to be provided to all trees as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report;
- c) All works within 5 metres of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. In the event that major structural or feeder roots are encountered, the arborist is to advise the builder to carry out appropriate action to ensure the retention of the tree.
- d) Signage is to be erected advising all contractors and visitors to the site that no works or storage is to take place within the calculated Tree Protection Zone (TPZ) of existing trees.

Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be reported to the Principal Certifying Authority prior to works recommencing.

Reason: To ensure the retention of the Urban Forest/Natural Environment and remain consistent with approved reports.

24. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

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

25. **Stormwater Disposal**

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

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

26. **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.

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

27. **Control of Weeds**

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

Reason: Weed management.

28. **Relocation of Native Plants**

Relocation of the Burrawangs, as recommended in the Arborist Report (UFA December 2019), is to be carried out by a qualified contractor with proven experience in this area and a maintenance strategy for a 12 month re-establishment period is to be developed, implemented and incorporated into the detailed landscape working drawings. This strategy is to address maintenance issues such as irrigation, soil testing, weeding, plant staking, fertilising, pest and disease control, remedial pruning and the like. Further, provision is to be made for the contractor to visit the site on a 3 monthly basis from the date of the relocation. After the inspection, the

contractor is to issue a report to the project manager certifying that the palms are healthy and performing to expectation. A copy of this report is to be forwarded to the Principal Certifying Authority.

Reason: To ensure transplanting is successful and retain the Urban Forest/Natural Environment.

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

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

Reason: To protect Aboriginal Heritage.

30. **Provision of Two Canopy Trees**

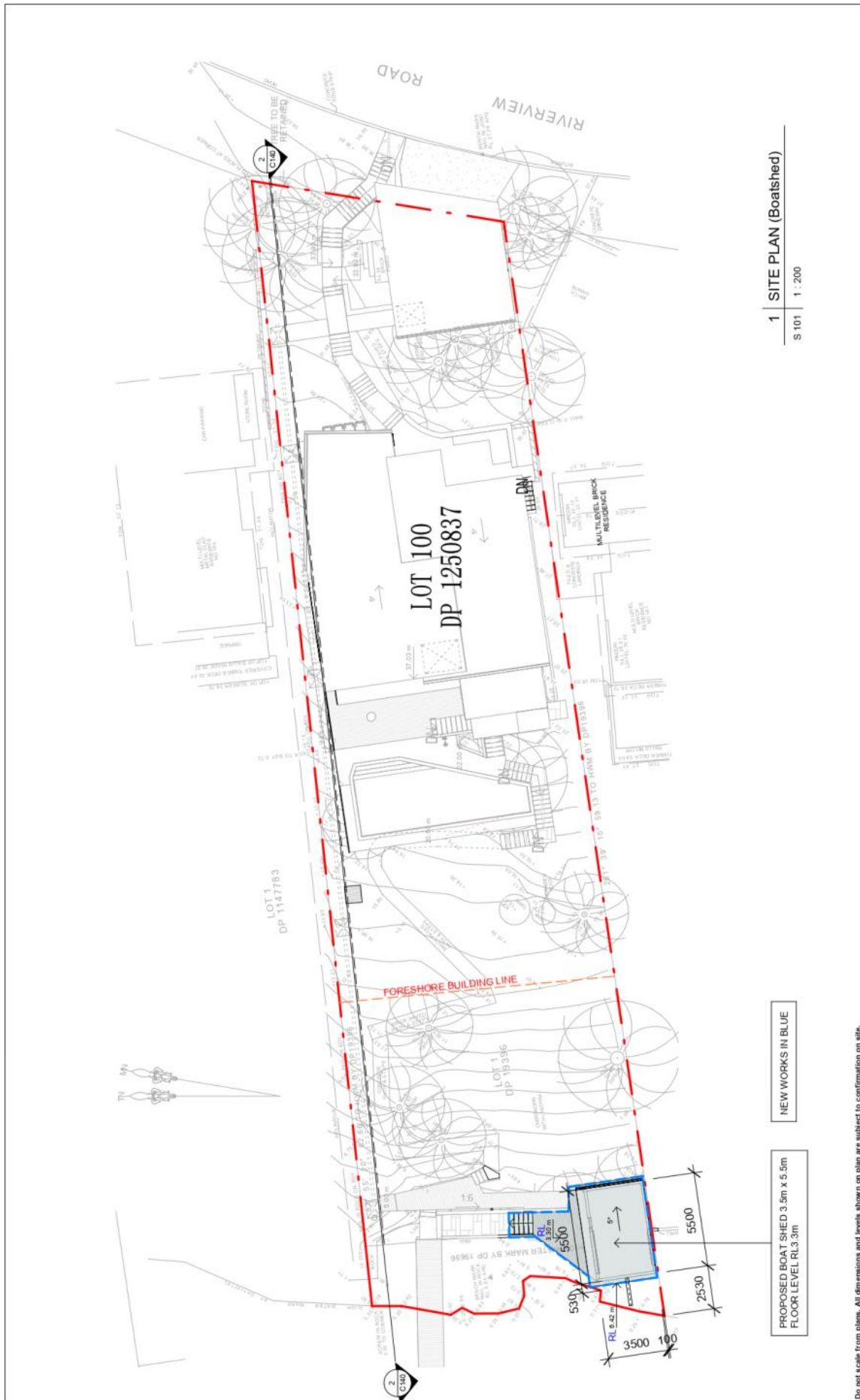
At least two (2) canopy trees are to be provided in the area, which at maturity will achieve a canopy height greater than 8.5 metres, to visually reduce the height, bulk and scale of the building. Species selection is to incorporate locally native species characteristic of the EEC Pittwater Spotted Gum Forest. This screen planting is to be retained over the life of the development and replaced if they should die or be destroyed or removed.

Reason: To ensure the retention of the Urban Forest/Natural Environment.

31. **Use of boatshed**

The boatshed shall not be used for residential purposes at any time.

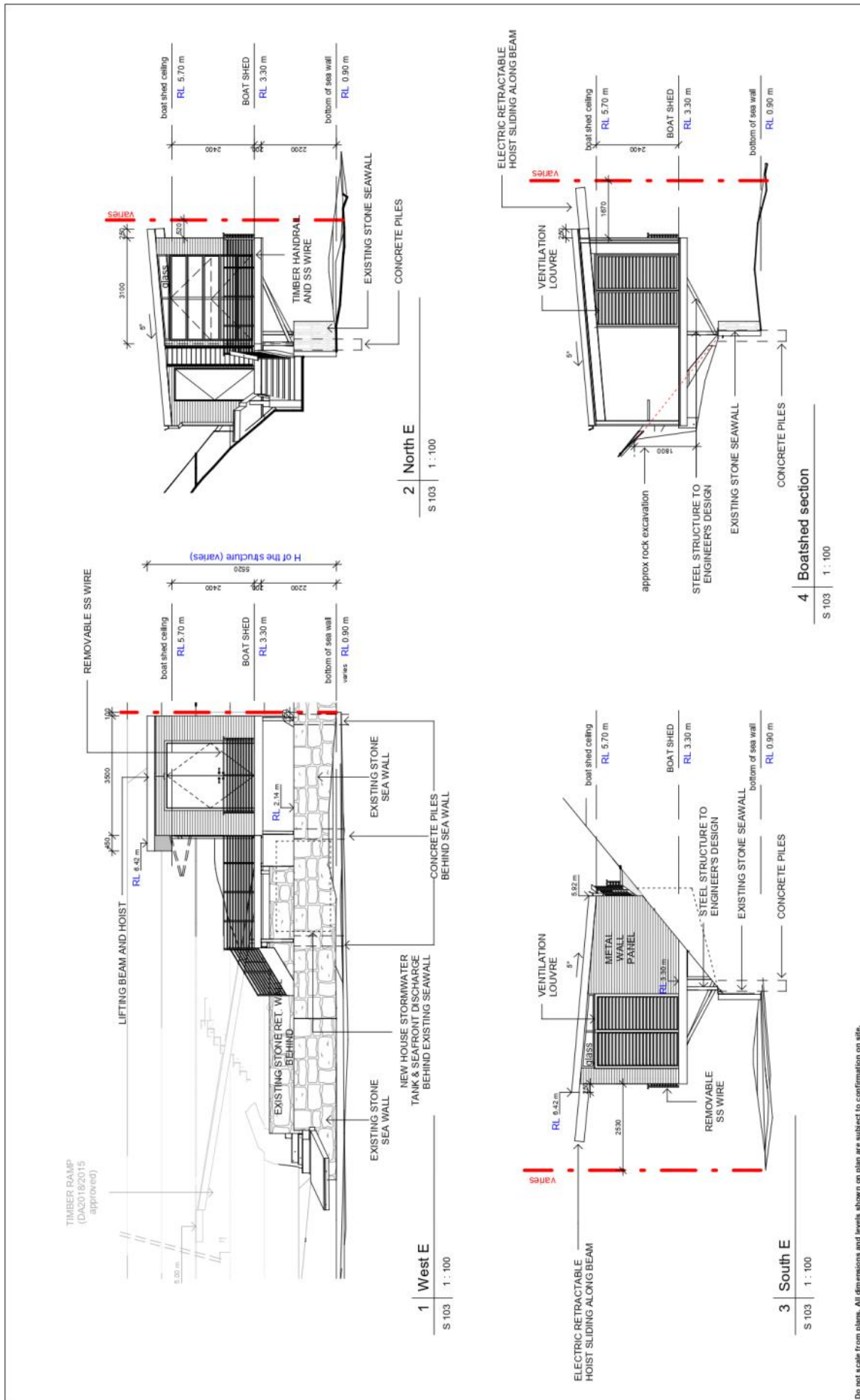
Reason: To ensure compliance with relevant planning controls.



Do not scale from plans. All dimensions and levels shown on plan are subject to confirmation on site.

REV	DATE	DESCRIPTION	DRWN	CHKD
	05.09.2019	Preliminary	MW	
	10.10.2019	Preliminary 2	MW	
8	29.11.2019	DA BOATSHED	MW	GL

DESIGNED BY:	YN & GEOFFREY LEE	DA BOATSHED	SHEET TITLE:	Site Plan
PREPARED BY:	BLUE SKY BUILDING DESIGNS Mobile: 0 414 310 171 E: info@bsbd.com.au	PROJECT NO.: 2018017	SHEET NO:	S 101
		AT: 163 Riverview Rd, Avalon	SCALE AS:	1:200
		FOR: Yn & Geoffrey Lee		



REV	DATE	DESCRIPTION	DRWN	CHKD
05.09.2019	Preliminary		MW	
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PROJECT TITLE:	DA BOATSHED
PROJECT NO.:	2018017
AT:	163 Riverview Rd, Avalon
FOR:	Yin & Geoffrey Lee

SHEET TITLE:	Elevations
SHEET NO.:	S 103
SCALE AS:	1:100



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7 February 2020

Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
DEE WH7Y NSW 2099

Dear Chief Executive Officer

REVISED CLAUSE 4.6 PLEP WRITTEN REQUEST

**DA2019/1493 – PROPOSED BOAT SHED – 163 RIVERVIEW ROAD
AVALON BEACH**

We act for Yin Lee and Geoffrey Lee ('our clients'), being the owners of the property known as No 163 Riverview Road, Avalon Beach (the 'site' or 'property').

0.0 BACKGROUND AND PURPOSE OF THIS DOCUMENT

This letter comprises a **revised** clause 4.6 submission in support of Development Application DA2019/1493 (the 'development application' or 'application') seeking development consent for a proposed boat shed (the 'proposed development' or 'development').

This present document is a written variation request under *Pittwater Local Environmental Plan 2014* ('PLEP') in connection with the application and is to be read in conjunction with the application itself and all other documents associated with the application including but not limited to the statement of environmental effects as well as any supplement to that document (jointly and severally, the 'SEE') prepared by our firm.

This **revised** clause 4.6 written request is submitted in substitution for the written request prepared by our firm and dated 21 January 2020. The rationale behind the preparation and submission of this revised document arises out of a request by Council's Student Planner for the applicant to submit amended plans with the RLs annotated on the plans. We have sent to Council a markup showing RL's for the southern elevation (refer email 4 February 2020 from Tia Gao of this firm). The previous clause 4.6 written

request stated that the portion of the boat shed proposed to be located between the seawall and new mean high water mark was **6.42m** above the existing ground level. Council's Student Planner has written to our firm (refer email of 31 January 2020 to Ms Tia Gao) stating that he had interpreted (rightly, in fact) the 6.42m annotation on the ridge to be an RL. However, the plans did not actually specify whether the measurement was in fact RL 6.42m AHD.

Now, the plans submitted with the application indicated that the maximum height of the boat shed is **5.52m** above the existing ground level, which reflects the measurement to the ridge (which the Council officer interpreted as an RL) from RL 0.9m (natural ground level vertically below the highest level of the structure). In light of the relevantly applicable height of buildings control, the extent of non-compliance is therefore **1.52m**.

Council's Student Planner has also requested that the clause 4.6 correlate precisely with the measurements specified on the plans—hence, the preparation and submission of this **revised** clause 4.6 written request.

1.0 INTRODUCTION

1.1 The site

The site, which has an area of approximately 1010 sqm, is known as No 163 Riverview Road Avalon Beach and is legally described as Lot 100 in Deposited Plan 1250837. The western boundary of the Lot has recently been re-defined (see under).

The site, which is situated on the waterfront site, is located on the lower, western-facing side of Riverview Road in the Avalon locality. The land slopes steeply from the front of site towards the rear boundary adjoining the waterfront. Access to the site is provided from Riverview Road. The site is a relatively short driving distance from Avalon Beach Village.

Currently, the site is occupied by a multi-level brick veneer dwelling house with a pool and a detached double carport, to which there is level access from Riverview Road.

The surrounding area comprises a low-density residential neighbourhood in a green leafy environment. The area has been settled and used for residential development for a considerable period of time.

The site has a west-northwest aspect, enjoys attractive views over Pittwater, and is 'naturally' landscaped, which assists in ensuring privacy from adjoining properties. The site currently has the benefit of a substantial deep-water jetty and pontoon.

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The site, for the most part, is zoned E4 Environmental Living under PLEP. However, a small portion of the site above current MHW (as defined in the Dictionary to PLEP) is located within the W1 Natural Waterways zone under PLEP.

It is the W1 Natural Waterways zone and its objectives that are relevant to this written request under clause 4.6 of PLEP.

The site is located in the Avalon Beach Locality under *Pittwater 21 Development Control Plan 2014* ('PDCP').

1.2 The proposed development

The proposed development involves the erection of a boat shed on the south western corner of the site. Specifically, the proposal involves the following elements: firstly, the erection of a boat shed (3.5m x 5.5m) including a small deck and boat lift with an electric hoist system and, secondly, minor rock excavation and construction of supporting concrete piles.

All elements (that is, aspects or components) of the proposed development are either permissible with consent in their own right (eg boat shed as described in the Dictionary to PLEP), or are associated with a boat shed, or are otherwise ancillary to the existing dwelling house situated on the site. The existing and proposed facilities serve the dwelling house.

Architectural plans showing the proposed development, and detailing the proposed schedule of works, accompany the development application.

1.3 Status and purpose of this present document

As mentioned at the outset of this document, this present document is a written variation request submitted under clause 4.6 of PLEP in connection with the application for review of the development application.

The essential purpose of this clause 4.6 request is to comprehensively address the matters required to be addressed by clause 4.6 of PLEP and to demonstrate that there would be no unreasonable impacts caused by the exceedance of the height of building development standard. In that regard, we submit, for the reasons and on the grounds set out in this document, that this written request justifies the contravention of the standard by demonstrating, firstly, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard.

Additionally, the proposed development will be in the public interest because it is consistent with such of the objectives of the standard as are of relevance

to the subject-matter of the development application and the objectives for development within, relevantly, the W1 Natural Waterways zone under PLEP, being the zone in which the development is proposed to be carried out insofar as the need has arisen for the this written request under clause 4.6 of PLEP.

2.0 REQUEST TO VARY A DEVELOPMENT STANDARD

This variation request under clause 4.6 of PLEP has been prepared by our firm, Turnbull Planning International Pty Limited, on behalf of our client.

Clause 4.6 of PLEP is as follows:

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.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note.** When this Plan was made it did not include all of these zones.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004* applies or for the land on which such a building is situated,
 - (c) clause 5.4.

2.1 Development standard sought to be varied

The development standard sought to be varied is the height of buildings control contained in, relevantly, clause 4.3(2) of PLEP. The relevantly applicable height of buildings control, as respects the portion of the site between the seawall and mean high water mark, being land located within the W1 Natural Waterways zone under PLEP, is 4.0m (refer Height of Buildings Map [Area B]).

It should be noted that all portions of the site located above the seawall are located within the E4 Environmental Living zone and are subject to an 8.5m maximum building height of buildings control relevantly applicable to the land zoned E4 Environmental Living.

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The portion of the boat shed proposed to be located between the seawall and mean high water mark is **5.52m** above the existing ground level. In light of the relevantly applicable height of buildings control, the extent of variation is **1.52m**.

Please refer to section 3.0 of this document for more specific detail.

2.2 Is a clause 4.6 request strictly needed?

Council is of the opinion that the proposed development, as depicted on the plans accompanying the development application, triggers a need for a clause 4.6 variation request as respects the portion of the site between the seawall and mean high water mark (refer email dated 14 January 2020 from Thomas Burns, Student Planner, to Tia Gao, Town Planner).

We agree with the view expressed by the relevant Council officer that the development application *may* cause a technical breach of the relevantly applicable height of buildings development standard *on one view*, given the difference between the statutory mapping showing the 'old' mean high water mark and that shown in the recent boundary redefinition.

Interestingly, in a paper entitled 'Some Aspects of Boundary Location in NSW' and written by K E Hamer, the following appears:

As a matter of practice and by agreement with the Maritime Services Board, which has a certificate of title for the bed of Sydney Harbour, the Registrar General accepts the approval of that Authority as indicating that it is satisfied after investigation that the definition of mean high water mark of Sydney Harbour is also the definition of the Maritime Services Board title boundary.

(http://www.nswlrs.com.au/__data/assets/pdf_file/0006/211875/Some_Aspect_s_of_Title_Boundary_Location_in_NSW.pdf.)

This notwithstanding, in terms of the land water interface, 'mean high water mark', as defined in the PLEP Dictionary, ***should*** be the boundary between the area, where on the waterside the height limit is 4.0m and on the landside it is 8.5m. Now, in dealing with the question as to whether a clause 4.6 request is necessary, this depends on whether one relies on the definition of mean high water mark in the Dictionary to PLEP (because this is now the zone/height boundary), or the mapping in PLEP where there is currently what can only be described as a 'mismatch'.

Annexed to this document is a Mark-up Plan showing the 'old' mean high water mark as well as the 'new' mean high water mark.

As a matter of abundant precaution, and so that there is no possibility of any development consent issued for the proposed boat shed being declared by the Court to be void and of no effect by reason of the absence of a clause 4.6 variation request—something which, in our respectful submission, would

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be very unlikely—we have formed the view that the better approach is to lodge a clause 4.6 request as requested. As such, we have recommended to our clients that a clause 4.6 variation request be prepared and lodged with Council. Our clients have agreed to that course of action.

2.3 Nature and status of the present document

The present document is in support of the application and is to be read in conjunction with the SEE prepared by our firm and submitted to Council in support of, and to inform, the development application. A supplement to the SEE has been lodged in recent times and this also deals with the matters raised in this submission.

The SEE (and supplement) deal with the impacts of the development proposal in detail, indicates measures to mitigate those impacts, and provides full details relating to the relevantly applicable statutory planning regime and compliance with the relevant planning controls and objectives.

Clause 4.6 of PLEP allows Council to grant consent for development even though the development contravenes a development standard imposed by PLEP (other than a few development standards excluded from the operation of clause 4.6). Clause 4.6 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

2.4 Clause 4.6 of PLEP

Clause 4.6 requires that a consent authority be 'satisfied' (NOTE: that means 'reasonably satisfied', see *R v Connell; Ex parte Hetton Bellbird Collieries Ltd* (1944) 69 CLR 407) of three matters before granting consent to a development that contravenes a development standard:

- that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- that 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.

The consent authority's satisfaction as to those matters must be informed by the objective of providing flexibility in the application of the relevant

control to achieve better outcomes for and from the development in question.

The Land and Environment Court of New South Wales has provided judicial interpretation and clarification of the matters to be addressed in relation to variations to developments standards lodged under State *Environmental Planning Policy 1 – Development Standards* ('SEPP 1') through the judgment of Lloyd J in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 ('Winten').

The *Winten* test was later rephrased by Preston CJ in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 ('Wehbe'). These tests and considerations can also be applied to the assessment of variations under clause 4.6 of the LEP and other standard LEP instruments. Accordingly, this clause 4.6 variation request is set out using the relevant principles established by the Court.

More recently, the NSW Court of Appeal in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 has had some very important things to say about the use and construction of clause 4.6. That case, and some others, are discussed in section 5.2 of this document.

These judicial authorities, and some others, will be discussed further in section 5.2 (Relevant case law on clause 4.6) of this document.

3.0 DEVELOPMENT STANDARD TO BE VARIED

Clause 4.3 ('Height of buildings') of PLEP controls the height of buildings.

A maximum building height of 4.0m applies pursuant to clause 4.3(2) of PLEP to the portion of the site between the seawall and mean high water mark (being land located within the W1 Natural Waterways zone under PLEP).

As mentioned above, the portion of the boat shed proposed to be located between the seawall and mean high water mark is **5.52m** above the existing ground level (RL 0.8m AHD).

4.0 IS THE PLANNING CONTROL A DEVELOPMENT STANDARD?

The expression 'development standards' is defined under section 4(1) of the EPA Act as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

...
(c) the character, location, siting, bulk, scale, shape, size, **height**, density, design or external appearance of a building or work ... [*emphasis added*]

The height of building standard prescribed under clause 4.3(2) of PLEP is clearly, demonstrably and unambiguously a development standard, being relevantly a provision of an environmental planning instrument (viz PLEP) in relation to the carrying out of development, being a provision by which a requirement is specified in respect of an aspect of that development, the *aspect* of the development being the 'height' of a building on the land upon which the development is proposed to be carried out.

An essential condition of the definition of development standard is that the requirements specified, or standards fixed in respect of any aspect of the development must be requirements or standards which, *ex hypothesi*, are *external* to the aspect(s) of that development: see *Woollahra Municipal Council v Carr* (1985) 62 LGRA 263 at 269-270 per McHugh JA. That is indeed the case here.

5.0 JUSTIFICATION FOR CONTRAVENTION OF THE STANDARD

Clause 4.6(3) and (4) of PLEP set out the matters to be satisfied as respects any clause 4.6 written request. Those matters will now be considered and discussed, in light of the relevantly applicable case law.

5.1 Clause 4.6 of PLEP

Clause 4.6(3) and (4) of PLEP are as follows:

- (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.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the Land and Environment Court and the NSW Court of Appeal in *Wehbe* and *Four2Five*.

The relevant matters contained in clause 4.6 of PLEP, with respect to the development standard contained in clause 4.3(2D) of PLEP, are each addressed below, in light of the abovementioned Court decisions.

5.2 Relevant case law on clause 4.6

***Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248**

This landmark decision of the NSW Court of Appeal was an appeal from a decision of a judge of the NSW Land and Environment Court's decision, the latter having been an appeal from a commissioner of that Court.

The case upheld Commissioner Pearson's original decision in regard to clause 4.6, however the Court of Appeal interpreted the approach taken by the commissioner differently to that of Pain J, in the Land and Environment Court. In doing so, the decision largely confined Commissioner Pearson's decision to the particular facts of that case, and the particular exercise of discretion by the commissioner.

In the original decision Commissioner Pearson had refused the request to vary the standard, principally on the basis that:

- the claimed additional housing and employment opportunities arising from the proposal were not sufficient environmental planning grounds as required by clause 4.6(3)(b) because they were *not particular to the site*; and
- the obligation on the applicant to demonstrate that *compliance with the standard was unreasonable or unnecessary* had to be fulfilled separately (i.e. in addition to) to the obligation to demonstrate that the proposed was consistent with the objectives of the standard, which *Four2Five* had failed to do.

Four2Five then appealed the commissioner's decision to a judge of the Land and Environment Court (Pain J), essentially arguing that the commissioner set the bar for a well-founded clause 4.6 variation request too high. However, Pain J dismissed *Four2Five's* appeal and endorsed the commissioner's approach to clause 4.6. On the first ground of appeal Pain J held that the commissioner had a broad discretion under clause 4.6(4)(a)(i) and that there was no specific limitation on that discretion. The commissioner was entitled to require the variation request to identify circumstances particular to the site. On the second ground of appeal, Pain J held that

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commissioner was correct in requiring the variation request to demonstrate consistency with the objectives of the standard *in addition to* consistency with the objectives of the standard and zone.

The matter then went on appeal to the NSW Court of Appeal.

Firstly, Leeming JA in the Court of Appeal:

- did not agree that the commissioner's decision in *Four2Five* proceeded on the basis that establishing that compliance with a standard is '*unreasonable or unnecessary*' in clause 4.6(3)(a) must necessarily exclude consideration of consistency with the objectives of the development standard and the objectives for development in the zone; and
- considered that Commissioner Pearson's decision was that '*consistency with objectives remained relevant, but not exclusively so*' (at [16]).

Secondly, while Leeming JA found no error in the approach taken by the commissioner in relation to her dissatisfaction with the environmental planning grounds relied upon, that was a matter for the commissioner *on the facts of the particular case and not a general principle*. Leeming JA said (at [16]):

It is sufficient to state that no error, and certainly no error of law, is disclosed ... It is clear that the Commissioner approached the question of power posed by subclause [4.6] (3)(b) on the basis that merely pointing to the benefits from additional housing and employment opportunities delivered by the development was not sufficient to constitute environmental planning grounds to justify contravening the development standards *in this case* ...

Moskovich v Waverley Council [2016] NSWLEC 1015

In *Moskovich* a commissioner of the Land and Environment Court applied the Court of Appeal's approach in *Four2Five*, apparently confirming a greater flexibility as respects the availability and use of the facility afforded by clause 4.6.

The case concerned an application to demolish two existing residential flat buildings and construct a single residential flat building on a site within zone R3 Medium Density Residential under *Waverley Local Environmental Plan 2012*. The application sought to vary the floor space ratio ('FSR') applying to the site. Moskovich submitted that compliance with the FSR standard was unreasonable and unnecessary because the design achieved the objectives of the standard and the R3 zone, in a way that addressed the particular circumstances of the site, and resulted in a better streetscape and internal and external amenity outcome than a complying development. Moskovich

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further submitted that there were 'sufficient environmental planning grounds' to justify the contravention because the proposal would replace two aging poorly designed residential flat buildings with a high quality RFB with exceptional internal and external amenity outcomes.

The Court approved the application and in doing so agreed with Moskovich's justification for the FSR variation. Consistent with the decision in *Four2Five* the Court agreed that the public interest test (in cl 4.6(4)(a)(ii)) is different to the 'unreasonable or unnecessary in the circumstances of the case' test (in cl 4.6(3)(a)).

The Court said that 'the latter, being more onerous, would require additional considerations such as the matters outlined by Preston CJ in *Wehbe* at [70-76]'. The Court found that additional reasons applied in this case.

In *Moskovich* the Court adopted the high threshold endorsed by the Court in *Four2Five* and found that Moskovich's variation request met that standard.

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

Micaul is a decision of the Chief Judge of the Land and Environment Court in an appeal against a decision of Commissioner Morris to uphold a request under clause 4.6 of *Randwick Local Environmental Plan 2012* to vary development standards relating to the height and FSR of a building.

The Council claimed that the commissioner failed to be satisfied about the requirements in clause 4.6(4), or alternatively failed to give adequate reasons. The Council also claimed that the commissioner failed to consider a requirement of a development control plan. Essentially the Council argued that the commissioner set the bar too low for the clause 4.6 variation request.

The Court dismissed the appeal and in doing so endorsed the commissioner's approach to clause 4.6. The Court held that the commissioner had set out the correct tests under clause 4.6 and expressly stated in the judgment that the commissioner was satisfied that the proposal satisfied those tests. The Court held that the degree of satisfaction required under clause 4.6(4) was essentially a matter for the commissioner (or the council at first instance). The Chief Judge observed in his judgement at [39] that clause 4.6(4) of the Standard Instrument LEP does not require the consent authority to be satisfied directly that compliance with *each* development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed those matters.

The Court's decision in *Micaul* lessens the force of the Court's earlier judgement in *Four2Five* that a variation request must demonstrate

consistency with the objectives of the standard in addition to consistency with the objectives of the standard and zone. Furthermore, the decision is an example of discretion at work. The principal circumstances that Commissioner Morris found to justify the variation to height and FSR was the location of the site at the low point of the locality, its proximity to larger residential flat buildings that would not comply with the building height development standard and its flood affectation. Presumably this was not the only site in the locality having those characteristics, and yet the commissioner was satisfied that the variation was justified. This is by no means a criticism of the commissioner's reasons, but an example of how the satisfaction threshold may vary from one decision maker to another.

Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118

In this case Preston CJ discussed at some length and elaborated upon the various tasks involved in making a clause 4.6 written request:

1. The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii): see *Initial Action* at [14].
2. Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Initial Action* at [14].
3. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see *Initial Action* at [14].
4. The first opinion of satisfaction, in cl 4.6(4)(a)(i), is 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). These matters are twofold:
 - a. first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (refer cl 4.6(3)(a)); and
 - b. secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (refer cl 4.6(3)(b)).

The written request needs to demonstrate both of these matters. See *Initial Action* at [15].

5. 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.

The adjectival phrase 'environmental planning' is not defined but refers to grounds that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979* (NSW) (the 'EPAA'), including the objects in section 1.3 of the EPAA.

The environmental planning grounds relied on in the written request under cl 4.6 must be 'sufficient'. There are two respects in which the written request needs to be 'sufficient':

- a. first, the environmental planning grounds advanced in the written request must be sufficient 'to justify contravening the development standard'. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.
- b. secondly, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter.

See *Initial Action* at [23]-[24].

6. The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). In that regard:
- a. The consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b).
 - b. The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent

authority, or the Court on appeal, to form the requisite opinion of satisfaction.

See *Initial Action* at [25].

7. The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.

The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii). See *Initial Action* at [26].

8. The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

See *Initial Action* at [27].

The approach of Preston CJ in *Initial Action* has been followed in subsequent Class 1 merit appeals where the question of whether or not a cl 4.6 request should be granted has needed to be determined. It has been endorsed by the decision of the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

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Huajun Investments Pty Ltd v City of Canada Bay Council (No 3) [2019] NSWLEC 42

In this Class 1 appeal, in which consent was sought to erect a residential flat building, Moore J was called upon to consider a clause 4.6 written request in circumstances where it was also necessary, as a matter of jurisdictional fact, for the proposed development to satisfy certain other tests in, relevantly, clause 101 of *State Environmental Planning Policy (Infrastructure) 2007*.

In the matter before his Honour, the proposed development failed to satisfy those other jurisdictional tests and also lacked merit for approval on unrelated grounds, quite irrespective of the substance of the clause 4.6 written request. In any event, the written request was found to be deficient as well in that the request did not demonstrate that the proposed development satisfied the first of the objectives for the height of buildings development standard and was therefore to be refused on that basis.

In terms of merit assessment of the proposed development, even if jurisdiction existed to permit merit assessment of the proposed development, the proposed development was unacceptable.

Moore J quoted extensively from the judgment of Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. (See above.)

5.3 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe* Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a 'closed' class.

While *Wehbe* related to objections made pursuant to SEPP 1, the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 and this was accepted by the Court in the *Four2Five* case.

As the language used in clause 4.6(3)(a) of PLEP is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five ways or methods outlined in *Wehbe* are as follows:

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

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
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.
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.

It is important to emphasise that *Wehbe* makes it unambiguously clear that an objection submitted – in this case, the present clause 4.6 written request – does not necessarily need to satisfy all of the tests referred to above. It is a common misconception that all 5 ways or methods must be satisfied. That is not the case at all. One way will suffice.

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary, is the first method, namely, that the objectives of the standard are still achieved notwithstanding non-compliance with the standard. That is the method used in this particular written request.

In accordance with the provisions of clause 4.6 of PLEP and the decision in *Wehbe*, this written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, that there are sufficient environmental planning grounds to justify contravening the development standard, and that 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.

5.3.1 The underlying objectives or purposes of the development standard

Clause 4.3(1) of PLEP is as follows:

(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,

- (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.

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

The objectives specified in clause 4.3(1) of PLEP will be addressed *seriatim*.

Objective 4.3(1)(a)

This objective seeks to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality.

Comment:

The built form is, we submit, consistent with the desired character of the locality for the reasons that follow.

The maximum height of the proposed boat shed that exceeds the relevantly applicable height of buildings control (4.0m as respects the portion of the site between the seawall and mean high water mark) is 5.52m.

The portion of the boat shed that exceeds the relevantly applicable height of buildings control of 4.0m is relatively small in footprint terms. In addition, the height, bulk and scale of the development is not disproportionate to similar structures in the immediate locality.

Controls for the regulation of boat sheds in the Pittwater areas are largely regulated through Part D15.15(c) ('Waterfront Development') of PDGP which aims to consistency in the scale and character of residential foreshore development on the Pittwater Waterway. The proposal in large part complies with such of the criteria as are of relevance and is consistent with desired outcomes of Part D15.15(c), to the extent to which they apply (noting, for example, that the development is not located on the western foreshore and this part of the commentary is inapplicable).

Specifically, the proposed boat shed is, on our view, located above the Mean High Water Mark (MHW), noting that only a very small part of the total structure (we estimate that it is no more than 15 per cent) is below (or west of) the 'old' mean high water mark. The structure does

not hinder public foreshore access, does not allow use of the roof area for recreational or observational purposes, and will be constructed from appropriate colours and low maintenance materials so as to ensure a design sympathetic to the surrounding natural environment.

While the proposed height of the boat shed at 5.52m, when measured from the NGL, exceeds what, in Council's view, is the relevantly applicable height of buildings control of 4.0m (given the difference between the statutory mapping showing the 'old' mean high water mark and that shown in the recent boundary redefinition), the proposed boat shed is consistent with the overall height, scale and character of residential foreshore development of the locality and provides an innovative and attractive design solution for providing boat storage to the occupants of the site. In addition, the proposed boat shed will improve the level of amenity afforded to the residents of the site without any significant impact on the amenity or environmental value of the foreshore area.

Objective 4.3(1)(b)

This objective seeks to ensure that buildings are compatible with the height and scale of surrounding and nearby development.

Comment:

As mentioned above, the built form of the proposed boat shed is consistent with the overall height, scale and character of residential foreshore development of the locality. Certainly, there occurs no jarring inconsistency as regards the juxtaposition of the development on the site with the height and scale of other developments in the immediate locality.

Please refer to our comments above in relation to objective 4.3(1)(a).

Objective 4.3(1)(c)

This objective seeks to minimise any overshadowing of neighbouring properties.

Comment:

The proposed boat shed will not result in any significant overshadowing of neighbouring properties.

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Objective 4.3(1)(d)

This objective seeks to allow for the reasonable sharing of views.

Comment:

The proposed boat shed will not affect the views from any neighbouring properties.

Objective 4.3(1)(e)

This objective seeks to encourage buildings that are designed to respond sensitively to the natural topography.

Comment:

The proposed boat shed will not dominate the natural environment and largely reflects the established, albeit quite eclectic, built form character of the Locality.

Excavation is minimised (approximately 1.8m high) by raising and cantilevering the structure and pushing it forward. Native vegetation on the site will not be significantly adversely affected by the proposed development. In this regard the proposed development requires the removal of two trees, one of which is already approved for removal as per DA2018/2015. For more detail please refer to the arboricultural impact assessment report, prepared by a qualified arborist and dated 15 December 2019, accompanying the development application.

The development proposal does not involve the construction of any permanent fencing on the site, in compliance with the controls contained in Part B4.7 of PDCP.

Objective 4.3(1)(f)

This objective seeks to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Comment:

The proposed boat shed will not dominate the natural environment and largely reflects the established, albeit quite eclectic, built form character of the Locality.

The proposal will not affect heritage items located in the vicinity of the site.

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The site is not listed in Schedule 5 ('Environmental heritage') to PLEP nor is the site listed within the NSW Atlas of Aboriginal Places.

Concluding comments as regards the relevant clause

We submit that the development is consistent with all of the abovementioned objectives of the standard.

The expression 'building height' is defined in PLEP as follows:

building height (or height of building) means:

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

Now, what is 'minor' is a question of fact and degree. Each case must be considered as regards its own circumstances. However, a test of reasonableness must be applied as a matter of lawful administrative decision-making.

Paragraph 3 of Circular B1 from the former Department of Planning states:

As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small ***in others it may be numerically large***, but nevertheless be consistent with the purpose of the standard.
[emphasis added]

The words of the Department quoted above are relevant to the numerical departure the subject of this clause 4.6 request. On one view, the building height exceedance could be seen to be numerically large but regard must be had to the overall structure and the location in which it is proposed to be erected.

When considering whether the portion of a building above the maximum height is minor, regard must be had, not to the quantum of the numerical departure itself, but to the quantum (i.e. 'portion') of the building above the maximum height and whether that portion is minor. We respectfully submit that, in the overall scheme of the matter, the height exceedance is minor in nature, scale and impact.

5.3.3 Consistency with the aims of PLEP

We also submit that compliance with the height of buildings development standard is unreasonable in these circumstances given that the proposed development supports the achievement of a number of the aims of PLEP.

PLEP aims to make local environmental planning provisions for land in Pittwater in accordance with the relevant standard environmental planning instrument under section 33A of the *Environmental Planning and Assessment Act 1979* (NSW): see clause 1.2(1), PLEP.

The particular aims of PLEP are as follows (refer clause 1.2(2), PLEP):

- (a) to promote development in Pittwater that is economically, environmentally and socially sustainable,
- (b) to ensure development is consistent with the desired character of Pittwater's localities,
- (c) to support a range of mixed-use centres that adequately provide for the needs of the Pittwater community,
- (d) to retain and enhance land used for employment purposes that is needed to meet the economic and employment needs of the community both now and in the future,
- (e) to improve access throughout Pittwater, facilitate the use of public transport and encourage walking and cycling,
- (f) to encourage a range of housing in appropriate locations that provides for the needs of the community both now and in the future,
- (g) to protect and enhance Pittwater's natural environment and recreation areas,
- (h) to conserve Pittwater's European and Aboriginal heritage,
- (i) to minimise risks to the community in areas subject to environmental hazards including climate change,
- (j) to protect and promote the health and well-being of current and future residents of Pittwater.

The proposed development will be environmentally sustainable (cf clause 1.2(2)(a)), will be consistent with the desired character of the Avalon Beach Locality (cf clause 1.2(2)(b)), and protects Pittwater's natural environment (cf clause 1.2(2)(g)). There will be no affectation of Pittwater's known Aboriginal heritage (cf clause 1.2(2)(h)).

The proposed boat shed will not cause any loss of amenity for the owners/occupiers of adjoining properties nor will it prevent or hinder public foreshore access.

In our opinion, the proposed development, in all the circumstances, is consistent with such of the aims of PLEP as are of relevance to the development.



5.4 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

The environmental planning grounds to be relied on in a written request under cl 4.6 must be 'sufficient' to justify contravening the development standard'. As Preston CJ pointed out in the *Initial Action* case, the focus of, relevantly, clause 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.

The proposed development is consistent with such of the aims of PLEP as are of relevance to the development: see section 5.3.3. of this document. However, in terms of providing site-specific justification for the purported departure from the building height development standard, two meaningful environmental planning ground are as follows:

- firstly:
 - the purported departure enables the construction of a pragmatic platform on which the boatshed will be built that minimises excavation into the land and rock, thus retaining the natural form of the foreshore rock and seawall to a reasonable extent; and
 - strict compliance with the height of buildings standard would necessitate more extensive excavation into the land and rock, which would be inimical to the natural environment; and
- secondly, the purported departure provides greater internal amenity for the residents of the dwelling house without creating any untoward external impacts upon the natural environment, members of the public or the occupants of adjoining or nearby residences.

Another appropriate environmental planning ground justifying a contravention of the development standard in this instance is that there is no demonstrable public benefit in maintaining the development standard (cf cl 4.6(5)(b)) in this instance, for the reasons that:

- i. the objectives of clause 4.3 of PLEP (refer clause 4.3(1)) are achieved in that the height and built form of the boat shed:
 - a. will be consistent with the desired character of the Avalon Beach Locality (refer clause 4.3(1)(a), PLEP);

- b. will be compatible for the most part with the height and scale of much of the surrounding and nearby development (refer clause 4.3(1)(b), PLEP);
- c. minimises any overshadowing of neighbouring property (refer clause 4.3(1)(c), PLEP);
- d. allows for the reasonable sharing of views (refer clause 4.3(1)(d), PLEP);
- e. responds sensitively to the natural topography (refer clause 4.3(1)(e), PLEP); and
- f. minimises the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items (refer clause 4.3(1)(f), PLEP).

In our opinion, all of the above constitute good environmental planning grounds to justify contravening the height of buildings development standard in this particular instance.

5.5 Clause 4.6(4)(a)(ii): The proposed development is in the public interest because it is consistent with the objectives of the zone and development standard

The two aspects of this matter will be addressed *seriatim*.

5.5.1 Consistency with objectives of the zone

The W1 zone objectives under PLEP are as follows (refer land use table, W1 zone, item 1):

- To protect the ecological and scenic values of natural waterways.
- To prevent development that would have an adverse effect on the natural values of waterways in this zone.
- To provide for sustainable fishing industries and recreational fishing.
- To ensure development does not adversely impact on the natural environment or obstruct the navigation of the waterway.
- To provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.

In our opinion, the development proposal is consistent with such of the zone objectives as are relevance to the subject-matter of the proposal.

The objectives will be addressed *seriatim*.

Objective 1

The first dot point objective seeks to protect the ecological and scenic values of natural waterways.

The proposed development is low-impact and responds sensitively to the natural topography.

The height and other *indicia* of the boat shed achieve a balance between maintaining the landforms, landscapes and other features of the natural environment and the aspirations of the residents of the site.

The boat shed, together with the platform on which it is to be built, respond to the natural topography. In this regard, the development enables the construction of a pragmatic platform on which the boatshed will be built that minimises excavation into the land and rock, thus retaining the natural beauty of the foreshore rock and seawall.

Amenity to adjoining properties is maintained and there will be no view loss for neighbours. Access to the foreshore by members of the public is maintained and preserved.

As such, we submit that the development is consistent with this stated objective.

Objective 2

The second dot point objective seeks to prevent development that would have an adverse effect on the natural values of waterways in this zone.

We are not aware of any aspect, feature element of the proposed development that would result in the development having an adverse effect on the natural values of Pittwater waterway. The proposed boat shed has been designed so as not to allow use of the roof area for recreational or observational purposes and the boat shed will be constructed from appropriate colours and materials so as to ensure a design sympathetic to the surrounding natural environment. In addition, there is no material risk of pollution or contamination of the waterway.

As such, we submit that the development is consistent with this stated objective.

Objective 3

The third dot point objective seeks to provide for sustainable fishing industries and recreational fishing.

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The boat shed will have no appreciable effect on sustainable fishing industries and recreational fishing.

As such, we submit that the development is consistent with this stated objective.

Objective 4

The fourth dot point objective seeks to ensure that development does not adversely impact on the natural environment or obstruct the navigation of the waterway.

The proposed development will have no effect on riparian and foreshore vegetation and wildlife corridors.

As such, we submit that the development is consistent with this stated objective.

Objective 5

The fifth dot point objective seeks to provide opportunities for private access to the waterway where these do not cause unnecessary impact on public access to the foreshore.

The proposed development will not impact existing access to the Pittwater foreshore.

As such, we submit that the development is consistent with this stated objective.

5.5.2 Consistency with objectives of the development standard

Please refer to section 5.3.2 of this document.

5.6 Secretary's Concurrence

It is understood that the Secretary's concurrence under clause 4.6(5) of PLEP has been delegated to Council.

The following section provides a response to those matters set out in clause 4.6(5) of PLEP which must be considered by Council under its delegated authority:

Whether contravention of the development standard raises any matter of significance for the State or Regional environmental planning (cf cl 4.6(5)(a))

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This written request under clause 4.6 of PLEP demonstrates that a variation to the height of buildings development standard is acceptable in terms of significance for State and Regional planning matters.

The variance of the development standard that is purportedly breached by a small portion of the proposed development will not contravene any overarching State or regional objectives or standards, or have any effect outside the sites immediate area.

The public benefit of maintaining the development standard (cf cl 4.6(5)(b))

Maintaining strict numerical compliance with, relevantly, the 4.0m metre height of buildings development standard would not, in our opinion, result in any public benefit in this situation. To maintain, that is, strictly enforce and apply, the standard in this instance would prevent the carrying out of a development that is eminently suited to the site and which recognises relevant ecological and other constraints as well as the land zoning.

We submit that the proposed development will be in the public interest because the development:

- is consistent with the objectives of the height of buildings development standard and the objectives for development for the zone in which the development is proposed to be carried out;
- is consistent with the desired character of the Avalon Beach Locality;
- is compatible for the most part with the height and scale of much of the surrounding and nearby development;
- minimises any overshadowing of neighbouring property;
- allows for the reasonable sharing of views;
- responds sensitively to the natural topography, minimising the amount of excavation into rock that would otherwise be required; and
- minimises the adverse visual impact of development on the natural environment (particularly tree loss), heritage conservation areas and heritage.

Any other matters required to be taken into consideration by the Planning Secretary before granting concurrence (cf cl 4.6(5)(c))

In our opinion, no other matters require consideration by the Secretary.

6.0 CONCLUSION

We respectfully submit that the written request justifies the contravention of the height of buildings development standard contained in clause 4.3(2) of PLEP by demonstrating, firstly, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

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and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard.

Further, the written request shows that the proposed development will be in the public interest because it is consistent with such of the objectives of the standard as are of relevance to the subject-matter of the development application and the objectives for development within the W1 Natural Waterway zone in which so much of the development as is purportedly in non-compliance with the 4.0m height of building control is proposed to be carried out.

Accordingly, we respectfully submit that the written request is well founded as the variation sought allows for the orderly and economic use of the land in an appropriate manner while also allowing for a better outcome in planning terms.

As such, the development application in the form now presented to Council may be approved with the variation as proposed, in accordance with the flexibility allowed under clause 4.6 of PLEP.

On behalf of our clients, we respectfully submit that a grant of development consent is appropriate in this instance.

Yours faithfully

TURNBULL PLANNING INTERNATIONAL PTY LIMITED



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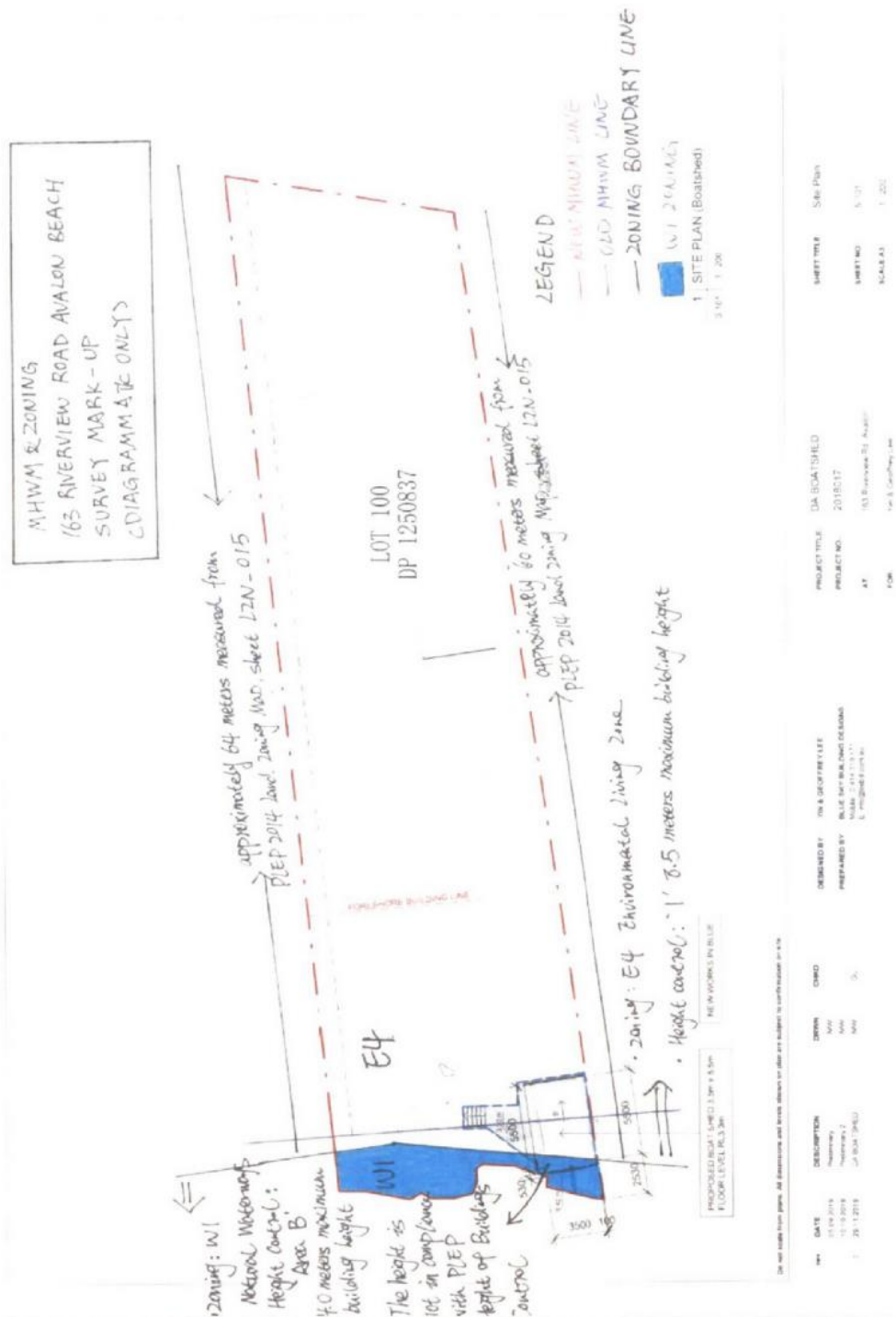
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Annexure 1. Mark-up Plan showing the 'old' MHW and the 'new' MHW.

ANNEXURE. MARK-UP PLAN SHOWING 'OLD' MHWM AND 'NEW' MHWM



ITEM 3.3	DA2019/1448 - 25 ANANA ROAD, ELANORA HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
AUTHORISING MANAGER	STEVE FINDLAY
TRIM FILE REF	2020/173516
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations

PURPOSE

This application has been referred to the Northern Beaches Local Planning Panel as the applicant/land owner is a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979.

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. DA2019/1448 for alterations and additions to a dwelling house at Lot 2 DP 1115977, 25 Anana Road, Elanora Heights subject to the conditions and for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1448
Responsible Officer:	Natalie Nolan, Nolan Planning Consultants (External Consultant)
Land to be developed (Address):	Lot 2 DP 1115977, 25 Anana Road, ELANORA HEIGHTS
Proposed Development:	Alterations and Additions to a dwelling-house
Zoning:	Pittwater LEP2014 – Land Zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Local Planning Panel
Land and Environment Court Action:	No
Owner:	Brendan John Smith and Linda Cervonaro Smith
Applicant:	Hooghuis Design
Application Lodged:	16/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential
Notified:	08/01/2020 to 28/01/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$329,524

EXECUTIVE SUMMARY

An application was received on 16 December 2020 for alterations and additions to a dwelling-house. There were no public submissions made in response to the notification by Council.

The owner of the site is an employee of Northern Beaches Council and involved in the assessment of Development Applications, being an officer within the Biodiversity Section. Accordingly, the application has been assessed by an independent external planning consultant and an independent external ecologist and is referred to the Northern Beaches Local Planning Panel for determination as per the Ministerial Directions.

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

The proposed development demonstrates compliance with the objectives of the relevant controls of the PLEP 2014 and PDCP 21.

The application is recommended for approval subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks approval for alterations and additions to an existing dwelling-house.

The additions are summarised as follows:

- Extend living area under existing verandah roof at northeast corner of dwelling.
- Replace existing balustrades to deck on northern side of dwelling.
- Existing porch area on western side of dwelling to be demolished and infilled to create a new ensuite and robe for master bedroom.
- New skylights to existing roof form.
- New deck to be constructed on southern side of dwelling.
- New/replacement window and door openings as required.

ASSESSMENT INTRODUCTION

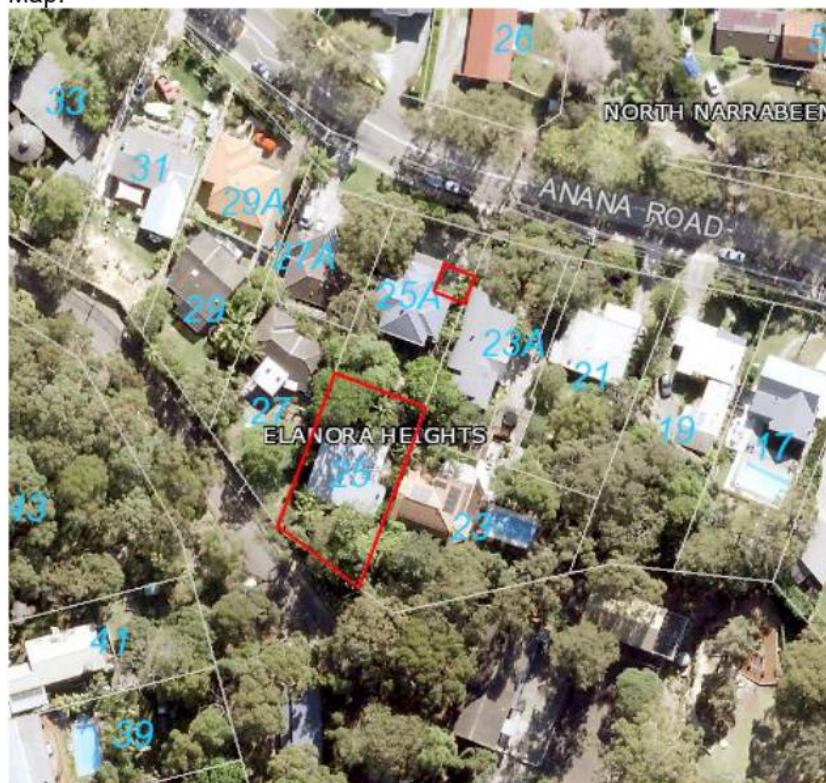
The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- 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.

SITE DESCRIPTION

Property Description:	Lot 2 DP 1115977, 25 Anana Road, ELANORA HEIGHTS
Detailed Site Description:	The subject site consists of an allotment of land located on the southern side of Anana Road. The site comprises two portions, with the main portion being generally rectangular in shape and an area of 616.8m². This portion comprises the dwelling house. The site does not have direct street access to Anana Road, rather access is gained via a 'right of footway' over No. 25A Anana Road and a portion of land with an area of 33m² located within No. 25A utilised for parking and accessed via a right of carriageway. The site falls from the rear boundary towards the north with a total fall of approximately 4.2m. The existing surrounding development comprises predominantly single detached housing on a variety of allotment shapes and sizes.

Map:



SITE HISTORY

Development Application (T0192/14) for tree removal was approved by Council on 14 April 2014. This application granted removal of 3 trees subject to replacement plantings.

There are no other applications relating to the subject site.

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 did not receive any submissions.

REFERRALS

Referral	Comments
Independent External Biodiversity Assessment (Sclerophyll Flora Surveys and Research P/L)	Based on a desktop review and assessment, the proposal is unlikely to result in a significant impact to any Threatened Ecological Communities (TECs) or Threatened species listed under the BC Act and as such the preparation of a Species Impact Statement is not required to accompany the DA. In addition, the results of the BMAT Tool Assessment confirm that the proposal is not captured under the Biodiversity Offset Scheme (BOS) and thus the preparation of a BDAR is similarly not required to accompany the DA.

Referral	Comments
	The proposal is also deemed to generally be in accordance with relevant biodiversity provisions prescribed in the Pittwater DCP, SEPP 44 and SEPP (Coastal management) 2018. The proposal is thus considered to be acceptable in relation to its biodiversity aspects with Draft conditions outlined in Attachment A.
Council's Landscape Section	The Arborist's Report indicates 4 trees are to be removed to accommodate the proposed works. The trees are close to the existing dwelling. The Arborist's Report indicates two (2) trees of low landscape significance, one (1) tree of moderate landscape significance and one exempt tree species to be removed. Two (2) of the trees are also exempt via being within two metres of the existing building. Numerous other trees on the site are to be retained. In this instance, no objections are raised to removal subject to conditions as recommended.

External Referral	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 AND ASSESSMENT ACT, 1979 (EP&A Act)

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	The Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.

Section 4.15 'Matters for Consideration'	Comments
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. These matters have been addressed via a condition of consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, enables Council to request additional information. Additional information was not requested. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider 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 Pittwater 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.

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 known 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. A365181) dated 11 December 2019. A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

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

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

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

SEPP (Coastal Management) 2018

The site is not subject to SEPP Coastal Management (2018), therefore this SEPP does not apply to the proposed development.

PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

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

Principal Development Standards

Standard	Requirement	Proposed	%Variation	Complies
Height of Buildings	8.5m	4.8m (to proposed works)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments,	Yes
4.3 Height of Buildings	Yes
5.10 Heritage Conservation	Yes
7.1 Acid Sulfate Soils	Yes
7.2 Earthworks	Yes
7.3 Flood Planning	Yes
7.6 Biodiversity Protection	Yes
7.7 Geotechnical Hazards	Yes
7.10 Essential Services	Yes

PITTWATER DEVELOPMENT CONTROL PLAN

Built Form Controls

Built Form Control	Requirement	Proposed	Compliance
Front Building Line	6.5m	Approx. 9.0m (existing setback retained)	Yes
Rear Building Line	6.5m	8.0m	Yes
Side Building Line	2.5m	3.224m	Yes
	1.0m	1.5m	Yes
Building Envelope	3.5m	New works do not encroach envelope	Yes
Landscaped Area	60%	62.6%	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.5 Elanora Heights Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip	Yes	Yes
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.2 Scenic protection - General	Yes	Yes
D5.3 Building colours and materials (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.5 Front building line (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)	No	Yes
D5.9 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D5.11 Fences - General (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.13 Construction, Retaining walls, terracing and undercroft areas (Excluding Elanora Heights Village Centre)	Yes	Yes

7.12 CONTRIBUTIONS

Pittwater Section 94 Council Contributions Plan for Residential Development

This Plan applies to the site and a suitable condition has been applied.

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 2013;
- Pittwater 21 Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, the Statement of Environmental Effects, all other documentation supporting the application and public submissions, and the

proposal does not result in any unreasonable impacts on the site and adjoining and surrounding properties. Suitable conditions of consent are 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

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

RECOMMENDATION (APPROVAL)

THAT Council as the consent authority grant Development Consent to DA2019/1448 for alterations and additions to an existing dwelling on land at, Lot 2 in DP 1115977, No. 25 Anana Road, Elanora Heights, 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
DA00 Compliance Table, Legend, Finishes Schedule, Drawing List	15/12/19	Hooghuis Design
DA01 Site and Roof Plan, Site Analysis Plan	15/12/19	Hooghuis Design
DA02 Demolition Plan, Lower Ground Floor Plan	15/12/19	Hooghuis Design
DA03 Ground Floor Plan	15/12/19	Hooghuis Design
DA04 North and East Elevations	15/12/19	Hooghuis Design
DA05 South and West Elevations	15/12/19	Hooghuis Design
DA06 Sections	15/12/19	Hooghuis Design
DA07 Erosion and Sediment Control Plan	15/12/19	Hooghuis Design
DA08 BASIX Certificate	15/12/19	Hooghuis Design
DA3001 Sections 1	15/12/19	Hooghuis Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation – J2515	11 December 2019	White Geotechnical
BASIX Certificate No. A365181	11 December 2019	B Home Design & Drafting
Arboricultural Impact Assessment	13 December 2019	Footprint Green Pty Ltd
Waste Management Plan	Not dated	Unknown

- b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.
- c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- d) The development is to be undertaken generally in accordance with the following:

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

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 (DACPLB09)

3. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

- Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewer 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. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

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

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

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

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

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

5. Policy Controls - Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$3,295.24 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 \$329,524.00.

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.

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

6. 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:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- 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.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 11 December 2019 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

8. 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.

9. 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.

10. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards. Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. 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.

12. Tree Removal

All 4 trees proposed for removal as indicated in the Tree Removal and Retention Plan (refer tree no's 1,2,3,4 shown in Section 6.2 of the Arborist report, Footprint Green Pty Ltd, Dec. 2019) shall be marked with surveyors flagging tape prior to commencement of building works. Only trees marked with flagging tape shall be removed. Trees shall be removed by the Project Consultant Arborist to prevent damage to the retained trees on the subject property.

13. Tree Protection Fencing

In accordance with Pittwater 21 DCP Control B4.22 Protection of Trees and Bushland Vegetation, all existing trees as indicated in the Tree Removal and Retention Plan (tree no's 5,6,7,8,9,10 shown in Section 6.2 of the Arborist report, Footprint Green Pty Ltd Dec. 2019) shall be retained and protected during the building works on the subject site. All 6 trees proposed for retention shall be cordoned off with tree protection fencing as per specifications detailed in Section 7.3 of the Arborist report prior to commencement of building works.

The tree protection fencing shall be certified as being adequate and in accordance with the specifications of AS 4970 ~ 2009 'Protection of Trees on Construction Sites' prior to the commencement of building works by the Project Consulting Arborist (Footprint Green Pty Ltd). Tree protection fencing shall remain in place and be in functional condition for the duration of the building works.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. 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.

15. No Material Storage within 5m of Tree Protection Zone (TPZ)

No storage of building materials, building waste and excavated fill is to occur within 5m of the installed tree protection fencing. Drainage is to be arranged such that fill, building materials or contaminants are not washed into tree protection fenced areas.

16. Deck Design and Construction

The proposed deck shall be designed and constructed in accordance with specifications outlined in Section 7.1 of the Arborist Report (Footprint Green Pty Ltd, Dec. 2019) in order to minimise impact on the 6 retained trees on the subject site. The construction of the deck (in particular the explorative digging required to determine suitable pier locations) should be

carried out under supervision of the Project Consulting Arborist (Footprint Green Pty Ltd) to minimise impacts to root systems of retained trees.

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

17. 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.

18. Restoration of Damaged Public Infrastructure

Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the Principal Certifying Authority with the Occupation Certificate application.

Reason: To ensure public infrastructure is returned to the state it was in prior to development

19. Documentation of Tree Protection Measures

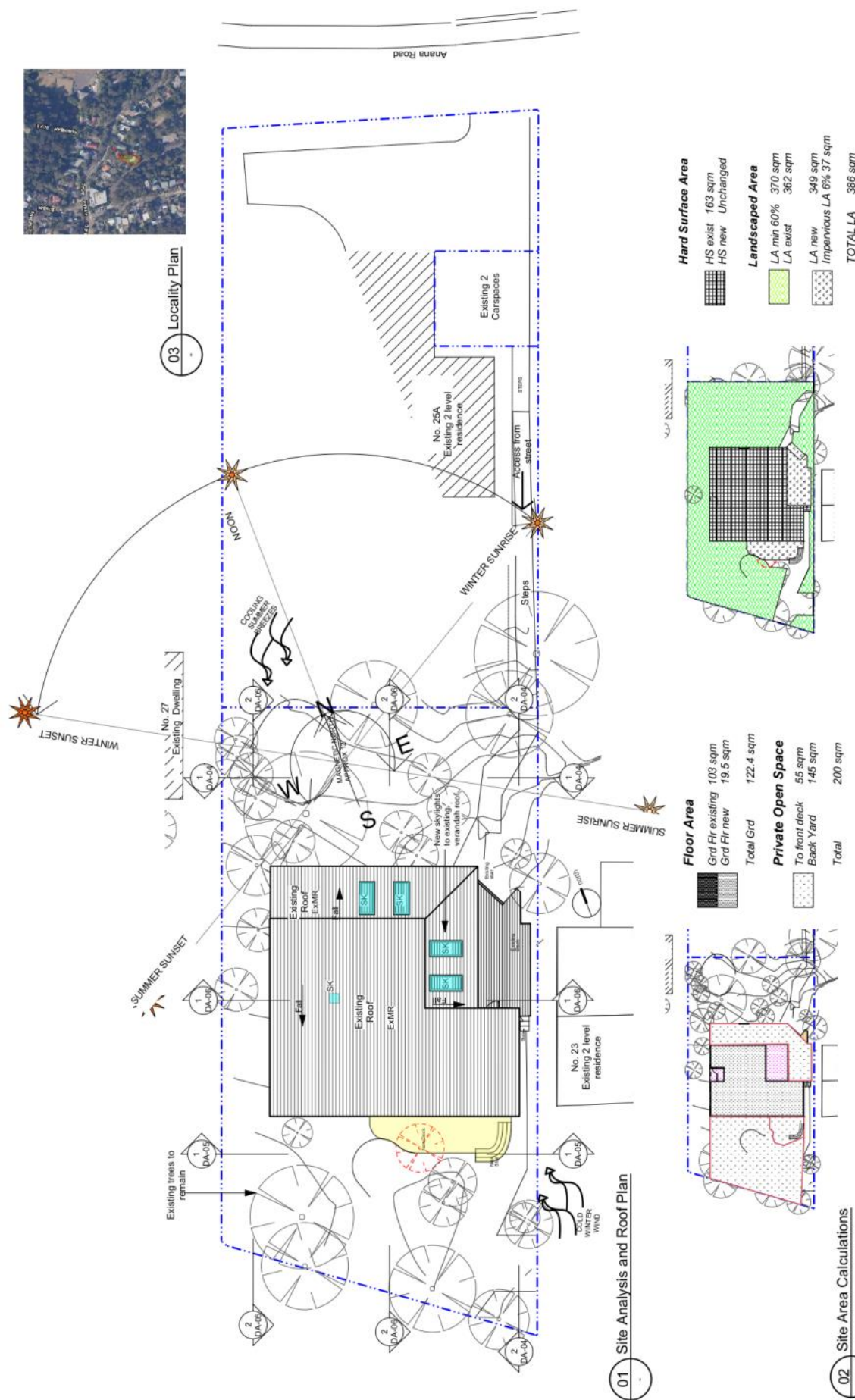
The Project Consultant Arborist shall prepare a report following the completion of building works to certify that all tree protection measures as specified in both Section 7 of the supplied arborist report (Footprint Green Pty Ltd, Dec. 2019) and in these Draft consent conditions have been complied with. This report is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

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

20. Environmental and priority weed control

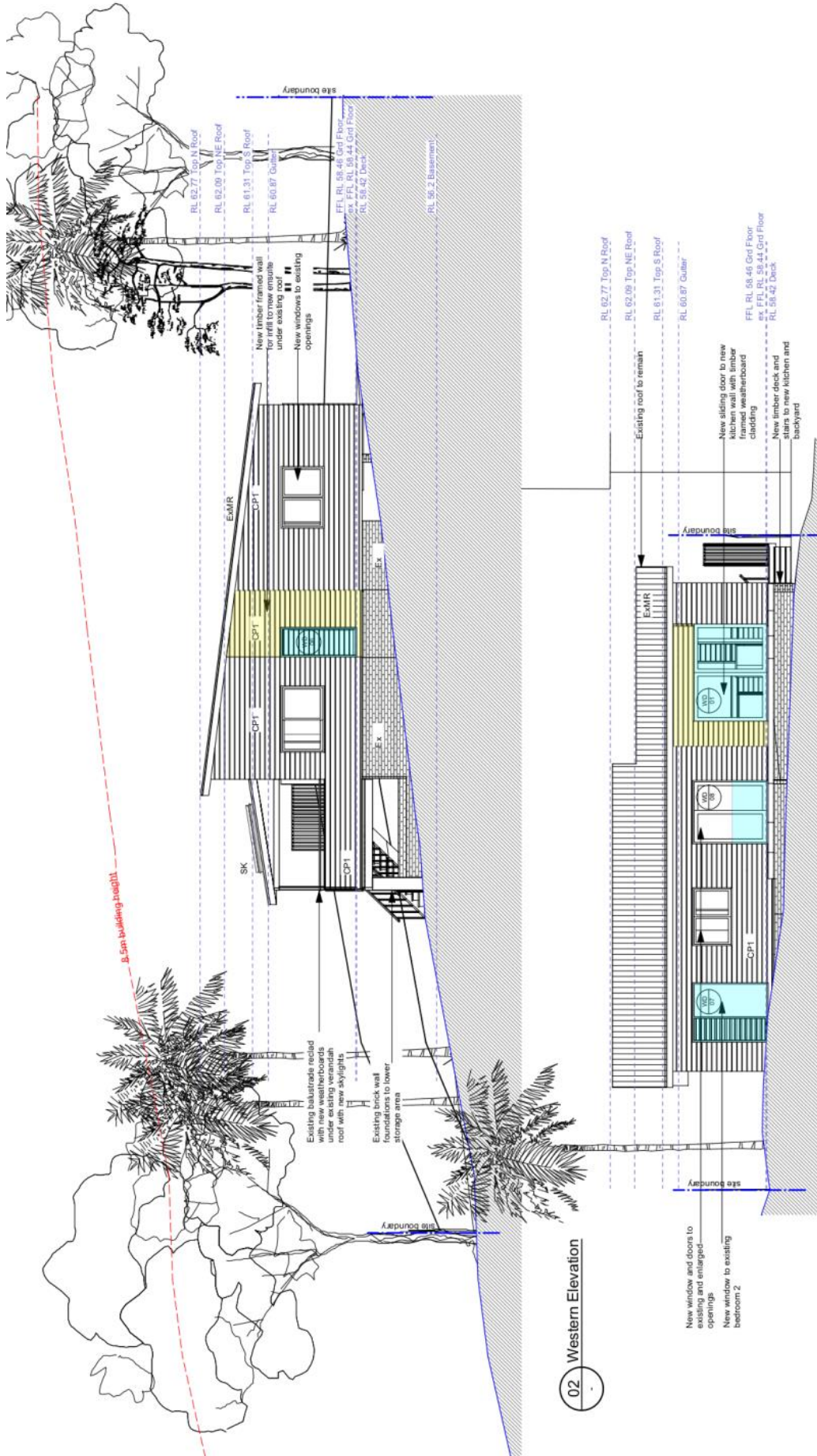
All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: preservation of environmental amenity.

[illegible]



Notes	Stage:
All work to conform to current Building Code of Australia and NSW requirement and all dimensions are in millimetres and figured dimensions take precedence over scaling dimensions. All drawings shall include north arrow, scale, date and draughtsperson's name, qualifications prior to proceeding.	Development Application Date : 15/12/19 Drawn: BH Scale: 1:100 UNO A3
AS 2579 and accordance with accompanying Light and Ventilation to comply with part F4 of the building code of Australia and AS 1564 light transmission to comply with current AS 1564 light requirements.	hd hooghuis design
Materials	Project:
New Timber framed porch/staircase in nature	Alterations and Additions to Single level Dwelling
New Concrete/Paving	Address:
New Glazing	for Mr and Mrs Smith
New Brickwork/blockwork	25 Anana Road
New Metal roofing / Metalwork	Elanora Heights, NSW
	Date
	Issue
	No.
	Development Application
	DA04
Drawing:	15/12/19



Notes All work to conform to current Building Code of Australia and NSW supplement and all dimensions are in millimetres and figured to nearest millimetre unless otherwise stated. Builder to verify all dimensions on site and confirm on site prior to installation. If any discrepancies are found, the drawings shall be amended accordingly. Footings and slabs to comply with current AS 1546 and all wall framing to comply with current AS 1544 light timber framing code and relevant amendments.	Materials New Timber framed post floor structure New Concrete Slab New Glazing New Brickwork/Blockwork New Metal roofing / Metalwork	South and West Elevations DA05	Alterations and Additions to Single level Dwelling	Development Application Date: 15/12/19 Drawn: BH Scale: 1:100 UNO A3	Project for Mr and Mrs Smith 25 Anana Road Elanora Heights, NSW	Address: 25 Anana Road Elanora Heights, NSW	Stage: Development Application	hd hooghuis design hooghuisdesign@optusnet.com.au 0408 413 714 s b n 53630502763
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ITEM 3.4	DA2019/1265 - 15 MONASH CRESCENT, CLONTARF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND GARAGE
AUTHORISING MANAGER	STEVE FINDLAY
TRIM FILE REF	2020/173452
ATTACHMENTS	1 Assessment Report 2 Site Plan and Elevations

PURPOSE

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

RECOMMENDATION OF MANAGER DEVELOPMENT ASSESSMENT

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2019/1265 for alterations and additions to a dwelling house and garage at Lot 54 DP 9745, 15 Monash Crescent, Clontarf for the reasons set out in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1265
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Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 54 DP 9745, 15 Monash Crescent CLONTARF NSW 2093
Proposed Development:	Alterations and additions to a dwelling house and garage
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Milenka Kolenda
Applicant:	Milenka Kolenda

Application Lodged:	12/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	26/11/2019 to 10/12/2019
Advertised:	Not Advertised
Submissions Received:	15
Clause 4.6 Variation:	4.3 Height of buildings: 10% 4.4 Floor space ratio: 59.8%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 1,500,000.00
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EXECUTIVE SUMMARY

The application seeks approval for alterations and additions to the existing dwelling. However, an assessment of the application has found that the proposal is in fact more appropriately categorised as demolition and construction of a new dwelling in accordance with the Land and Environment Court established principle for 'demolition' (also see assessment under Clause 4.4.2 Alterations under the Manly DCP).

Specifically, the proposal involves a new garage and a new dwelling with further additions including a roof pavilion structure and canvas canopies (to the front and rear of the dwelling). The proposed dwelling involves significant breaches to the numerical development standards. This includes a 59.5% variation to the development standard for building height and a 10% variation to the development

standard for Floor Space Ratio.

The application is referred to the NBLPP due to the extent of variation to development standards and number of submissions (11).

The proposal involves significant variation from planning controls including side setbacks, rear setbacks, total open space above ground, landscaped area, and garage width at the boundary frontage.

Furthermore, the changes will not complement the existing streetscape, will have an unreasonable impact on amenity (including views), and will not be of a bulk and scale that is befitting of the scenic protection area.

The assessment concludes that the proposed bulk and scale of the dwelling would result in an amenity impact and visual impact that is not appropriate.

Therefore, it is recommended that the application be refused.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for alterations and additions to the existing dwelling. However, an assessment under the Land and Environment Court established planning principle for "Demolition" under Clause 4.4.2 of this report has found that the proposal involves a significant departure from the existing position. As such, the proposal should be appropriately categorised as a new dwelling.

In detail, the proposal involves the following:

Ground Floor

- Lobby
- Open plan dining/kitchen/rumpus, powder room
- Study
- Pantry
- Laundry
- Rear open plan living and dining
- Rumpus area
- Storeroom

First Floor

- Bathroom
- Gym
- Four bedrooms (including three robes and three ensuites)
- Balcony

External

- New roof terrace with new internal access stairs, new lift shaft and new glass balustrade
- BBQ area
- Outdoor Dining
- Paving
- Lawn
- Fire pit

- Terrace
- A three car space garage
- New pedestrian entry
- New entry structure with open pergola
- New outdoor entertaining

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 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.4.2 Alterations and Additions

SITE DESCRIPTION

Property Description:	Lot 54 DP 9745 , 15 Monash Crescent CLONTARF NSW 2093
Detailed Site Description:	The subject site consists of an allotment located on the south-western side of Monash Crescent. The site is irregular in shape with a frontage of 11.74m along Monash Crescent and a depth of 39.39m. The site has a

	surveyed area of 594.3m². The site is located within the E3 Environmental Management zone and accommodates a dwelling house on site. The site is relatively flat and has a rear boundary that adjoins a reserve at middle harbour. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by residential development on either side of Monash Crescent.
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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:

- DA0004/1998- Council refused this application for a shade structure to an existing roof deck. Reasons for refusal included that the proposal would not be in keeping with character, would be overbearing and would have an adverse impact on the Middle Harbour area.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and

Assessment Act 1979
EXISTING USE RIGHTS

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 15 submission/s from:

Name:	Address:
Mr Anthony Paul Brooks	13 Monash Crescent CLONTARF NSW 2093
Ms Caron Louise Brooks	13 Monash Crescent CLONTARF NSW 2093
John Clapin	7 Monash Crescent CLONTARF NSW 2093
Mrs Helen Dorothy Hayes	11 Monash Crescent CLONTARF NSW 2093
Mr Matthew Paul Hayes	11 Monash Crescent CLONTARF NSW 2093
Mrs Josi Carroll	17 Monash Crescent CLONTARF NSW 2093
Mrs Philippa Clare Stuart	20 Monash Crescent CLONTARF NSW 2093
Mr Wayne Anthony Collins Mrs Gay Elizabeth Collins	29 A Amiens Road CLONTARF NSW 2093
Meriel Frost	5 Monash Crescent CLONTARF NSW 2093
Mr Robert Walter Frost	5 Monash Crescent CLONTARF NSW 2093
Mr Anthony James Stuart	20 Monash Crescent CLONTARF NSW 2093
Mr Mark Edward Dowling	22 Monash Crescent CLONTARF NSW 2093
Mr Graham Keith Sowden	14 Monash Crescent CLONTARF NSW 2093
Mr Daniel Edward Brooks	11 A Monash Crescent CLONTARF NSW 2093
Mrs Katerina Fay McMaster	31 Amiens Road CLONTARF NSW 2093

11 of which are unique submissions.

The matters raised within the submissions are addressed as follows:

- Intensification in use of terrace/rooftop area; privacy impacts caused by terrace (noise and visual); negative impacts on the beach front; potential for roof structures; Access to light; inappropriate re-purposing
Comment:
The new roof terrace is of a size and in a location that would have an unreasonable impact on privacy. This includes unreasonable opportunity for overlooking and noise impacts. The height of the access pavilion will also have an unreasonable impact on amenity and will not provide for an appropriate visual presentation within the scenic foreshore area including to the harbour.

- Breach of height limit
Comment:
The request to vary the development standard for building height is not supported. This is due to the lack of appropriate visual presentation of bulk and the unreasonable impact on amenity including views.
- Three storey nature
Comment:
The presentation of bulk which includes a three storey element is overbearing, and would not present appropriately given the scenic qualities of the area. Furthermore, the third storey element has an impact on view that is unreasonable (as assessed under the Land and Environment Court established principle for views).
- Impact on views and vistas
Comment:
The proposal would have an unreasonable impact on views (as assessed below in accordance with the Land and Environment Court established planning principle). This includes that the breach in the development standard for building height will contribute to a loss of water views from living areas.
- FSR
Comment:
The request to vary the development standard for Floor Space Ratio is not supported. This includes that the proposed bulk and scale is not compatible with the area and that amenity impacts caused by the breach would be unreasonable.
- Open Space/ Landscaping
Comment:
The total amount of open space above ground and amount of landscaped area does not comply with the controls. This design for open space is not appropriate for the area as it would have an unreasonable impact on neighbours and would not provide natural features and permeable space to be appropriate for the area.
- A new dwelling would be required to comply with current controls
Comment:
The proposal is considered to be a new dwelling in accordance with the court established planning principle for demolition. As such, the significant non-compliance with a number of controls is a further reason that the development is unreasonable for the site.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed development has been assessed against the following provisions: - Manly LEP Clause 6.5 (Terrestrial Biodiversity) - SEPP (Coastal Management) - Coastal Environment Area The subject site is highly modified with minimal native vegetation or biodiversity values remaining. Subject to conditions of consent, the proposal is considered to comply with the assessed provisions.

Internal Referral Body	Comments
	However, given the bulk and scale of the development, assessment by Council's Landscape referral body against DCP landscaping requirements should be considered.
NECC (Coast and Catchments)	The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP. The application has also been assessed using Northern Beaches SREP assessment template. Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016. State Environmental Planning Policy (Coastal Management) 2018 As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development. The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Clauses 13 (coastal environment area) and 14 (coastal use area) do not apply as the site is also located within the SREP area. Hence, only Clause 15 of the CM SEPP apply for this DA. Comment: As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated November 2019 and Council accepts the assessment, the DA satisfies requirements under Clause 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. Sydney Regional Environment Plan (Sydney Harbour Catchment), 2005 The subject site is located within/adjacent to the W2 (Environmental Protection) Zone.

Internal Referral Body	Comments
	As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated November 2019 and Council accepts the assessment, it is determined that the objectives and assessment criteria of the zone have been met. Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005 Landscape character Assessment The subject site is located within the Landscape Character Type 6 As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd. dated November 2019 and Council accepts the assessment, it is determined that the proposed development within the landscape satisfy the relevant criteria. Manly LEP 2013 and Manly DCP No issues identified.
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed development is recommended for approval.
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. A359669 dated Friday, 25, October 2019).

SEPP (Infrastructure) 2007Ausgrid

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

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

Comment:

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

SEPP (Coastal Management) 2018

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

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

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

Comment:

Council's Coastal officer has accepted the assessment provided by the applicant in relation to Clause 15. It is further assessed that there is reasonable separation between the dwelling and harbour so as to appropriately reduce likelihood of increased risk to coastal hazards or other land.

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.35m	10%	No (see comments)
Floor Space Ratio Site area: 594.3m ²	FSR: 0.4:1 (237.72m ²)	FSR: 0.64:1 (380m ²)	59.8%	No (see comments)

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	No
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Height of Building

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.35m
Percentage variation to requirement:	10%

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 not demonstrated that the objectives of the development standard are achieved.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

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

The applicants written request argues, in part:

- The proposed development is consistent with the objectives of the zone
- The proposed development would maintain a compatible scale relationship with existing development
- The additions would maintain amenity and solar access
- The proposal complies with landscaping requirements

It is not agreed that the proposed development involves a scale that is compatible with surrounding development. It is also suggested that the height of the building contributes to a scale that is incompatible. Furthermore, the proposed height contributes to amenity impact that is unreasonable. This includes impact on views and privacy.

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore not satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposal involves a two storey dwelling with an access pavilion and rooftop terrace. Although there is some variety in roof forms and height of buildings, the predominant form in the streetscape is that of two storey dwellings with pitched roofs. The proposal will not be consistent with this predominant style and will produce a bulk above the second storey that is not desirable for the area. In particular, the flat nature of the land means that the presentation of this bulk will be readily visible from both the streetscape and neighbouring properties.

The proposal does not comply with this objective.

b) to control the bulk and scale of buildings,

Comment:

The proposal involves a development that expands across the width of the site at both the ground floor and first floor level. As such, the proposal does not provide modulation to minimise the presentation of bulk and scale and does not comply with the control for side setbacks. Along with the roof pavilion feature above the second storey, this results in a development that does not sufficiently control bulk and scale.

The proposal does not comply with this objective.

c) to minimise disruption to the following:

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

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

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

Comment:

The proposed roof pavilion does not comply with the development standard for building height. This pavilion contributes to a moderate disruption of views toward the harbour for dwellings inland of the subject site. As a result of this moderate disruption and the non-compliance with the development standard, the view sharing outcome is unreasonable.

The proposal does not comply with this objective.

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

Comment:

For solar access, the proposal involves sufficient separation from the neighbouring site to the

south. This is due to a lane way adjacent and to the south-east of the site. This lane way contributes to the proposal being consistent with the requirements for Sunlight Access and Overshadowing under the Manly DCP, 2013.

The proposal complies with this objective.

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

Comment:

The proposal involves a height and bulk that is not compatible with the Foreshore Scenic Protection area or the adjacent recreation zone. In particular, the roof pavilion and significant expansion of the building bulk across the site does not complement the natural and scenic qualities of the area.

The proposal does not comply with this objective.

Zone objectives

The underlying objectives of the E3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment:

The overbearing height results in a presentation of bulk that does not manage and restore areas with special ecological, scientific, cultural or aesthetic values.

The proposal does not comply with this objective.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

Although a dwelling is permissible in the zone, the overall height and bulk of the proposed dwelling signifies a development that would have an adverse effect on the above values.

The proposal does not comply with this objective.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment:

The bulk shown by the non-compliance with setback controls and building height controls provides an overbearing built form. This dominates scenic qualities of the foreshore.

The proposal does not comply with this objective.

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

Comment:

The proposal does not involve any significant impact on natural features.

The proposal complies with this objective.

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

Comment:

The proposal does not comply with the requirement for landscaped area and the development involves hard surface areas which extend across a large part of the site and are not appropriate for the area.

The proposal does not comply with this objective.

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

Comment:

The proposal involves a height and bulk that is inconsistent with the desired character of the area and that results in an unreasonable amenity impact for neighbouring properties.

The proposal does not comply with this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the E3 Environmental Management 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.

Conclusion

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard can not be assumed.

Floor space ratio

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	FSR: 0.4:1 (237.72m ²)
Proposed:	FSR: 0.64:1 (380m ²)
Percentage variation to requirement:	59.8%

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 not demonstrated that the objectives of the development standard are achieved.

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

*different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- The proposed development is consistent with the objectives of the zone
- The proposed development would maintain a compatible scale relationship with existing development

It is not agreed that the proposed development involves a scale that is compatible with surrounding development. It is also suggested that the Floor Space ratio contributes to a scale that is incompatible. Furthermore, the proposed floor space ratio contributes to amenity impact that is unreasonable. This includes impact on views and privacy.

In this regard, the applicant's written request has not demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore not satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is 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 E3 Environmental Management zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.4 – '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 shape of the lot is irregular in a form in which the width of the lot gets wider toward the rear of the site. The shape of the proposed building envelope and footprint generally follows the shape of the lot. This shape does not match the predominant form of surrounding lots and building footprints, which are generally rectangular. Along with the non-compliance with side setback controls and landscaped area, this contributes to a built form which is incompatible with the desired streetscape character.

The proposal does not comply with this objective.

(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:

Along with the non-compliance with Floor Space Ratio, the proposal involves a development that does not comply with side setbacks and does not comply with the development standard for building height. This results in a development with a lack of open corridors and an obscurement of the Foreshore Scenic Protection Area that is unreasonable.

The proposal does not comply with this objective.

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

Comment:

The proposed dwelling which has a 59.8% variation to the development standard for Floor Space Ratio, will not maintain an appropriate visual relationship between the existing character and landscape of the area. This is contributed to by the three levels of built form and lack of landscaping on site.

The proposal does not comply with this objective.

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

Comment:

The proposal involves a dwelling with setbacks which do not adequately minimise privacy impact to neighbouring properties. Furthermore, the proposal does not provide an amount of landscaping which would adequately minimise environmental impacts on the site.

The proposal does not comply with this objective.

(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 proposal is not within a business zone.

Zone objectives

The underlying objectives of the E3 Environmental Management zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment:

The overbearing height results in a presentation of bulk that does not manage and restore areas with special ecological, scientific, cultural or aesthetic values.

The proposal does not comply with this objective.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

Although a dwelling is permissible in the zone, the overall height and bulk of the proposed dwelling signifies a development that would have an adverse effect on the above values.

The proposal does not comply with this objective.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment:

The bulk shown by the non-compliance with setback controls and building height controls provides an overbearing built form. This dominates scenic qualities of the foreshore.

The proposal does not comply with this objective.

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

Comment:

The proposal does not involve any significant impact on natural features.

The proposal complies with this objective.

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

Comment:

The proposal does not comply with the requirement for landscaped area and the development involves hard surface areas which extend across a large part of the site and are not appropriate for the area.

The proposal does not comply with this objective.

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

Comment:

The proposal involves a height and bulk that is inconsistent with the desired character of the area and that results in an unreasonable amenity impact for neighbouring properties.

The proposal does not comply with this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the E3 Environmental Management 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.

Conclusion

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the inconsistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Floor Space Ratio Development Standard can not be assumed.

6.9 Foreshore scenic protection area

The proposal involves a height, bulk and scale that is not compatible with the Foreshore Scenic Protection area. The proposed variation of 59.3% to the development standard for Floor Space ratio and the proposed variation of 10% to the development standard for building height is a total amount of built form that results in unreasonable view loss and a visual presentation which does not align with the visual aesthetic amenity expected for the area. In particular, an analysis (below) against the Land and Environment court established planning principle for views has found the view sharing outcome to be inadequate.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 594.3m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 6.5m	7.75m	N/A	No (see comments under building height)
	South: 6.5m	7.75m	N/A	No (see comments

				under building height)
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.45m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	1.01m	83.2%	No (see comments)
4.1.4.2 Side Setbacks and Secondary Street Frontages	North-east: 2.58m (based on wall height)	0.9m	55.8%	No (see comments)
	South west: 2.58m (based on wall height)	1.14m	65.1%	No (see comments)
	Windows: 3m	0.9-1.1m	N/A	No (see comments)
4.1.4.4 Rear Setbacks	8m	6.72m	16%	No (see comments)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area	67% (401m ²)	N/A	Yes
	Open space above ground 25% of total open space	40% (195m ²)	N/A	No (see comments)
4.1.5.2 Landscaped Area	Landscaped area 40% of open space	24.2% (97.1m ²)	N/A	No (see comments)
4.1.5.3 Private Open Space	18sqm / 12sqm per dwelling	80m ²	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	9.94m (82.8%)	N/A	No (see comments)
Schedule 3 Parking and Access	Dwelling 2 spaces	3 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	No	No
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	No	No
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	No	No
3.4.3 Maintenance of Views	No	No
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	No
4.1.5 Open Space and Landscaping	No	No
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	No
4.4.2 Alterations and Additions	No	No
5.4.1 Foreshore Scenic Protection Area	No	No

Detailed Assessment

3.1 Streetscapes and Townscapes

Merit consideration:

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

Objective 1) To minimise any negative visual impact of walls, fences and carparking on the street frontage.

Comment:

The proposal involves a three space garage and entry structure that extends across the majority of the frontage. Given the control under Clause 4.1.6.1 which requires car parking structures to extend no more than 50% of the frontage, this is an extent that contributes to the overall negative visual impact and overbearing bulk of the proposal.

The proposal does not comply with this objective.

Objective 2) To ensure development generally viewed from the street complements the identified streetscape.

Comment:

The proposed dwelling follows the boundaries of the irregular shaped lot. Given the surrounding rectangular lots, the bulk provided with this style is dominating and overbearing in the streetscape. As such the proposal does not complement the identified streetscape.

The proposal does not comply with this objective.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment:

The proposal does not involve a front fence or front wall.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

3.4.2 Privacy and Security

Merit consideration:

The development is considered against the underlying Objectives of the Clause as follows:

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- *appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and*
- *mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.*

Comment:

The proposal involves side setbacks of 0.9m-1.1m to the rooftop terrace. Along with the excessive extent of the terrace shown by non-compliance with the total space above ground control, this provides a lack of physical separation from the boundaries and neighbouring properties. This does not minimise loss of privacy to adjacent and nearby development.

The proposal does not comply with this objective.

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

Comment:

The proposal does not provide an adequate outcome for privacy given the extent of the rooftop terrace area. It is also noted that further screening to this area may be appropriate as it may compromise access to light and views.

The proposal does not comply with this objective.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal involves sufficient openings and outdoor open spaces to encourage awareness of neighborhood security.

The proposal complies with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

3.4.3 Maintenance of Views

Merit consideration:

The development is considered against the Objectives of the Control:

Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.

Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised landmarks or buildings from both private property and public places (including roads and footpaths).

Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

31 Amiens Road, Clontarf

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

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

Comment:

The property at 31 Amiens Road (pictured) obtains water and land-water interface views over the subject site toward middle harbour. The corridor and extent of water view is limited due to the vegetation either side of the site that obscures opportunity for views toward water in other directions.



Photo 1: Views from 31 Amiens Road over the subject site.

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

Comment:

The views are obtained over the rear boundary and from this location the view is relatively distant but this is the only area in which there is an opportunity for views of the harbour from 31 Amiens Road.

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

Comment:

Given the impact on the only water view at the property is from a living area, the impact caused by the roof access pavilion and bulk of the dwelling is considered to be moderate.

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

Comment:

The proposal does not comply with the development standard for Building height nor the development standard for Floor Space Ratio. Given these non-compliance and the scenic qualities of the area, the moderate impact is therefore considered to be unreasonable.

Other properties

It is also noted there would be some view loss for various other properties in the area. The extent of non-compliance with development standards and building setbacks contributes to an outcome which does not provide for adequate view sharing in the area.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

4.1.4 Setbacks (front, side and rear) and Building SeparationDescription of non-compliance

The proposal does not comply with the front setback control of 6m. In this regard, the proposal involves a setback of 1.01m to the proposed garage.

The proposal does not comply with the side setback control at the north-east or south-west boundary

(2.58m). In this regard, the proposal has a setback of 0.9m at the north-east and 1.14m at the south-west.

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 proposal involves a building bulk across the site which does not adequately contribute to the the spatial proportions to the street and is overbearing in its relationship with natural features and the foreshore. Furthermore, the extent of garage and entry structure toward the front of the site, provides a presentation of bulk that is inconsistent with the streetscape and not desirable in terms of providing an open presentation to the street.

The proposal does not comply with this objective.

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 proposal involves a rooftop terrace which has non-compliant side setbacks that contribute to an outcome for privacy that would be unreasonable for neighbouring properties. These setbacks result in a lack of physical separation between the terrace and private open space areas. Furthermore, the lack of modulation at the side setbacks would not sufficiently maintain the pattern of spacing in the street and would not provide appropriate views and vistas from private and public space.

The proposal does not comply with this objective.

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

Comment:

The proposal does not provide a front, side or rear setback that complies with a setback control. Given, the lack of adequate visual presentation and the unreasonable amenity impact, flexibility is not warranted for this siting.

The proposal does not comply with this objective.

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 proposal does not comply with the control for landscaped area on the site and proposes hard surface to the majority of the front and rear of the site. This does not adequately enhance or maintain natural features.

The proposal does not comply with this objective.

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

Comment:

The subject site is not within bush fire prone land.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposal does not comply with the control which restricts open space above ground to be 25% of total open space. In this regard, the proposal involves 195m² above ground which equates to be 40%.

Merit consideration:

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

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

Comment:

The proposal does not provide adequate landscaped area on site so as to retain and augment natural features on the site. In particular, the large paved area to the rear and large garage area to the front of the site inappropriately restrict opportunity for natural features on the site.

The proposal does not comply with this objective.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage

appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The proposal involves hard surface to surround the site and as so, does not sufficiently maximise soft landscaped areas at ground level. Furthermore, the main open space area is to the rooftop terrace as opposed to maximising space at ground level. This does not provide an appropriate balance of open space on site.

The proposal does not comply with this objective.

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

Comment:

The total amount of open space above ground level results in a situation in which there is an unreasonable privacy outcome for the site. The extent of the rooftop terrace provides unreasonable opportunity for overlooking and acoustic privacy impact.

The proposal does not comply with this objective.

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

Comment:

The proposal involves a landscaped area of 97.1m². Given the site area of 594.3m², this is not an appropriate amount of permeable surface to maximise opportunity for water infiltration.

The proposal does not comply with this objective.

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

Comment:

The proposal does not involve any weeds and provides not unreasonable opportunity for the spread of weeds.

The proposal complies with this objective.

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

Comment:

The proposal does not comply with the landscaped area control and does not provide enough natural features across the site to maximise wildlife habitat and potential for wildlife corridors.

The proposal does not comply with this objective.

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

proposal is not supported, in this particular circumstance.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

See assessment under *Clause 3.1 Streetscapes*

4.4.2 Alterations and Additions

The proposal involves demolition of more than half of the existing dwelling (including the ancillary garage). As such, the proposed building is considered to be a new dwelling for the purposes of Clause 4.4.2.

Furthermore, an assessment is made against questions established by the Land and Environment Court planning principle for Demotion as follows:

Qualitative issues

How is the appearance of the existing building to be changed when viewed from public places?

The proposal involves demolition of the existing garage and construction of a new garage. Although the new garage is of a similar bulk and scale to the existing garage, the location of the access area is changes and the external materials at the front elevation will be different to the existing garage. The front elevation of the dwelling also completely changes the materials used as compared to the existing dwelling. Furthermore, roof pavilion structure will add a third storey element to the presentation.

To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places?

The proposal involves removal of some lawn from the rear of the site and also proposes a canvas canopy over this lawn. This will result in built form and hard surface dominating the presentation from the harbour.

To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?

As a result of the additional hard surface and bulk, the proposal will have an unreasonable visual impact on the Environmental Heritage item- *I1 Harbour Foreshores*.

What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?

The proposal involves the demolition of the majority of walls within the existing dwelling and garage.

What is the extent, if any, of any proposed change to the use of the building?

The proposal does not involve any change of use, however, the proposal does involve additional structures to the roof area to provide an intensification to the use of this area.

To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?

The proposal will result in a change to the presentation of the garage, front elevation and will add a structure to the roof.

To what extent, if any, are the existing access arrangements for the building proposed to be altered?

The proposal involves a new access including a lift to the access the rooftop area.

To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development?

With the exception of changes to the location of windows, the proposal will not significantly alter the outlook from within the existing building.

Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?

The extent of the demolition to the internal and external walls and materials is to an extent that the existing house will lose the majority of its existing characteristics.

Quantitative issues

To what extent is the site coverage proposed to be changed?

The proposal involves a change in the location of the entry area and also involves canopies to the front and rear of the dwelling. This results in a coverage of roof form and cover which extends across the most of the site, from the front boundary to 3.5 metres from the rear boundary.

To what extent are any existing non-compliances with numerical controls either increased or diminished by the proposal?

The existing building complies with the development standard for building height. the proposed dwelling adds a third storey element that does not comply with the standard.

The proposal also adds a canopy structure that adds to the existing non-compliance with the control for rear set back and foreshore building line.

To what extent is the building envelope proposed to be changed?

The location of the building envelope is similar to the existing building but the materials and design of the envelope is substantially different to the existing building.

To what extent are boundary setbacks proposed to be changed?

The proposal involves an additional canopy structure in the rear setback.

To what extent will the present numerical degree of landscaping on the site be changed?

The total amount of landscaped area on site will be slightly reduced (in accordance with the calculation made under the Manly DCP).

To what extent will the existing floor space ratio be altered?

The proposal provides a lack of information in order to make an accurate comparison between existing and proposed Floor Space Ratio. However, comparison to demolition and proposed floor area indicates proposed floor space ratio is similar to existing.

To what extent will there be changes in the roof form?

The proposal changes the roof from having a pitched element to being a flat style roof with balustrade for the roof terrace.

The garage changes from having a pitched roof to being a flat roof.

To what extent will there be alterations to car parking/garaging on the site and/or within the building?

The proposal involves a new garage structure and changes the location of the access within this structure.

To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?

The proposal does not involve any significant change to landform.

What relationship does the proportion of the retained building bear to the proposed new development?

The retention of sections of walls is minor compared to the extent of walls proposed.

The above consideration of the proposal shows that there would be a significant departure from the existing position. As such, the proposal is considered to be for a new dwelling.

CONCLUSION

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

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

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

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

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

Council is not satisfied that:

1) The Applicant's written requests 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 have 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.

Conclusions on the Assessment of the Application

In the assessment of the application, it has been found that the proposal is for a new dwelling in accordance with the Land and Environment Court established planning principle for 'demolition'.

The proposed dwelling involves a bulk and scale that is overbearing for the streetscape, and foreshore scenic protection area. Furthermore, the lack of appropriate setbacks, non-compliant floor space ratio,

non compliant building height, result in amenity impacts to neighbours and surrounding properties.

A condition has also been imposed to require that the height of planting along the western boundary is limited. This provides a reasonable balance between promoting natural features on site and protecting the amenity of the western neighbour.

On balance, the proposal should be refused as the design is not suitable for the site and locality by virtue of the overbearing scale and lack of sufficient separation from surrounding development.

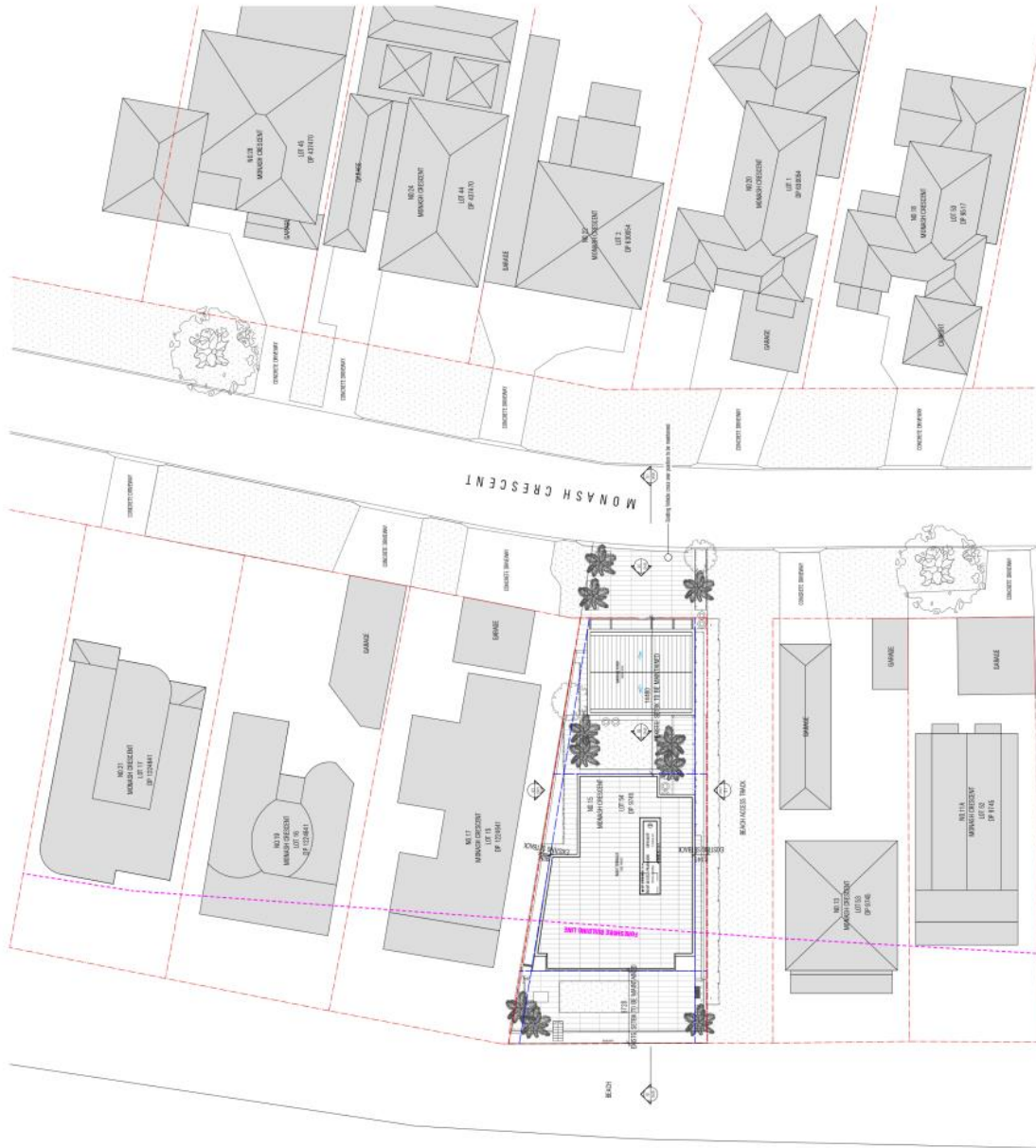
Therefore, the application is recommended for refusal.

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

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council , as the consent authority REFUSE Development Consent to Development Application No DA2019/1265 for the Alterations and additions to a dwelling house and garage on land at Lot 54 DP 9745, 15 Monash Crescent, CLONTARF, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.6 Exceptions to Development Standards of the Manly Local Environmental Plan 2013.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.9 Foreshore Scenic Protection Area of the Manly Local Environmental Plan 2013.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan .
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan .
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 4.4.2 Alterations and Additions of the Manly Development Control Plan.



02 PLAN
Location Plan
Scale: N.T.S.

01 PLAN
Site Plan
Scale: 1"=100'

